



Order under Section 69 Residential Tenancies Act, 2006

Citation: Taha v Qayoumi, 2022 ONLTB 11069

Date: 2022-11-09

File Number: LTB-L-031885-22

In the matter of: 1408, 2910 HIGHWAY 7
CONCORD ON L4K0H8

Between:	Ismail Salih Taha	Landlord
	and	
	Samim Qayoumi	Tenant

Ismail Salih Taha (the 'Landlord') applied for an order to terminate the tenancy and evict Samim Qayoumi (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 27, 2022.

The Landlord's Legal Representative, Marshall Yarmus, the Landlord, and the Tenant attended the hearing. The Tenant spoke with Duty Counsel prior to the start of the proceeding.

Determinations:

1. The Landlord confirmed his first name is Ismail and his last name is Taha. As a result, the application is amended to reflect the Landlord's proper name.
2. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$2,850.00. It is due on the 15th day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$93.70. This amount is calculated as follows: \$2,850.00 x 12, divided by 365 days.

Issues raised by the Tenant

6. The Tenant testified with respect to issues that might be the subject of a tenant's application in particular alleged incidents that might be characterized as harassment and/or intimidation, including the frequency and nature of inspections of the rental unit, leaving the door unlocked after an inspection, and unauthorized arrears discussions with

his family members. However, the Tenant did not provide the Landlord with written notice he would be raising such issues at the hearing under section 82 of the *Residential Tenancies Act, 2006* (the 'Act').

7. The Tenant confirmed he received the Notice of Hearing via email dated October 5, 2022. The covering email to the Notice of Hearing provides:

For the Tenant: Attached you will find a form "Issues a Tenant Intends to Raise at a Rent Arrears Hearing" to submit to the Board prior to the hearing, is any issues are present.

8. The section 82 list of issues form attached to the email further provides:

This form must be given to the landlord or the landlord's representative, and the Board as soon as possible but no later than 5 days before the hearing of the landlord's application. You **MUST** also give a copy of all documents, pictures and other evidence that you intend to rely upon at the hearing no later than 5 days in advance of the hearing unless ordered otherwise. Information about how to give your documents to the Board is contained in the Notice of Hearing.

9. The Notice of Hearing provides a party is give the other party a copy of all evidence they want to use during the hearing as soon as possible but at least 7 days before the hearing and, if they have any evidence they wish to rely on in reply, to provide this at least 5 days before the hearing. Further, if such is not done parties are advised they may not be permitted to rely on evidence during the hearing.
10. When asked whether he provided notice to the Landlord of the issues he wished to rise, the Tenant testified he did not because he did not know what to do.
11. The Tenant testified he looked into the email about attaching evidence of issues but did not know how to upload and attach video evidence he wished to rely upon. He testified he attempted to contact the Board but could not get through. He also testified he had spoken with a paralegal two weeks earlier but could not afford to hire them. It is also noted the Tenant spoke with Duty Counsel at the start of this proceeding.
12. The Tenant's difficulty was with respect to uploading video evidence. I find the Tenant's ability to provide notice of his section 82 issues was unaffected. Nonetheless, the Tenant did not send the form or even an email regarding section 82 issues he intended to raise to the Landlord or Landlord's representative. I also note under section 29(2) of the Act a tenant has one year to file an application after the day the alleged conduct giving rise to the application occurred. The Tenant also remains able to seek legal advice regarding pursuing his issues.
13. As a result, I did not consider the Tenant's issues under s. 82 of the Act; however, I did consider these under section 83 of the Act.

Section 83 considerations

14. Following hearing of the Tenant's evidence and submissions regarding his financial circumstances, and the Landlord's evidence regarding the impact of the Tenant's non-payment of rent, but before a determination was made as to the amount of arrears owing, the parties agreed the Tenant would vacate the rental unit on or before November 30, 2022.
15. As a result, the portion of this order regarding termination of tenancy is issuing on consent. The outstanding determinations regarding the amount owing are set out below.
16. While not strictly necessary given the parties' consent, as I heard evidence on issues that might give rise to mandatory eviction under section 83(3)(a) of the Act before the parties reached the above agreement and provided an oral ruling on this issue at this hearing, I have also set out my determinations in this regard.
17. Section 83(3) of the Act provides:

83(3) without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,

 - (a) the landlord is in serious breach of the landlord's responsibility under this Act or of any material covenant in the tenancy agreement.
18. Where the Board is satisfied the landlord is in serious breach of the landlord's responsibilities under the Act or of any material covenant in the tenancy agreement, it is mandatory to refuse the landlord's application for eviction. In addition to being serious, the landlord's breach, whether of their responsibilities under the Act or of a material covenant, must also be occurring at the time of the hearing.
19. The Tenant testified the Landlord's behaviours regarding inspections stopped after receipt of the Notice of Hearing. The other incidents mentioned were singular events. I therefore found the issues alleged were not ongoing as of the date of the hearing. As a result, I advised the parties that the Landlord's application would not be refused under section 83(3)(a).

Determination of amount owing

20. The Tenant submitted he made rental payments which were not accounted for by the Landlord. He submitted he only owed rent for 6 or 7 months not the 10 claimed by the Landlord.
21. The Tenant testified he paid rent on October 20, 2021 and February 17, 2022.
22. The N4 Notice does not claim unpaid rent for the rental periods before December 15, 2021 and does not claim unpaid rent for the rental period commencing February 15, 2022. Further, the Landlord testified the Tenant paid rent for February 2022.

23. The Tenant did not provide evidence particularizing any other payments alleged. Despite receiving the Notice of Hearing on October 5, 2022, and being aware he had to provide evidence in advance of the hearing as set out above, the Tenant testified he had not looked into collecting evidence from his other bank account earlier and did not wish to testify he had made other payments without confirming for fear of being inaccurate.
24. In the above circumstances, I find the Tenant did not establish they made any rental payments for which the Landlord did not account. As a result, I find the Landlord has not claimed for any amounts paid by the Tenant. I further find the Tenant has not made any payments since the application was filed.
25. I find the rent arrears owing to November 14, 2022 are \$28,500.00.
26. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
27. The Landlord collected a rent deposit of \$2,850.00 from the Tenant and this deposit is still being held by the Landlord.
28. Interest on the rent deposit in the amount of \$38.23 is owing to the Tenant for the period from September 15, 2021 to October 27, 2022.

It is ordered that:

1. The application is amended to name the Landlord as Ismail Salih Taha.
2. On consent of the parties, the tenancy between the Landlord and the Tenant is terminated as of November 30, 2022. The Tenant must move out of the rental unit on or before November 30, 2022
3. The Tenant shall pay to the Landlord \$24,165.87. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
4. The Tenant shall also pay the Landlord compensation of \$93.70 per day for the use of the unit starting October 28, 2022 until the date the Tenant moves out of the unit.
5. If the Tenant does not pay the Landlord the full amount owing on or before November 20, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 21, 2022 at 4.00% annually on the balance outstanding.
6. If the unit is not vacated on or before November 30, 2022, then starting December 1, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after December 1, 2022.

November 9, 2022
Date Issued

Rebecca Case
 Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on June 1, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$26,868.10
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,850.00
Less the amount of the interest on the last month's rent deposit	- \$38.23
Total amount owing to the Landlord	\$24,165.87
Plus daily compensation owing for each day of occupation starting October 28, 2022	\$93.70 (per day)