



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Chowdhury v Avila, 2022 ONLTB 9767

**Date:** 2022-10-24

**File Number:** LTB-L-003040-22

**In the matter of:** A, 9 ALLISTER AVE  
SCARBOROUGH ON M1M3K7

**Between:** Ashraf Chowdhury Landlord

**And**

Jefferson Avila Tenants  
Rizaly Laurente  
Warlina Florendo

Ashraf Chowdhury (the 'Landlord') applied for an order to terminate the tenancy and evict Jefferson Avila, Rizaly Laurente, and Warlina Florendo (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

This application was heard by videoconference on October 19, 2022.

The Landlord and the Tenants, Jefferson Avila and Rizaly Laurente attended the hearing.

**Determinations:**

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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.
2. As of the hearing date, the Tenants was still in possession of the rental unit.
3. The lawful rent is \$2,200.00. It is due on the day first day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$72.33. This amount is calculated as follows: \$2,200.00 x 12, divided by 365 days.
5. The Tenants has not made any payments since the application was filed.
6. The rent arrears owing to October 31, 2022 are \$31,200.00.
7. The Landlord collected a rent deposit of \$2,100.00 from the Tenants and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
8. The Landlord owes the interest on the deposit in the amount of \$145.81 for the period from November 16, 2017 to October 19, 2022.

**Tenant's issues under s 82 of the Act:**

## Raccoon and odor:

9. The Tenants testified there was a racoon in their ceiling from January 1, 2019 which was reported to the Landlord who didn't do anything. The Landlord replaced the roof in spring 2021 and also secured part of the roof with the metal net so that the racoon could no longer enter the attic.
10. The video taken October 17 2022 of the attic shows insulation and some brown spots scattered throughout the area which the Tenant testified is raccoon feces which is source of continuous odor that emanates throughout the house but more prevalent in their daughter's bedroom. The Landlord provided no evidence to contradict the Tenant's testimony nor evidence that he investigated or cleaned the attic before the shingles of the roof were replaced. I find this is a breach of the Landlord's maintenance obligations under section 20 of the Act. The extent of the odor was not articulated nor were there dates provided when the odor was heightened. There didn't seem to be a heavy concentration of feces in the attic in any one spot seen in the video but on a balance of probability I find the odor likely to have existed since urine can't be seen on the video given the texture of the pink insulation on the base of the attic. An abatement of 5% rent abatement for 12 months is reasonable or \$1,320.00 (\$2,200.00 x 5%x12 months).

## AC Unit

11. The Tenants state the AC unit was not in proper functioning order as it would not spew cold air to cool the rental unit. They told the Landlord about it in 2019 who failed to take any action. The Landlord stated his electrician inspected the unit as a condition of a purchase and sale agreement before taking ownership of the unit. There was no evidence that the Landlord investigated after receiving the Tenants complaint and having taken no action is a breach of his maintenance obligation under section 20 of the Act. The tenants mitigated by purchasing a small unit for their daughters bedroom but the excessive heat according to the Tenant caused problems that heightened impairments related to breathing and made living in the unit in the summer very unpleasant. An abatement of 5% for June, July and August 2022 is reasonable or \$330.00 (\$2,200.00 x5%x 3 months).

## Snow and Lawn Care

12. At the time when its tenancy started in November 2017, the Tenants we're the only tenants living in the residential complex. A condition of their tenancy agreement is that they take responsibility to remove snow and take care of the yard. The Landlord subsequently rented the basement at which time the Landlord is responsible for maintaining the residential complex. The Landlord cannot transfer his obligation of maintenance to the Tenants despite any agreement or waiver to the contrary as stipulated in the Act. Ther was not enough evidence with respect to the scope and frequency of the landscaping work conducted nor whether the Tenants returned these duties to the Landlord after the basement tenants moved in. As of January 2022, however, the Tenants appear to be the only tenants in the complex.

## Washroom:

13. One washroom of the rental unit is situated separately from the rest of the rental unit. The Tenants have a key to the washroom and although she indicated it wasn't private because of where it was situated, the Tenant has access to second washroom situated in main part of her unit. The washroom was not accessible by other tenants living the complex nor was it used by other tenants.

## Utilities:

14. The Tenant is responsible for 60% of utilities and the basement unit was responsible for 40% as per the tenancy agreement the Tenants signed. The Tenant states there were more people living in the basement and it was unfair that they pay 60% of the utilities for gas and electricity. The Landlord stated the basement has been vacant since January 2022 and in 2021 was occupied for three months which the Tenants did not challenge. When the basement was not occupied the Landlord paid 40% of the Tenants utility costs. The Tenants did not establish the Landlord interfered with their rights to the level of substantial as required by the Act.

## Visit without Notice:

15. The Tenants referenced one incident without giving a date when the Landlord came to their door to request entry into the unit without giving notice. The Tenants did not give consent and the Landlord left without entering the unit. The Landlord's mere presence at the unit is not unlawful, or constitute harassment. The Tenants knew the Landlord could not enter the unit without their consent not having given any written notice before the visit. I am not satisfied the Landlord violated any of the tenants' rights related to entry.

## S.83 Relief:

16. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would be unfair to postpone the eviction pursuant to subsection 83(1)(a) of the Act. Although the Tenants have a young child in school and needs time to relocate and find alternate accommodations, I find it unfair to give additional time given the significant arrears having made no payments toward arrears for almost a year.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants voids this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$29,736.00 if the payment is made on or before October 31, 2022. See Schedule 1 for the calculation of the amount owing.

**OR**

- \$31,936.00 if the payment is made on or before November 4, 2022.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants has paid the full amount owing as ordered plus any additional rent that became due after November 4, 2022 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
  4. **If the Tenants does not pay the amount required to void this order the Tenants must move out of the rental unit on or before November 4, 2022.**
  5. If the Tenants do not void the order, the Tenants shall pay the Landlord \$26,664.19 which represents the rent owing to October 19 2022 and the cost of the application fee, less the last months deposit and interest old on the deposit.
  6. The Tenants shall also pay the Landlord compensation of \$72.33 per day for the use of the unit starting October 20, 2022 until the date the Tenants moves out of the unit.
  7. If the Tenants does not pay the Landlord the full amount owing on or before November 4, 2022, the Tenants will start to owe interest. This will be simple interest calculated from November 5, 2022 at 4 20.00% annually on the balance outstanding.
  8. If the unit is not vacated on or before November 4, 2022, then starting November 5, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
  9. 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 November 5, 2022.

**October 24, 2022****Date Issued**\_\_\_\_\_  
Sandra Macchione

Member, Landlord and Tenants 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 May 5, 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.

\*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

**Schedule 1  
SUMMARY OF CALCULATIONS**

**A. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before October 31, 2022**

Rent Owing To October 31, 2022	\$31,200.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$1,650.00
<b>Less</b> the amount of the credit that the Tenants is entitled to	- \$
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$29,736.00</b>

Rent Owing To November 30, 2022	\$33,400.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$1,650.00
<b>Less</b> the amount of the credit that the Tenants is entitled to	- \$
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$31,936.00</b>

**B. Amount the Tenants must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$30,374.27
Application Filing Fee	\$186.00
	\$0.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00

<b>Less</b> the amount of the last month's rent deposit	- \$2,100.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$145.81
<b>Less</b> the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$1,650.00
<b>Less</b> the amount of the credit that the Tenants is entitled to	- \$
<b>Total amount owing to the Landlord</b>	<b>\$26,664.19</b>
Plus daily compensation owing for each day of occupation starting October 20, 2022	\$72.33 (per day)