



**Amended Order under Section 69
Residential Tenancies Act, 2006**

File Number: TSL-19153-20-AM

In the matter of: 325, 2 EVA ROAD W
ETOBICOKE ON M9C0A9

Between: Jennifer Monteiro Landlord

and

Stajha Martin

Tenant

I hereby certify this is a true copy of an Order dated
Sept 28, 2021
LS
Landlord and Tenant Board

This order originally issued on August 11, 2021. It subsequently came to this Member's attention that the actual amount of arrears owing on the hearing date was \$4,586.00, not \$2,386.00 as indicated in the original order. Although this error has absolutely no effect on the outcome of the hearing, the order is amended to correct this clerical error. The amended portions are bolded for ease of reference.

It should be noted that when the Landlord's Request to Amend was received, a Direction was issued on August 18, 2021 requiring the following information:

1/ Confirmation that the last month rent deposit was used for the period January 15, 2021 to February 14, 2021; and if this so,

2/ Where the difference of \$2,200 is coming from, based on the following:

Application was for period Nov.15/20 to Dec.14/20 \$500.00 owing plus costs \$186.00

New rent Dec.15/21 through Jul.14/21, 7 months X \$2,200.00 = \$15,400.00

New rent \$15,400.00 + application \$686.00 = \$16,086.00

\$16,086.00 minus \$11,500.00 (per update) = \$4586.00 owing on hearing date.

Parties agree \$2,386 was owing for period ending July 14, 2021

Therefore, there is a difference of \$2,200.00.

The Landlord was to provide written submission by September 3, 2021 and the Tenant by September 13, 2020. To date I have not received the Tenant's written submissions, therefore this order is being amended based on the uncontested submissions of the Landlord.

It should also be noted that the Landlord's submissions with respect to the section 82 issues are not addressed in this order. They are not part of the amendment request and the issues raised would not fall under a "clerical amendment".

Jennifer Monteiro (the 'Landlord') applied for an order to terminate the tenancy and evict Nova Stephenson and Stajha Martin (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by video conference on June 23, 2021. The Landlord and the Tenant, Stajha Martin, attended the hearing.

At the hearing the Tenant raised the following issues pursuant to [section 82](#) of the [Residential Tenancies Act, 2006](#) (the '[Act](#)')

- Malfunctioning dryer and dishwasher.
- Malfunctioning freezer.

Determinations:

1. On consent, the parties removed Nova Stephenson as a Tenant as he is a minor.
2. The Tenant has not paid the total rent the Tenant was required to pay for the period from November 15, 2020 to July 14, 2021. Because of the arrears, the Landlord served a Notice of Termination effective November 30, 2020.
3. The Tenant is in possession of the rental unit.
4. The lawful monthly rent is \$2,200.00.
5. The Landlord collected a rent deposit of \$2,200.00 from the Tenant. **This deposit was used for the rent owing January 2021 as the Tenant was supposed to be moving out the end of January 2021.**
6. The Tenant paid **\$11,500.00** after the application was filed.
7. As of the hearing date, the Tenant owes **\$4,586.00**, inclusive of the application filing fee, to July 14, 2021.

Section 82 Issues

Freezer

8. The Tenant testified that within one month of moving in she texted the Landlord that the freezer was over-freezing because of an ice build up. She moved into the unit August 15, 2020. The Tenant also testified that the Landlord said she probably was not using it properly. The second time the issue re-occurred, the Landlord sent a technician. The technician fixed the problem on October 10, 2020. He advised the Tenant that the freezer

shelf had not been assembled correctly, therefore the door was not closing properly, which was causing the constant ice build-up.

9. The Landlord testified that the Tenant complained of the freezer problem on September 25, 2020. Although the freezer was given to the Tenant in good working condition, the Landlord sent a technician to look at it. The Landlord confirmed that the technician said the freezer door was not closing properly.

Dryer and dishwasher

10. The Tenant testified that within a month or so of moving in she advised the Landlord that the dryer was ripping clothing and the dishwasher was no washing properly.
11. The Tenant entered into evidence her texts to the Landlord and pictures showing various clothing items that had been torn from the dryer. The Landlord was advised of this issue in October 2020. The Tenant also testified that the Landlord told her she did not care and to go to the drycleaners. The Tenant has used the drycleaners since, and the dryer has still not been fixed.
12. With respect to the dishwasher, the Tenant testified that when the technician was in her unit for the freezer issue on October 10, 2020, she asked him to look at the dishwasher. The technician said he would have to investigate it further, as the reason for it not washing properly could be several causes. The Tenant also testified that the Landlord sent another technician who said it was fixed, but it still never washed dishes properly; they did not come clean. The Tenant entered into evidence pictures of uncleaned dishes coming out of the dishwasher after being put through a wash cycle.
13. The Landlord testified that the technician said the problem with the dishwasher was that the sprayer at the top was broken, which is why dishes were not being cleaned properly. The technician replaced the sprayer. The Landlord also testified that even after the sprayer was fixed the Tenant still complained that the dishwasher was not working properly. The Landlord did not have a technician go back and look at the dishwasher.
14. With respect to the dryer, the Landlord testified that she did suggest the Tenant use a drycleaner, and since the Tenant texted that the matter was handled by doing this, the Landlord did not pursue fixing it. The Landlord also testified that there are no complaints from other tenants, but this Tenant comes up with new issues all the time. The Landlord further testified that she did not fix the dryer because the Tenant was taking the dry-cleaning money off the rent. The Landlord said she has done the best she can.

Remedy requested for all section 82 issues

15. The Tenant testified that she was affected by all the problems because she is a single mother with a young child, these problems were a great inconvenience to her, stressful and took up a great deal of her time. She felt like she was washing dishes all day long, every day; this was very time consuming and inconvenient, especially with a young child. The Tenant also testified that that she cannot use the dryer at all; because of all the items

that have already been destroyed she does not want to risk any further loss. She further testified that she has been spending approximately \$30.00 per week at the drycleaners.

16. It should be noted that the total of the abatement and compensation requested by the Tenant from her move-in date to the date of hearing would be approximately 10 months and amount to approximately \$4,000.00, and would exceed this amount if ordered to the date the appliances are repaired.
17. The Tenant requested an abatement of rent of \$250.00 per month from her move-in date, August 15, 2020, until the dishwasher and dryer are repaired. The Tenant also requested compensation of \$150.00 per month since she moved in until the dryer is fixed to cover her dry-cleaning expenses.
18. The Landlord submitted that she was willing to have the dishwasher and dryer fixed, but the Tenant should not be given an abatement of rent, she should have to pay all of the arrears; these issues were just a means of the Tenant getting out of paying her rent.

Analysis of all section 82 issues

19. For the reasons that follow, I find the Tenant is only entitled to some remedy for the freezer, dishwasher, and dryer issues. The quantum and type of which will be discussed below.
20. Although the issues being addressed are under section 82 of the Act, which permits a tenant in an arrears application to raise any issue that could be the subject of an application made by the tenant, the landlord's obligation for maintenance and repair comes from section 20 of the Act.
21. In general, a landlord will not be found liable for breaching its maintenance obligations under subsection 20(1) of the Act where the landlord responds reasonably to a maintenance problem (see *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477).
22. With respect to the dishwasher, the undisputed evidence is that despite the complaints by the Tenant, the Landlord did not have a technician come back and look at/fix the dishwasher. As for the dryer, it is also undisputed that the Landlord did not follow up with a technician at all. Therefore, I find that the Landlord did not address either of these issues in a timely or effective manner. Accordingly, the Tenant is entitled to remedy.
23. The Landlord admitted to not fixing either appliance, therefore, the Landlord is ordered to have the dryer and dishwasher repaired or replaced by August 31, 2021.
24. With respect to the abatement of rent for the dryer and dishwasher, I find \$100.00 per month for both to be reasonable based on my knowledge of similar case law and how the Tenant was affected. The Tenant is a single mother with a young child and the problems have not been addressed since shortly after she moved in. Not having a working dishwasher has affected her daily and not having a working dryer has affected her on a weekly basis. However, the Landlord was not advised of these issues until after the

move-in date of August 15, 2021, therefore the Landlord cannot be held liable until after being advised of these problems.

25. Neither party gave an exact date as to when the landlord was advised of the problems with the dishwasher and dryer., however the communications entered into evidence by the Tenant are dated October 10, 2020, therefore I fix the abatement from this date. Therefore, the Tenant is entitled to an abatement of \$100.00 per month from October 10, 2020 through August 31, 2021, the date the Landlord is ordered to have the appliances repaired or replaced by, in the amount of \$2,672.62, calculated as follows.

October 10 to 31, 2020 = 21 days; \$100.00 per month X 12 months = \$1,200.00;
\$1,200.00 ÷ 365 days = \$3.29 per day; \$3.29 X 21 days = \$69.09

November 2020 through August 2021 = 10 months X \$100.00/month = \$1,000.00

\$69.09 + \$1,000.00 = \$1,069.09

26. With respect to the freezer, the Landlord testified that the Tenant told her about the problem on September 25, 2020 and did not dispute the Tenant's testimony that the technician addressed the issue on October 10, 2020. Therefore, based on the testimony and evidence before me I find the freezer issue was addressed 15 days after the problem was reported to the Landlord. However, the Landlord did not dispute that it took two complaints from the Tenant before the technician was sent, therefore although the end result was effective, for this reason it was not done in a timely fashion; the Landlord should have investigated after the first complaint, not just blame the Tenant. As such the Tenant is entitled to an abatement of rent; I fix this amount at \$50.00.
27. It should be noted that with respect to the dishwasher, the Tenant did not request any remedy for the freezer issue. Pursuant to the Divisional Court's decision in *Beauge v. Metcap Living Management Inc.*, [2012] O.J. No. 1052 (Div. Ct.) , **it is not open to the Board to order an amount in excess of that claimed in an application** which has not been amended. [emphasis added] As the total remedy ordered does not exceed what was requested, as calculated in paragraph 16 above, ordering the \$50.00 abatement is not contrary to *Beauge*.
28. Therefore, based on the above, the total rent abatement the Tenant is entitled to for the dishwasher, dryer, and freezer issues is \$1,069.09 plus \$50.00 for a final total of \$1,119.09. This amount shall be deducted from the arrears owing as of the hearing date.
29. **Thus, the Tenant owes \$4586.00 in arrears minus the \$1,119.09 abatement leaving a balance owing of \$3,466.91.**

Relief from Eviction

30. I have considered all of the disclosed circumstances in accordance with subsection 83 of the *Residential Tenancies Act, 2006* (RTA), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the

Tenants, and find that it would not be unfair to grant relief from eviction subject to the condition(s) set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act. The Tenant requested a repayment plan if the balance owing exceeded \$1,500.00. As the balance owing is less than but close to the above-noted amount, I find a short repayment plan to be reasonable. Based on the timing of this order, I find it reasonable for the repayment to start effective September 15, 2020, and due to the delay in the start date, it be shortened to a 2-month plan.

31. The Tenant testified that once the section 82 issues were deducted from the arrears, if the balance owing was in excess of \$1,500.00, she would need 3 to 4 months; she could pay the arrears amount with her monthly rent on the 15th of each month.
32. The Landlord did not offer testimony with respect to relief from eviction, therefore I will deem the standard 11-day voidable order as being sought.
33. This order contains all the reasons within it. No further reasons shall be issued.

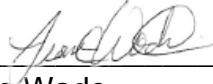
It is ordered that:

1. The Tenant shall pay to the Landlord **\$3,466.91**, which represents the arrears of rent **(\$3,280.91)** and costs (\$186.00) outstanding for the period ending July 14, 2021, minus the \$1,119.09 awarded to the Tenant under section 82, **PLUS rent due July 15, 2021 for a total amount of \$5,480.91.**
2. The Landlord's application for eviction of the Tenant is denied on the condition that:
 - (a) The Tenant shall make the following payments to the Landlord in respect of the monies owing under paragraph 1 of this order:

Date Payment Due	Amount of Payment
August 15, 2021	\$2,200.00 (for July rent if not already paid)
September 15, 2021	\$633.46 (arrears and costs)
October 15, 2021	<u>\$1,323.75</u> (arrears)
<u>October 31, 2021</u>	<u>\$1,323.70</u> <u>(arrears)</u>

- (b) The Tenant shall also pay the Landlord the lawful rent of \$2,200.00 for the months of August 2021 up to and including October 2021, in full, on or before the 15th day of each corresponding month.
3. If the Tenant fails to make any of the payments in accordance with paragraph 2, and by the dates required, then:
- (a) The Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant, and for the payment of any new arrears of rent and NSF charges not already ordered under paragraph 1 of this order. The Landlord must make the application within 30 days of a breach of a condition set out in paragraph 2 of this order.
- (b) The balance owing under paragraph 1 of this order shall become payable on the day following the date of default. The monies owing shall bear interest at the post-judgment interest rate determined under subsection 207(7) of the Act.
4. The Landlord is ordered to have a technician repair or replace the dryer and dishwasher on or before August 31, 2021.
5. If the Landlord does not have the dryer and dishwasher repaired or replaced on or before August 31, 2021, the Tenant is entitled to deduct from her rent \$3.29 per day (or \$1.645 per day for one appliance) until the appliances are repaired.

September 28, 2021
Date Amended



Diane Wade
Member, Landlord and Tenant Board

Toronto South-RO
15 Grosvenor Street, 1st 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.