



Mar 12, 2025

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

File Number: LTB-L-100876-24

In the matter of: A, 923 ADOLPHUS ST
CORNWALL ON K6H3T8

Between: Donald Heubner Landlord

And

Zachary Dewe-Boucher Tenant

Donald Heubner (the 'Landlord') applied for an order to terminate the tenancy and evict Zachary Dewe-Boucher (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 5, 2025. The Landlord's representatives, Lisa Duchene and Marissa Carilla-Singh, and the Tenant attended the hearing. The Tenant met with Duty Counsel prior to the commencement of the hearing.

Preliminary Issue:

1. Under section 82 of the *Residential Tenancies Act, 2006* (the 'Act'), a tenant may raise any issue that could be the subject of a tenant application, such as maintenance problems or harassment, during a hearing about rent arrears.
2. Subsection 82(2) requires a tenant to give advance notice to the Landlord of their intent to raise the issue at the hearing and that this notice shall be given within the time set out in the Rules and in compliance with the Rules. The Board's Rules requires that a tenant must give the Landlord and the Board a written description of each issue at least 7 days before the hearing. The Rules also require a tenant to include details such as a description of the issue, when it began, and when the landlord became aware of the issue. These requirements are also detailed on the Notice of Hearing.
3. The Tenant disclosed his intent to raise issues at the hearing at 11:57 p.m. on March 3, 2025, essentially the day before the hearing given the hour the Tenant uploaded this information to the Tribunals Ontario Portal (portal). The Tenant did not provide a copy of this disclosure to the Landlord.
4. The Tenant did not provide a clear or convincing explanation as to why he was unable to meet the requirements for disclosure. He explained that he wanted to wait until he had legal representation before submitting information. He stated that his first meeting with the legal clinic was supposed to be on December 11, 2024, but that he did not meet with the clinic until December 24, 2025, and his next meeting with the clinic was in January. He did not clearly explain how this resulted in a delay in disclosure.

5. The Tenant indicated that Duty Counsel told him he should cite the Divisional Court decision in *Shapiro v. Swingler*, [2021 ONSC 6191 \(CanLII\)](#) as a rationale as to why he should be permitted to raise his issues under section 82 despite failing to comply with disclosure requirements. .
6. *Shapiro v. Swingler* is a Divisional Court decision concerning an application for persistent late payment of rent in which the Member decided not to grant an adjournment or brief recess to allow the Tenants an opportunity to provide banking records because they had not been disclosed in advance.
7. In *Shapiro*, the court held that procedural fairness was at the higher end of the spectrum because the Tenants faced potential eviction and had evidence that may be responsive to the issues. The Court held that procedural fairness would at least require that the Board consider whether to grant a brief recess to allow the Tenants to obtain paper copies of their bank record.
8. The case before me is different from *Shapiro* in that the Tenant does not dispute that he has made no payments to the Landlord and that he owes the amount claimed. As explained at the hearing, I believe it would be procedurally unfair to allow the Tenant to raise these issues at the hearing as the Tenant has provided no disclosure to the Landlord. I further believe it would be prejudicial to the Landlord to adjourn this matter to allow the Tenant an opportunity to properly disclose these issues as the arrears are substantial.
9. The Tenant was reminded that he may file his own application with the Board on these issues and that he may make submissions on these issues pursuant to subsection 83(3)a) of the Act.

Determinations:

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$875.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$28.77. This amount is calculated as follows: \$875.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to March 31, 2025 are \$11,205.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.

Section 83 considerations

9. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
10. The Tenant has resided in the rental unit since May 2021. He testified that his sole source of income is Ontario Works ('OW') benefits in the amount of \$694.00 a month. He explained that he fell into arrears because he lost his job at the end of 2022 and then spent the next year going back and forth with Employment Insurance for his back pay.
11. The Tenant testified that he does not want to stay in the unit and that he has applied for housing. He stated that he just needs time to put his belongings in storage and to find a place to stay.
12. I gave the Tenant an opportunity to make submissions as to whether the Landlord was in serious breach of their obligations under the Act.
13. Subsection 83(3)(a) of the Act states that the Board shall refuse the eviction if the Landlord is in serious breach of obligations under the Act. those determined to be serious and ongoing will invoke section 83(3) of the Act.
14. The Act is silent about what constitutes a "serious breach".
15. The leading case that states the test for "serious breach" is *Puterborough v. Canada (Public Works and Government Services)* [2005] O.J. No 5727 [hereinafter *Puterborough*]. In the *Puterborough* case, paragraph 22 of the decision states that "serious breach", in the context of the Landlord's maintenance responsibilities "means more than the rental premises being in poor condition and in need of significant work ... In short, a serious breach of the landlord's responsibilities is not established simply by the rental premise being in need of extensive repairs."
16. The Tenant stated that the worst maintenance issues was mold. He indicated that the last time he reported this issue to the Landlord was sometime the summer of 2024 and that this report would have been verbal. He described finding mold on a jacket hanging in an unfinished closet and in the bathroom and furnace room. He stated that photographs he uploaded to the portal show the mold.
17. The Landlord denies they have received any reports from the Tenant regarding a possible presence of mold. It also should be noted that the Tenant did not provide a copy of the photographs to the Landlord.

18. I am not convinced that the Landlord is in serious breach of their obligations under the Act such that eviction should be refused. The Tenant had no evidence corroborating his testimony that he verbally reported a mold issue to the Landlord. This is significant given the Landlord denies any knowledge of the issue. In my view, if the issue was serious, the Tenant would have continued to report the issue or would have put his concerns in writing or contacted the City by-law officers.
19. I find that the Tenant has failed to establish, on a balance of probabilities, that the Landlord is in serious breach of their obligations under the Act.
20. As noted above, the Tenant did not put forth a proposal to pay the arrears indicating that he just needs time to move out. Given the arrears are substantial and the Tenant's monthly income is less than the monthly rent, I find it would be prejudicial to the Landlord to postpone the eviction.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$11,391.00 if the payment is made on or before March 23, 2025. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after March 23, 2025 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before March 23, 2025.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$10,717.39. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$28.77 per day for the use of the unit starting March 8, 2025 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before March 23, 2025, the Tenant will start to owe interest. This will be simple interest calculated from March 24, 2025 at 5.00% annually on the balance outstanding.
8. If the unit is not vacated on or before March 23, 2025, then starting March 24, 2025, 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 March 24, 2025.

March 12, 2025
Date Issued

Dawn Sullivan

Dawn Sullivan
Vice Chair, 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 September 24, 2025 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 to void the eviction order and continue the tenancy if the payment is made on or before March 23, 2025

Rent Owing To March 31, 2025	\$11,205.00
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 the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$11,391.00

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

Rent Owing To Hearing Date	\$10,531.39
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	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$10,717.39
Plus daily compensation owing for each day of occupation starting March 8, 2025	\$28.77 (per day)