



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

**Citation:** Ashrafi v Dolo, 2024 ONLTB 89750

**Date:** 2024-12-06

**File Number:** LTB-L-084160-24

**In the matter of:** 764 LONG POINT CIR  
GLOUCESTER ON K1T4H5

**Between:** Soleiman Ashrafi  
Farishta Rahmani

**and**

Shannon Dolo  
Osborne Dolo

I hereby certify this is a  
true copy of an Order dated

**Dec 6, 2024**

Landlord and Tenant Board

Landlords

Tenants

Soleiman Ashrafi and Farishta Rahmani (the 'Landlords') applied for an order to terminate the tenancy and evict Shannon Dolo and Osborne Dolo (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on November 26, 2024.

The Landlords' Legal Representative, Lisa Duchene, the Landlords and the Tenants attended the hearing.

### **Determinations:**

#### Preliminary Issue – Legal Address of Landlord

1. The Tenant, Osborne Dolo ('OD') raised a preliminary issue that the Landlord has not provided their legal address to the Tenants.
2. Section 12(1) of the *Residential Tenancies Act, 2006* (the 'Act') states the following:

12(1) Every written tenancy agreement entered into on or after June 17, 1998 shall set out the legal name and address of the landlord to be used for the purpose of giving notices or other documents under this Act".

3. Section 12(4) of the Act provides that a tenant's obligation to pay rent is suspended where a landlord has failed to comply with the requirements of section 12(1) of the Act. The Act further provides that once a landlord has complied with the section 12(1) provisions, all withheld rent becomes owing.
4. In this case, the tenancy agreement signed by the parties on May 2, 2020 identifies the Landlords but does not identify an address for the Landlords. However, in the Landlords' previous L1 application against the Tenants in LTB-L-040921-24, their legal address is

identified on page 2 of the application. A copy of this application was mailed to the Tenants by the Board on June 25, 2024. While OD initially disputed receiving a copy of the application, he ultimately acknowledged that the Tenants had received it but submits that the Landlords ought to have provided their legal address prior to that time.

5. The Divisional Court held that providing the address of the Landlords, even after the tenancy agreement was signed by the parties, complies with the requirement to provide an address for service of the documents as required under section 12(1) of the Act (see: *Nejad v. Preddie*, [2016] O.J. No. 3846, 2016 ONSC 4348 (Div Crt)).
6. In this case, the N4 Notice was served on the Tenants on October 12, 2024, several months after the Tenants received the Landlords' legal address. Therefore, the Tenants' obligation to pay rent, even if suspended at the time they signed the initial tenancy agreement, was no longer suspended when they received the N4 Notice from the Landlords as, at that time, the Landlords had complied with section 12(1) of the Act.

### L1 Application

7. The Landlords 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.
8. As of the hearing date, the Tenants were still in possession of the rental unit.

### *Lawful Monthly Rent*

9. It was undisputed that the lawful monthly rent at the commencement of the tenancy was \$3,000.00. It was also undisputed that in October 2022, the Landlords increased the rent to \$3,075.00. The Landlords did not provide notice in the form approved by the Board, as required pursuant to section 116(3) of the Act.
10. Section 135.1 of the Act, effective July 21, 2020, as a result of amendments to the Act made by the *Protecting Tenants and Strengthening Community Housing Act, 2020*, states the following:

135.1 (1) An increase in rent that would otherwise be void under subsection 116 (4) *is deemed not to be void if the tenant has paid the increased rent in respect of each rental period for at least 12 consecutive months.*

(2) Subsection (1) does not apply with respect to an increase in rent *if the tenant has, within one year after the date the increase was first charged, made an application in which the validity of the rent increase is in issue.*

(3) For greater certainty, if subsection (1) applies with respect to an increase in rent, *section 116 is deemed to have been complied with.*

(4) For greater certainty, *nothing in this section limits the application of section 136.*

(Emphasis added)

11. As a result of section 135.1, even if a landlord increased the rent without serving the tenant with any notice of rent increase as required by Act, the otherwise unlawful rent increase is deemed to be valid if the tenant pays the increased rent for 12 consecutive months without filing an application with the Board challenging the lawfulness of the increase.
12. In accordance with section 135.1 of the Act, \$3,075.00 is deemed to be the lawful rent despite the fact that no notice of rent increase was served for this increase. The Tenants paid \$3,075.00 per month for 12 consecutive months during the period of October 2022 to September 2023, and the Tenants did not file an application within one year after the date the increase was first charged on October 1, 2022.
13. Based on the Monthly rent, the daily rent/compensation is \$101.10. This amount is calculated as follows:  $\$3,075.00 \times 12$ , divided by 365 days.

#### *N4 Notice*

14. While the Tenants initially disputed the amount the Landlords claimed was owing in the N4 Notice, OD testified that the Tenants did not make any additional payments not already reflected in the N4 Notice. Therefore, I find the N4 Notice is valid.

#### *Rent Arrears*

15. The Tenants have not made any payments since the application was filed.
16. The rent arrears owing to November 30, 2024 are \$25,746.60.
17. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
18. The Landlords collected a rent deposit of \$3,000.00 from the Tenants and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
19. Interest on the rent deposit, in the amount of \$229.15 is owing to the Tenants for the period from May 1, 2020 to November 26, 2024.

#### *Section 83*

20. Section 83(3)(a) of the Act states that the Board must refuse to grant an eviction application where satisfied that "the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement". In order for this section to apply the breach must be significant in its impact on the Tenants and it must be ongoing as of the date of the hearing.
21. OD testified that there is currently no heat in the rental unit as the furnace is not working. He testified that this is not the first time the furnace has broken as he has previously had it repaired on more than one occasion during the tenancy. He testified that he has complained to the Landlords regarding the issue, but the Landlord has failed to investigate or remedy the issue.

22. The Landlord, Soleiman Ashrafi ('SA'), testified that he has not been notified about any issues with the furnace. He testified that he has a contract with Reliance so had he been made aware of an issue with the heat, he would have notified Reliance right away.
23. The burden of proof is on the Tenants to establish that the Landlords are in serious breach of their obligations under the Act. Based on the evidence of both parties, I am not satisfied, on a balance of probabilities that a heating issue exists.
24. I prefer the evidence of SA. SA's testimony was consistent and detailed. In contrast, OD's testimony was vague and often inconsistent with recollection of dates. Additionally, the Tenants did not submit any documentary evidence to corroborate OD's oral testimony. While OD sought to rely on past repair invoices, in my view, whether the furnace previously required repairs is not indicative of a current and ongoing heat issue in the rental unit. I would have expected that the Tenants would be able to provide temperature readings or copies of emails or text messages to the Landlords notifying them of the issue with the heat, especially in light of OD's testimony that he demanded communications with the Landlords be in writing only.
25. Pursuant to section 83(2) of the Act, I must also consider all of the circumstances in deciding whether to exercise discretionary relief from eviction under section 83(1).
26. The Tenants are seeking to preserve the tenancy. OD testified that they had stopped making rent payments because the Landlords were not addressing maintenance issues in the rental unit. OD testified that he has just started working again and can pay \$600.00 towards the arrears, in addition to the full rent each month, until the arrears are paid off.
27. The Landlords' Legal Representative submitted that the situation has degraded due to the Landlords having to chase the Tenants for rent payments and the Tenants are not likely to adhere to any payment plan.
28. I find that it would be unfair in the circumstances to impose the Tenants' requested payment plan for two reasons.
29. First, the Tenants have only made one full rent payment to the Landlords since February 2024. OD stated that the Tenants were deliberately withholding payments due to alleged maintenance issues in the rental unit. Second, the length of time it would take to pay off the arrears, 44 months, is unreasonable and prejudicial to the Landlords who have been waiting some time for repayment.
30. 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 not be unfair to postpone the eviction until January 31, 2025 pursuant to subsection 83(1)(b) of the Act.
31. The Tenants requested that eviction be postponed until the middle or end of January 2025. The arrears are substantial, have continued to accrue. The Tenants have four children, one of which has been diagnosed with autism and requires additional support. The eviction is being briefly postponed to provide the Tenants with time to find new living arrangements. Considering all of the above, it would be fair to postpone the eviction to January 31, 2025 but it would be unfair to postpone the eviction further.

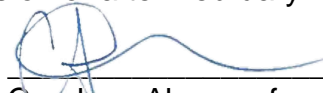
**It is ordered that:**

1. The tenancy between the Landlords and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlords or to the LTB in trust:**
  - \$29,007.60 if the payment is made on or before December 31, 2024. See Schedule 1 for the calculation of the amount owing.

**OR**

- \$32,082.60 if the payment is made on or before January 31, 2025. See Schedule 1 for the calculation of the amount owing.
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 have paid the full amount owing as ordered plus any additional rent that became due after January 31, 2025 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 do not pay the amount required to void this order the Tenants must move out of the rental unit on or before January 31, 2025.**
  5. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$22,257.05. 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 Landlords owe on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
  6. The Tenants shall also pay the Landlords compensation of \$101.10 per day for the use of the unit starting November 27, 2024 until the date the Tenants moves out of the unit.
  7. If the Tenants do not pay the Landlords the full amount owing on or before January 31, 2025, the Tenants will start to owe interest. This will be simple interest calculated from February 1, 2025 at 6.00% annually on the balance outstanding.
  8. If the unit is not vacated on or before January 31, 2025, then starting February 1, 2025, the Landlords 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 Landlords on or after February 1, 2025.

**December 6, 2024**  
**Date Issued**

  
Candace Aboussafy  
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 August 1, 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before December 31, 2024**

Rent Owing to December 31, 2024	\$28,821.60
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlords 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 Landlords owe the Tenants for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenants are entitled to	- \$0.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$29,007.60</b>

**B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before January 31, 2025**

Rent Owing to January 31, 2025	\$31,896.60
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlords 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 Landlords owe the Tenants for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenants are entitled to	- \$0.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$32,082.60</b>

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

Rent Owing to Hearing Date	\$25,300.20
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlords 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	- \$3,000.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$229.15
<b>Less</b> the amount the Landlords owe the Tenants for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenants are entitled to	- \$0.00
<b>Total amount owing to the Landlords</b>	<b>\$22,257.05</b>
Plus daily compensation owing for each day of occupation starting November 27, 2024	\$101.10 (per day)