



AMENDED
Order under Section 69
Residential Tenancies Act, 2006

Citation: Moral v Solomon, 2024 ONLTB 6402

Date: 2024-04-23

File Number: LTB-L-037792-22-AM

In the matter of:

MAIN HOUSE/UPPER UNIT, 58 NUFFIELD
ST
BRAMPTON ON L6S5Z1

Between:

Soledad Moral

Landlord

And

Melissa Solomon
Glenn Charles

Tenants

A clerical amendment hearing took place by videoconference on April 20, 2026. Only the Tenants' agent, Jane Seale, attended the hearing. By 9:41, the Landlord did not attend the hearing, though properly served with the Notice of Hearing.

Jane Seale testified that the written tenancy agreement between the parties was entered into in May 2020. The Tenants were unable to locate their copy of the agreement for the hearing and the Landlord did not respond to Jane Seale's several emails asking the Landlord for this document. The tenancy agreement names Melissa Solomon and Glenn Charles as the only tenants, and the Tenants' minor children, Tyler Harris and Alivia Harris, as occupants, only. At no time has the agreement been amended to cast these children as tenants. Based on Jane Seale's uncontested and credible testimony, I determined that it is appropriate to amend the original order to remove these children as tenants.

Soledad Moral (the 'Landlord') applied for an order to terminate the tenancy and evict Melissa Solomon and Glenn Charles (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 22, 2023.

The Landlord, the Landlord's legal representative, Carey Blake, and the Tenant, Melissa Solomon, attended the hearing.

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. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Tenant vacated the rental unit on September 10, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit.
4. The lawful rent is \$3,200.00. It was due on the 23rd day of each month.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to September 10, 2022 are \$7,452.10.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$3,200.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
9. Interest on the rent deposit, in the amount of \$8.42 is owing to the Tenant for the period from June 23, 2022 to September 10, 2022.

Section 82 issues

10. The Tenants raised the following issues under section 82 of the *Residential Tenancies Act, 2006* (the 'Act'):
 - a. Landlord failed to return \$750.00 deposit paid on March 20, 2022;
 - b. Broken refrigerator;
 - c. Mice infestation; and
 - d. Bad faith eviction.

\$750 deposit

11. The Landlord required the Tenant to pay them a \$750.00 deposit to hold the house. This amount was paid by the Tenant on March 20, 2022 and was not returned to the Tenant or applied to any rent owing. These facts are not in dispute.

12. Subsection 105(1) of the Act provides that the only security deposit that a landlord may collect is a rent deposit collected in accordance with section 106. Subsection 106(2) states that the amount of a rent deposit shall not be more than the rent for one month. Accordingly, the Landlord was not entitled to require the Tenants to pay more than \$3,200.00 as a rent deposit. As such, the Landlord shall be ordered to pay the Tenants \$750.00.

Refrigerator

13. The Tenants claim that they were without a working refrigerator from April 2, 2022 to April 7, 2022, or 6 days. This fact is not in dispute. The Landlord made arrangements to have a new refrigerator delivered to the rental unit on April 7, 2022.

14. Subsection 20(1) of the Act states:

A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.

15. It is important to note that subsection 20(1) of the Act does not contain an element of fault. Therefore, the reasons for a landlord's breach are not relevant. In *Onyskiw v. CJM Property Management Ltd.* 2016 ONCA 477 (CanLII), however, the Court of Appeal rejected the idea that any service interruption amounts to an automatic breach of the Act. Instead, the Court urged the Board to make a "contextual analysis" in each case, looking at all the facts before finding that a landlord breached the Act. As part of this analysis, the Court directed the Board to look at the essential nature of a tenant's complaints and what steps, if any, were taken by the landlord.

16. Subsection 30(2) of the Act states: "In determining the remedy under this section, the Board shall consider whether the tenant or former tenant advised the landlord of the alleged breaches before applying to the Board." This section of the Act was intended to reflect the case law in the area that basically states that if a landlord does not know about a particular disrepair problem, then the landlord cannot and should not be held financially liable for failing to address it.

17. Additionally, in accordance with section 16 of the Act, when a landlord becomes liable to pay any amount as a result of a breach of subsection 20(1), the tenant has a duty to take reasonable steps to minimize the loss.

18. In determining whether the Landlord has breached their obligation to repair and maintain, the Board must first consider whether a maintenance or repair issue existed. The Board must then consider when the Landlord was informed of the issue or should reasonably

have been aware of the issue and whether the steps taken to address the issue were reasonable in the circumstances.

19. As noted above, it was undisputed that the Tenants were without a working refrigerator for six days. It was also undisputed that the Landlord was aware of the issue as they had taken steps to replace the refrigerator. Given this, the issue before me is whether the steps the Landlord took to address the issue was reasonable in the circumstances.
20. I accept that the refrigerator was ordered and delivered as soon as possible. Accordingly, I find that the steps the Landlord took to address the issue with the refrigerator was reasonable in the circumstances. As such, I find the Landlord is not in breach of subsection 20(1) of the Act. This portion of the Tenant's claim is dismissed.

Mouse Infestation

21. The Tenants reported to the Landlord on April 21, 2022 that there was a presence of mice feces in the cupboards and drawers in the rental unit. It was not disputed that the Landlord retained the services of an exterminator promptly and that the infestation was resolved to the satisfaction of the Tenant by May 12, 2022.
22. I find that the Landlord's response to this issue was timely, reasonable and effective in the circumstances. Accordingly, I dismiss this claim.

"Bad Faith" Eviction

23. The Tenants claim of "bad faith" eviction stem from the service of an N4 notice of termination. The Tenants, however, acknowledge that they were in arrears when the N4 notice was given to them.
24. Landlords are entitled to give tenants notices of termination and file applications with the Board when warranted. The Landlord was entitled to give the Tenants an N4 notice of termination and to file an application with the Board as the Tenants were in arrears of rent. Accordingly, I am not convinced it can be said that the Landlord intended to deceive by giving the Tenants the N4 notice of termination.
25. The Tenant's assertion of bad faith seems to be rooted in a letter from the Landlord recommending that she vacate the unit as the result of a health and safety condition associated with the potential of mold in the basement of the rental complex.

26. The circumstances surrounding the creation of the Landlord's letter are important. It was not contested by the parties that this letter was intended for the single purpose of facilitating the Tenant's application for insurance coverage. Further, it was uncontested that the Tenant had clearly expressed her intention to vacate the unit prior to this letter being provided to her. The letter was the product of discussions between the Landlord and the Tenant focused on facilitating an insurance claim the Tenant wanted to make.

27. I find the Tenant has failed to sufficient establish "bad faith" by the Landlord.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of September 10, 2022, the date the Tenant moved out of the rental unit.
2. The Tenant shall pay to the Landlord \$3,679.68. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. The rent deposit, the interest the Landlord owes on the rent deposit, and the amount the Landlord owes the Tenant under section 82 is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
3. If the Tenant does not pay the Landlord the full amount owing on or before April 10, 2024, the Tenant will start to owe interest. This will be simple interest calculated from April 11, 2024 at 7.00% annually on the balance outstanding.

March 27, 2024
Date Issued

Paul Sommerville
Member, Landlord and Tenant Board

April 23, 2026
Date Amended

Sean Henry
Vice Chair, Landlord and Tenant Board

15 Grosvenor St, 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.

Schedule 1
SUMMARY OF CALCULATIONS

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

Rent Owing To Move Out Date	\$7,452.10
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	- \$3,200.00
Less the amount of the interest on the last month's rent deposit	- \$8.42
Less the amount the Landlord owes the Tenant under section 82	- \$750.00
Total amount owing to the Landlord	\$3,679.68