



(c) Did the Board err in law in failing to consider whether to refuse to terminate the tenancy pursuant to section 83 of the *Residential Tenancies Act*, 2006, S.O. 2006, c. 17 (“*RTA*”)?

[3] Section 210(1) of the *RTA* states that:

(a) Any person affected by an order of the Board may appeal the order to the Divisional Court within 30 days after being given the order, but only on a question of law.

(b) As a result, there is no right of appeal on a finding of fact by the Board.

**Appeal Ground #1 - Did the Board err in finding that the Tenant’s written notice of termination was valid?**

[4] The Tenant gave written notice of termination of her lease on February 9, 2024, effective as of April 9, 2024. The parties were in a monthly tenancy and the rent was payable at the beginning of each month. The Tenant’s notice of termination was not valid because the notice must be given at least 60 days before the last day of the month, when the termination is effective.

[5] Section 44(2) of the *RTA* states that for a monthly tenancy like this “a notice to terminate a monthly tenancy shall be given at least 60 days before the date the termination is specified to be effective on the last day of the rental period.”

[6] The Tenant gave 60 days notice of termination on February 9, 2024, effective on April 9, 2024. The effect of termination date should have been on April 30, 2024, the last day of the rental period, and not on April 9, 2024, in order to comply with the *RTA*.

[7] The solicitor for the Board acknowledged that the Tenant’s written notice of termination was defective, but submits that this finding was of no consequence due to its finding that the parties subsequently reached an agreement to terminate the tenancy at the end of June 2024.

[8] While the Board found that the Tenant’s notice of termination constituted adequate notice of termination, I agree with the Board’s submission that this error was not of any significance, because the Board found that the parties subsequently agreed to that the tenancy would terminate her at the end of June 2024.

[9] As a result, I dismiss the Tenant's appeal on ground #1.

**Appeal Ground #2 - Did the Board err in finding that the Landlord and Tenant agreed to terminate the tenancy on June 30, 2024?**

[10] Section 77 of the *RTA* allows the Landlord to apply for an order terminating a tenancy and evicting a Tenant if:

(a) the Landlord and Tenant have entered into an agreement to terminate the tenancy.

[11] The above section allows the parties to agree to terminate a tenancy. The issue is whether the Landlord and Tenant reached an agreement to terminate the tenancy. The agreement must include a term stating when the tenancy terminates.

[12] At paragraph 5 of its decision, the Board stated that the Landlord testified that he received an email from the Tenant on February 20, 2024, requesting that the Landlord extend the termination date of the tenancy to the end of June 2024. The Landlord provided evidence that he agreed to this request by email dated February 23, 2024.

[13] The Landlord's email on February 20, 2024, initially said he would consider her request and discuss it with his new Tenant. On February 23, 2024, the Landlord wrote "I'm very happy to inform you that the new Tenant has-with difficulty finally agreed to postpone his move until June 2024. I hope this please your family and give you some time to look for another house. I trust that I fulfilled your request. Have a good weekend."

[14] The Board found that this evidence constituted an agreement by the parties to terminate the tenancy as of the end of June. This is a finding of fact by the Board from which there is no right of appeal.

[15] The Tenant submitted that the Board had made a finding at paragraph 12, that the parties had reached an agreement to terminate the tenancy on June 30, 2024, without any evidence to support this finding. If this submission was correct, then it would constitute an error of law to make a finding in the absence of any evidence as held by *R. v. J.M.H.*, 2011 SCC 45 at para. 25.

[16] The Board made a finding of fact that the Landlord and the Tenant had reached an agreement to terminate the tenancy on June 30, 2024. In her email, the Tenant had asked the Landlord to extend the termination date to the “end of June”, which the Landlord accepted. I find that the Board did not make any error in finding that the “end of June” was the same as June 30 which was the last date of the monthly tenancy.

[17] The Landlord’s reply email of February 23, 2024, stated that he fulfilled the Tenant’s request to terminate the lease at the end of June. Subsequent to the February 23, 2024 acceptance, the Landlord referred to an agreement to leave on May 30, 2024. The Tenant replied to this in capital letters saying: “BULL SHIT”. Her response indicates that she did not agree with the May 30 termination date. The Landlord then repeated that the Tenant will be out of the house at the end of May 2024.

[18] The evidence indicates that the Landlord accepted the Tenant’s request to terminate the tenancy as of the end of June. The Board made a finding of fact based on this evidence that the parties had made an agreement to terminate the lease on the end of June, or June 30, 2024. The Board had evidence on which it could make a finding of fact on June 30, 2024. The Tenant does not have a right of appeal for a finding of fact where there was evidence to support the Board’s finding.

[19] The Board rejected the Tenant’s evidence that her daughter had misinterpreted her instructions when she sent the email requesting to change the termination date to the end of June, from April 9 on her termination notice. This is also a finding of fact that the board was entitled to make, but from which there is no right of appeal.

[20] As a result, I dismiss the Tenant’s appeal based on ground # 2.

**Appeal Ground # 3 - Did the Board make an error in law by failing to consider whether to refuse the eviction, pursuant to section 83 (3) of the RTA, in light of all of the circumstances?**

[21] The Tenant submits that the Board considered whether to delay the eviction under section 83 of the RTA, but failed to consider whether it should refuse to order the eviction under section 83 of the RTA.

[22] The Board stated at paragraph 13 of their decision as follows: “I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Residential Tenancy’s Act and find that it would not be unfair to postpone the eviction until December 15, 2024.”

[23] The Board specifically referred to section 83 of the *RTA* which gives the Board a discretion to either refuse to grant the eviction or to postpone the eviction for a period of time. It decided not to refuse the eviction.

[24] Section 83(3) sets out the following five criteria where eviction should be refused:

- (a) Where the Landlord was in serious breach of his responsibilities. There was no evidence that that was the case;
- (b) The application was not brought because the Tenant complained to a governmental authority, but rather because that the Tenant gave written notice of termination and the issue was whether there had been an agreement to terminate the tenancy on June 30, 2024;
- (c) The application was not brought because the Tenant was attempting to enforce her legal rights;
- (d) The Tenant was not a member of the Tenant’s Association; and
- (e) The application was not brought because the unit was occupied by children.

[25] At paragraph 14 of the Board’s decision, it set out the Tenant’s circumstances, including the fact that she resided in the unit with her four children, that she was on a fixed income through the Ontario Disability Support Program (“ODSP”) and had experienced some health concerns.

[26] The Tenant submits that I should exercise my discretion in a different manner than that exercised by the Board. I find that the Board did consider the provisions of section 83 of the *RTA*, as it specifically adverted to the section and considered the Tenant’s circumstances and decided to postpone the date for eviction, and by implication decided not to refuse eviction. At paragraph 15, the Board found that it would be unfair to the Landlord to accord a substantial delay in eviction,

and found that to permit the Tenant to remain in the unit indefinitely (i.e. “a refusal of her eviction”) would be unfair to the Landlord in all the circumstances

**Disposition**

[27] For the above reasons, the Tenant’s appeal of the Board’s decision evicting her is dismissed there will be no order for costs.

[28] In the circumstances, the eviction of the Tenant will be delayed until January 31, 2024.

**Date:** December 16, 2025

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The Honourable Justice Robert Smith

**CITATION:** Hamilton v. Hafez, 2025 ONSC 7038  
**COURT FILE NO.:** DC-25-2972  
**DATE:** 2025/12/16

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

Angela Hamilton

Appellant

– and –

Kefah Hafez

Respondent

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**REASONS FOR DECISION**

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Justice Robert Smith

**Released:** December 16, 2025