



**Order under Section 69 / 88.2 / 89
Residential Tenancies Act, 2006**

Citation: Gil v Beharry, 2023 ONLTB 80708

Date: 2023-12-14

File Number: LTB-L-061728-23

In the matter of: 200 Werry Avenue
Dundalk, ON N0C 1B0

Between: Tiziana Gil
Daren Daley
Daniel Daley

And

Ganesh Beharry

I hereby certify this is a
true copy of an Order dated
DEC 14 2023
Landlord and Tenant Board

Landlords

Tenant

Tiziana Gil, Daren Daley, and Daniel Daley (the 'Landlords') applied for an order to terminate the tenancy and evict Ganesh Beharry (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

Further, the Landlords also applied for an order to terminate the tenancy and evict the Tenant because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant, and the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises.

Further, the Landlord's also applied for an order requiring the Tenant to pay the Landlords' reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

Further, the Landlord also applied for an order requiring the Tenant to pay the Landlords' reasonable out-of-pocket costs the Landlords has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on November 15, 2023.

The Landlords, the Landlords' witness Abiola Folarin and the Tenant attended the hearing. The Tenant met with Tenant Duty Counsel prior to the hearing.

Determinations:

L1 Application – Non-Payment of Rent

1. The Landlords 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 \$2,800.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$92.05. This amount is calculated as follows: \$2,800.00 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 November 30, 2023 are \$16,800.00.
7. The Landlords 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.
9. The Tenant acknowledged the arrears and testified that he has been off work for the last five months. The Tenant testified that he is self-employed and is not eligible for Employment Insurance. The Tenant testified that he was trying to get Ontario Works to assist with his arrears but to no avail as of the date of the hearing.
10. The Tenant was unable to propose a payment plan but testified that if he was approved for Ontario Works that he would set up a pay direct to the Landlords.

L2 Application – Substantial Interference & Willful Damage

11. As explained below, the Landlords have proven on a balance of probabilities the grounds for the termination of the tenancy and for the claim for compensation in the application. Therefore, the tenancy will be terminated as of January 31, 2024 and the Tenant will be ordered to pay the Landlords' costs totaling \$8,605.31.
12. The Tenant was in possession of the rental unit on the date the application was filed.
13. The Tenant agreed that he failed to pay water costs that they were required to pay under the terms of the tenancy agreement.
14. The Landlords have incurred reasonable out-of-pocket expenses of \$1,105.31 as a result of the Tenant's failure to pay water costs and as such, the Tenant will be directed to pay same.
15. The Landlords testified that when the Tenant moved in, the parties had agreed to allow the Tenant two dogs in the unit. When an inspection took place two months later, the Landlord had noticed that the Tenant had more dogs.
16. As a result, the unit's floors were scratched, and the door trims, baseboards and drywall were damaged by biting or scratching.
17. Further, the Landlords had observed carpet stains that were left by dog feces. Pictures of the damage were entered into evidence.

18. Based on the evidence provided by both parties, I am satisfied that the Tenant, another occupant of the rental unit or a person whom the Tenant permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex and further that the Tenant substantially interfered with the Landlords' reasonable enjoyment of the unit by not paying the water charges as outlined.
19. The Landlords had a contractor view the damage and gave an estimate of the costs of \$7,500.00 to repair the damage and/or replace property that was damaged and cannot be repaired. Having reviewed the photos of the damage and the evidence from both parties, I am satisfied that the estimate of costs is reasonable and the Tenant will be ordered to pay same.

Section 83 Considerations

20. The Landlords outlined how the lack of rent and utility payments have affected their financial position, which was the same evidence the Landlords had filed with their Request to Shorten Time. The Landlords testified that they have maxed out their credit cards and lines of credit to cover their two mortgages as a result of the Tenant not paying rent.
21. The Tenant testified that he would like to stay in the unit, as he lives in the unit with his young children and grandchildren. As outlined above, he testified that he is currently looking for work and has applied for Ontario Works. The Tenant testified that he had a slight heart attack caused by stress and that he was meeting with his cardiologist on December 15, 2023.
22. On the basis of the evidence of both parties, I am issuing a non-voidable termination order to January 31, 2024. It is clear from my view that the tenancy is not sustainable, and the Tenant has no means of paying the arrears, the outstanding utility costs, or the damage costs. That said, due to the Tenant's small children and health issues eviction will be postponed to January 31, 2024.
23. 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, 2024 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. Pursuant to the L2 Application, the tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before January 31, 2024.
2. The Tenant shall pay to the Landlords \$15,566.75. 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.
3. The Tenant shall also pay the Landlords compensation of \$92.05 per day for the use of the unit starting November 16, 2023 until the date the Tenant moves out of the unit.
4. The Tenant shall also pay to the Landlords \$1,105.31, which represents the reasonable out-of-pocket expenses the Landlords have incurred as a result of the unpaid utility costs.

5. The Tenant shall also pay to the Landlords \$7,500.00, which represents the reasonable costs of repairing the damage and/or replacing the damaged property.
6. The Tenant shall also pay to the Landlords \$186.00 for the cost of filing the application.
7. The total amount the Tenant owes the Landlords is \$24,358.06.
8. If the Tenant does not pay the Landlords the full amount owing on or before December 25, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 26, 2023 at 7.00% annually on the balance outstanding.
9. If the unit is not vacated on or before January 31, 2024, then starting February 1, 2024, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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, 2024.

December 14, 2023
Date Issued



Jagger Benham
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, 2024 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.