



**Order under Sections 87 and 88.2
Residential Tenancies Act, 2006**

Citation: Ali Rastgoo v Noelle Pierce, 2023 ONLTB 40646

Date: 2023-05-31

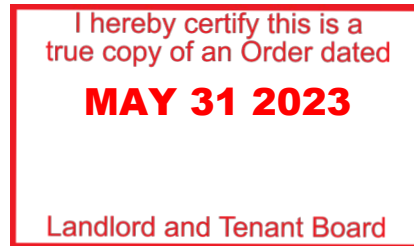
File Number: LTB-L-067345-22

In the matter of: 1037 ELGIN ST
NEWMARKET ON L3Y3C3

Between: Ali Rastgoo

And

Dave Pierce, Jennifer Pierce



Landlord

Tenant

Ali Rastgoo (the 'Landlord') applied for an order to terminate the tenancy and evict Dave Pierce, Jennifer Pierce (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. **This is the L1 application.**

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Landlord requires possession of the rental unit for the purpose of residential occupation. **This is the L2 application.**

The Landlord has also applied for an order requiring the Tenant to compensate the Landlord for the Tenant's failure to pay utility costs that they were required to pay under the terms of a tenancy agreement.

These applications were heard by videoconference on May 17, 2023.

The Landlord and the Tenant attended the hearing

Determinations:

PRELIMINARY ISSUE

A. Is Noelle Pierce A Tenant

1. At the beginning of the hearing, NP, who was named a Tenant in the application, raised a preliminary issue with respect to her status at the rental unit. Specifically, that she had moved out in December 2018, that the Landlord was aware of this and that her name should be removed from the application.
2. NP testified that she provided notice to the Landlord verbally and has not lived in the rental unit since she moved out. She further testified that she has no belongings of value there nor does she have any participation with respect to the decisions related to this tenancy. NP testified that the remaining tenants are her parents.

3. The Landlord confirms that NP moved out with verbal notice but that he was told by her mother that she went back and forth at the rental unit. The last time he saw NP at the property was in the summer of 2019.
4. The Landlord further confirmed that he has had communications only with JP with respect to the issues, rent and decisions regarding this tenancy.
5. Based on the submissions before the Board, I find that Noelle Pierce is not a tenant of the rental unit. I say this because I do not find there to be a substantial connection between her and the tenancy – she has no belongings there, does not make any decisions with respect to the tenancy, does not receive mail there and does not have control of the rental unit. As such, NP's request to remove her from the application is granted.

L2 APPLICATION

6. The Landlord's L2 application is based on a N12 notice of termination served to the Tenant on November 13, 2022 with a termination date of January 15, 2023 pursuant to subsection 48(1) of the *Residential Tenancies Act, 2006*.
7. At the hearing, the Landlord's evidence was, the rental period ran from the 4th of one month to the 3rd of the next month.
8. This raises a concern with respect to the termination date on the N12 notice of termination – specifically that it failed to comply with subsection 48(2) of the Act which states:

(2) The date for termination specified in the notice shall be **at least 60 days** after the notice is given **and shall be the day a period of the tenancy ends** or, where the tenancy is for a fixed term, the end of the term.

[Emphasis added.]

9. As the termination date on the N12 was not the last day of the rental period, I found the notice to be defective and the Landlord's L2 application with respect to this notice was dismissed.
10. As part of the L2 application included a claim for compensation due to a failure in paying the utility costs.
11. At the hearing, the Landlord's uncontested evidence was the Tenant was responsible to pay the utilities of electricity, water, gas and that they were in the Landlord's name, but the Tenant paid them directly.
12. The Landlord testified that between July 2022 and May 2023, the utility bills were not being paid resulting in arrears that the Landlord had to pay on their behalf and seeks reimbursement of this amount from the Tenants totalling \$1,103.83.
13. The Tenant did not dispute the utility arrears as claimed by the Landlord and sought to stay in the rental unit. She testified that she was awaiting her inheritance from her dad's estate but that the funds had not yet been distributed to her.
14. Based on the submissions before the Board, I find the Landlord has proven on a balance of probabilities that the utility arrears total of \$1,103.83 and that these payments were the responsibility of the Tenant.

15. These payments fall squarely within the provisions of section 88.2(1) which states:

88.2 (1) A landlord may apply to the Board for an order requiring a tenant or former tenant to pay costs described in subsection (4) if,

(a) while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant failed to pay utility costs that they were required to pay under the terms of the tenancy agreement;

...

16. An order shall issue awarding this amount in full to the Landlord.

L1 APPLICATION

17. The N4 notice of termination was served to the Tenant on October 6, 2022 with a termination date of October 20, 2022 and also contained an error rendering the notice defective. Specifically, it misidentified the rental period as running from the 1-31st of each month instead of the 4th of one month to the 3rd of the next month. As such, the request for eviction could not be granted under the application.

18. The Landlord elected to proceed with an order for arrears and costs only for the period ending May 31, 2023.

19. The Tenant was in possession of the rental unit on the date the application was filed.

20. The lawful rent is \$2,050.00. It is due on the 4th day of each month.

21. The Tenant has not made any payments since the application was filed.

22. The rent arrears owing to May 31, 2023, are \$20,500.00.

23. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

24. The Landlord seeks an order for the arrears and costs only.

25. The Tenant does not oppose the quantum of rent arrears as claimed by the Landlord.

26. She testified that the reason she fell into arrears was because her husband became sick, and they were living on \$1,000.00 a month with assistance from the foodbank. The Tenant wants to pay the Landlord and wants to stay in the rental unit but cannot propose a repayment plan as she has no funds or ability to do so.

27. Based on the evidence before the Board, I find the arrears and costs owing to May 31, 2023, total \$20,686.00. This is undisputed by the parties.

28. As the Landlord seeks an order for the arrears and costs, and no submissions were made by the Tenant regarding a repayment plan, the Landlord's request is granted.

29. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The application is amended to remove Noelle Pierce as a named Tenant.
2. The Tenant shall pay to the Landlord \$20,686.00. This amount includes rent arrears owing up to May 31, 2023 and the cost of filing the application.
3. The Tenant shall also pay the Landlord \$1,103.83, which represents the sum of the Landlord's reasonable out-of-pocket costs for the Tenant's failure to pay utility costs.
4. The total amount owing by the Tenant to the Landlord is \$21,789.83.
5. If the Tenant does not pay the Landlord the full amount owing on or before June 11, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 12, 2023 at 6.00% annually on the balance outstanding.



May 31, 2023

Date Issued

Sonia Anwar-Ali

Member, 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.