



**Order under Subsection 87(1)
Residential Tenancies Act, 2006**

Citation: Haider v Livernoche Tellez, 2023 ONLTB 72831

Date: 2023-11-06

File Number: LTB-L-036432-23

In the matter of: 1516, 2550 SIMCOE ST N
OSHAWA ON L1L0R5

Between: Afzal Haider Landlord

And

Andrea Livernoche Tellez Tenant

Afzal Haider (the 'Landlord') applied for an order requiring Andrea Livernoche Tellez (the 'Tenant') to pay the rent that the Tenant owes.

This application was heard by videoconference on September 13, 2023.

The Landlord's Representative David Lyman and the Tenant attended the hearing.

1. The Tenant did not pay the total rent they were required to pay for the period from March 1, 2023 to July 30, 2023.
2. The lawful rent is \$2,425.00. It is due on the 1st day of each month.
3. The Tenant has not made any payments since the application was filed.

When did the Tenant relinquish possession of the unit?

4. The sole issue in this application is the date the tenancy ended, and thus the date arrears are owing up to.
5. The Landlord argued that the Tenant is liable for rent up to July 30, 2023, the day she returned the keys and officially moved out of the unit.
6. The Tenant did not pay rent after February 2023. As a result, the Landlord filed this application. The Landlord reached out to the Tenant but did not hear anything back.
7. The Landlord's lawyer contacted the Tenant on June 23, 2023, to say that the hearing was to be September 13, 2023. The Landlord indicated a willingness to enter a payment plan. Again, the Landlord received no reply.
8. On or about July 19, 2023, the Landlord received a message from the utility company regarding the utilities in the unit. The Landlord was advised that the utilities had been disconnected on July 12, 2023.
9. The Landlord had to pay some \$1,408 in unpaid utilities.



10. The Landlord reached out by phone to the Tenant on or about July 20, 2023. The Tenant replied by text stating that (i) she had left the unit (ii) she still had to collect her belongings (iii) she was unemployed (iv) she would send payments at the end of the month (v) she would leave the keys on Sunday July 23, 2023 with the concierge.
11. On Sunday July 23, the Landlord checked, and the keys were not with the concierge.
12. The Landlord reached out to the Tenant again regarding possession of the unit and the keys.
13. The real estate agent picked up the keys from the Tenant on July 30, 2023.
14. The Landlord is seeking rent arrears to July 30, 2023 and costs.
15. The Tenant lost her father in April 2022, and by December 2022, she had lost her job. She testified that her ex took her to court, and she had no savings. She has two kids aged 10 and 3.
16. She left the unit on May 12, 2023. She claims she did not go back to the unit. She had to rent the elevator at the complex to move out, and had to pay a deposit for this. She claims there was a record in the complex that she left at that time. She then moved out. She did not tell the Landlord she moved out. She did not disconnect her utilities. On July 5, 2023, she was notified that her utilities had gone to the collection agency.
17. The Tenant argues that she is only liable for the rent for March and May of 2023.

Analysis

18. The leading case on the meaning of "*in possession*" is the Court of Appeal's decision in *1162994 Ontario Inc. v. Bakker*, 2004 CanLII 59995 (ON CA). In *Bakker* the Court held that possession of a rental unit refers to some form of control over that unit as demonstrated by such factors such as access to, use of, or occupation of the unit.
19. Whether a tenant has returned the keys is an important factor to consider when determining whether a tenant is still in possession, however it is not determinative.
20. The Tenant did not inform the Landlord that she moved out on May 12, 2023.
21. Nor did she disconnect her utilities.
22. She did not reply to him when he reached out to her several times.
23. She held onto the keys until July 30, 2023.
24. I accept the Landlord's evidence about her text of July 20, 2023. At that time, she still had belongings in the unit. It was on this date that she clearly told the Landlord that she had left.
25. In my view, it is clear that the Tenant was still in possession of the unit up to July 30, 2023. Up to that time, she had access to the unit. She still had belongings in the unit or use of the unit. Moreover, she did not even tell the Landlord she had left. He found out for certain when she texted him on or about July 20, 2023. Even if she was not living there, I find that she had possession of the unit up to July 30, 2023.



26. The tenancy ended on **July 30, 2023** as a result of the Tenant moving out in accordance with a notice of termination, LTB order or agreement to terminate the tenancy. Therefore, the Tenant's obligation to pay rent also ended on that date. Indeed, the Landlord stated he was only seeking arrears up to July 30, 2023.
27. The rent arrears and daily compensation owing to July 30, 2023 are \$9,700.00.
28. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The Tenant shall pay to the Landlord \$9,886.00. This amount includes rent arrears owing up to July 30, 2023 and the cost of the application.
2. If the Tenant does not pay the Landlord the full amount owing on or before November 17, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 18, 2023 at 7.00% annually on the balance outstanding.

November 6, 2023
Date Issued

James W. Campbell
James Campbell
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.