



**Order under Section 69  
Residential Tenancies Act, 2006**


**File Number:** LTB-L-064208-22

**In the matter of:** 16 John Moore RD  
East Gwillimbury ON L9N0P4

**Between:** Rosepreet Mann

**And**

Michael Gersh  
Katya Shtrachman

I hereby certify this is a  
true copy of an Order dated  
**August 3, 2023**  
  
Landlord and Tenant Board

Landlord

Tenants

Rosepreet Mann (the 'Landlord') applied for an order to terminate the tenancy and evict Michael Gersh and Katya Shtrachman (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

The Landlord also claimed charges related to NSF cheques

This application was heard by videoconference on May 8, 2023 and on June 1, 2023.

The Landlord, the Landlord's Legal Representative Francisco Gomez, the Tenants and the Tenant's Legal Representative Linda J. Millman attended the hearing.

**Determinations:**

1. The Landlord served the Tenants with a Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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 Tenants were in possession of the rental unit on the date the application was filed.
3. The Tenants vacated the rental unit on May 29, 2023. Arrears are calculated up to May 29, 2023.
4. The lawful rent is \$3,400.00.
5. The Tenants have not made any payments since the application was filed.
6. There is no dispute that the rent arrears owing to May 29, 2023 are \$26,864.66.
7. The Landlord is entitled to the cost of filing the application.
8. The Landlord collected a rent deposit of \$3,400.00 from the Tenants 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 \$90.36 is owing to the Tenants for the period from May 7, 2022 to May 29, 2023.

10. The Tenants paid a key deposit of \$100.00 to the Landlords. The key deposit is applied to the arrears of rent because the tenancy terminated.
11. The total amount the Tenants owe the Landlord is \$23,460.30.

*Is K.S. a Tenant?*

12. The Tenant's Legal Representative L.M. requested that the application be amended to remove K.S. as a respondent because she was not in possession of the unit when the application was filed.
13. The Landlord disagrees and takes the position that K.S. remains a joint tenant who had lawful possession of the rental unit, along with M.G., until May 29, 2023. The Landlord has never agreed to remove K.S. from the lease agreement.
14. L.M. did not present any objective evidence establishing that K.S. had been released from the tenancy, including showing that K.S. attempted to provide the Landlord with a notice of termination because she wanted to end her tenancy.
15. Having reviewed the LTB portal, there was no evidence that K.S. vacated the unit prior to the application being filed, or evidence of an N9 notice of termination, or of any written request to the Landlord asking to be released from the tenancy agreement.
16. To the contrary, the evidence of the Landlord as submitted to the Board shows that the Landlord sent rent due notices to both Tenants twice per month, from November 28, 2022 to April 15, 2023. This demonstrates that the Landlord considered K.S. to be a Tenant during that period.
17. This is a joint tenancy. Under the Act, if a landlord obtains an order to end a tenancy because one joint tenant's conduct contravened the Act, enforcement of the order will end the whole tenancy and evict all the tenants. Sections 37 and 47 of the Act provide that a tenant may end their tenancy by agreement with the landlord or by giving a notice that meets certain criteria. In a joint tenancy, agreement or notice by all the joint tenants will meet the requirements of those sections.
18. The Landlord is a party to the tenancy agreement and has not agreed to amend the agreement to remove K.S. as a Tenant. Among other terms, the lease explicitly provides that the Tenants' obligations under it are to be joint and several. It would be contrary to the principles of contract law if the Tenants could unilaterally amend the agreement.
19. Neither am I aware of any authority for the proposition that joint tenants can sever their tenancy without their landlord's consent. Therefore, unless the Landlord consents, the reasonable conclusion is that the law does not permit K.S. to remove herself from the tenancy unless the entire tenancy is terminated.
20. I find that the tenancy has not been severed and K.S.'s interest in it has not terminated. The order issued will be effective against both K.S. and M.G..

*Costs*

21. The parties are each seeking costs against the other in relation to this hearing.
22. The Landlord's Legal Representative F.G. asks the Board to award the Landlord \$400.00 in costs 'thrown away' because the Tenants' conduct was unreasonable in the

proceedings. He claims that the Tenants waited until the last minute to retain a representative, and then obtained an adjournment because they needed more time to raise section 82 issues, and to serve and file reams of evidence.

23. He points to the fact that the arrears application was heard on an urgent basis, and an order was granted on consent, at the previous hearing. The hearing was adjourned to allow the Tenants to raise section 82 issues, and for a determination as to whether the Tenants would be entitled to an abatement of rent, which might be off-set against the arrears owing if the application was granted.
24. Because the Tenants subsequently withdrew their section 82 application before this hearing, F.G. asserts that the Tenants never intended to litigate these issues but utilized the adjournment to delay an enforcement of a final arrears order. This conduct, he submits, constituted an abuse of process. Additionally, he submits, the Tenant's Legal Representative made unmeritorious attempts to argue that one Tenant was no longer a tenant, further complicating the issues and delaying the outcome of the proceedings.
25. His position is that, had the Tenants withdrawn their section 82 application with sufficient advance notice to cancel this hearing, the Landlord and the Landlord's Legal Representative would not have had to attend this hearing, and this would have saved significant cost to the Landlord.
26. On that basis, F.G. also asks the Board to order Board costs. LTB Guideline 3 "Costs" provides guidance on this issue and states that: "When a party or their agent or legal representative acts improperly or unreasonably in a proceeding, the Board may order one or more of them to pay to the Board an amount that will partly cover the expenses that the Board has incurred as a result of that conduct."
27. The Guideline further states that: "An order for Board costs is appropriate in cases in which the adjudicative costs to the public have been unjustifiably increased by the unreasonable conduct or omission of a party or a party's agent or legal representative."
28. The Tenant's Legal Representative L.M. submits that the Tenants are not familiar with Ontario law relating to residential tenancies because they originate from out-of-province. She explained that she informed the Landlord's Legal Representative and the Board without delay when the Tenants decided to withdraw the section 82 issues application. She asserts that, at all times, the section 82 issues were valid.
29. L.M. claims that the Tenants should be awarded costs because the Landlord commenced a frivolous and vexatious motion for costs. I find that the L.M.'s submissions in this regard devoid of merit.
30. Based on the submissions at the hearing, I do not find that the Tenants' conduct was entirely unreasonable, to the point it attracts the sanctions requested. The representatives know that is not uncommon for tenants to seek legal representation close in time to the hearing.
31. While L.M.'s choices and methods were not particularly sound in this case and may not fare well at a future hearing on a different matter, there is no question that in this case she was advocating in the Tenants' best interests and was forthcoming about her own errors.
32. Therefore, no costs will be awarded.

**It is ordered, on consent, that:**

1. The tenancy between the Landlord and the Tenants is terminated as of May 29, 2023, the date the Tenants moved out of the rental unit.
2. The Tenants shall pay to the Landlord \$20,447.73. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and unpaid NSF charges. The rent deposit, the key deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
3. If the Tenants do not pay the Landlord the full amount owing on or before August 14, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 15, 2023 at 6.00% annually on the balance outstanding.

**August 3, 2023**

**Date Issued**

*Elle Venhola*

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Elle Venhola

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.

**Schedule 1**  
**SUMMARY OF CALCULATIONS**

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

Rent Owing To Move Out Date	\$26,864.66
Application Filing Fee	\$186.00
NSF Charges	-\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$3,400.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$90.36
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate} (key deposit)	- \$100.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$23,460.30</b>