

Order under Section 69
Residential Tenancies Act, 2006

File Number: SWL-51348-21

In the matter of: 4, 282 HIGH STREET
LONDON ON N6C4L4

Between: Giulian Larovere Landlord

and

Brayden Sinclair Tenants
Emma Labatt

Giulian Larovere (the 'Landlord') applied for an order to terminate the tenancy and evict Brayden Sinclair and Emma Labatt (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe. **This is the L1 application.**

Giulian Larovere (the 'Landlord') applied for an order to terminate the tenancy and evict Brayden Sinclair and Emma Labatt (the 'Tenants') because they, another occupant of the rental unit or someone they permitted in the residential complex have wilfully or negligently caused undue damage to the premises. The Landlord has also applied for an order requiring the Tenants to compensate the Landlord for the damage; and because the Landlord requires possession of the rental unit for the purpose of residential occupation. **This is the L2 application.**

These applications were scheduled by videoconference on November 12, 2021 at 1:00pm.

Only the Landlord attended the hearing.

Also in attendance was the Landlord's witness, Maren Larovere.

Determinations:

L1 APPLICATION

1. The Tenants have not paid the total rent the Tenants were required to pay for the period from January 1, 2021 to November 30, 2021. Because of the arrears, the Landlord served a Notice of Termination effective March 29, 2021.
2. The Tenants are in possession of the rental unit.
3. The lawful monthly rent is \$970.00.
4. The Tenants paid \$2,910.00 after the application was filed.

5. The arrears and costs owing to November 30, 2021 total \$7,961.00.
6. The Landlord collected a rent deposit of \$950.00 from the Tenants and this deposit is still being held by the Landlord.
7. Interest on the rent deposit is owing to the Tenants for the period from December 3, 2018 to March 29, 2021.

L2 APPLICATION

8. The Landlord's L2 application was served to the Tenants pursuant to subsection 48(1) of the *Residential Tenancies Act, 2006* (the 'Act') on March 14, 2021 with a termination date of May 31, 2021.
9. This is a month-to-month tenancy in which rent is due on the first of the month.
10. The rental unit is an apartment within a five-unit building.
11. As of the date of the hearing, the compensation required to be paid to the Tenants pursuant to 48.1 of the *Residential Tenancies Act, 2006* (the 'Act') has not been paid. Section 55.1 of the *Residential Tenancies Act, 2006* (the 'Act') states that compensation owing under section 48.1 of the Act is due by the termination date on the notice of termination. This means that the Landlord has until May 31, 2021 to pay the Tenants this amount.
12. In terms of the requirement for compensation, the Landlord testified that the Tenants were in arrears of rent since January 2021. As such, the Landlord maintains the position that the compensation requirement should be offset by the rent arrears outstanding for May 2021.
13. The Landlord filed a declaration, in compliance with my interim order issued on August 12, 2021, from the Landlord's daughter, Maren Larovere, who is the child referred to on the N12 notice of termination, confirming that she would be moving into the rental unit for her own use for a period of one year. This was also confirmed in the testimony provided by ML at the hearing where she testified that she was currently living in the family home and sought to move into the rental unit to be independent.
14. The Landlord seeks termination of the tenancy as soon as possible.

ANALYSIS

15. Based on the evidence before the Board, I am satisfied that the Landlord genuinely intends requires the rental unit for his daughter to personally use for the next few years. The Landlord bears the obligation to prove the good faith requirement [*Feeney v. Noble*, [1994] O.J. No. 2049], but is only required to establish that she genuinely intends to live in the rental unit for at least a year.
16. The motives and the reasonableness of the move into the subject unit and the availability of other alternatives are only relevant as circumstantial evidence from which inferences

can be drawn when deciding whether a genuine or sincere intention to occupy the unit exists [*Fava v. Harrison*, [2014] O.J. No. 2678 (Div. Ct.); *Clarke v. Bielak*, [2003] O. J. No. 4479 (Div. Ct.); *Salter v. Beljinac* [2001] O. J. No. 2792 (Div. Ct.)].

17. By waiving the rent arrears for May 2021, I find that the Landlord has satisfied the compensation requirement under section 48.1 of the *Residential Tenancies Act, 2006* (the 'Act').
18. While the Landlord seeks an immediate termination of the tenancy, and while I can empathize with the Landlord in terms of the delays they have faced, I find that a standard, eleven-day order would be more appropriate and fair under the circumstances as expedited evictions are generally available only for serious situations involving dangerous behaviour or criminality. Both the application before the Board and the evidence before the Board did not suggest this was the case.
19. With respect to the Landlord's section 89 damage as part of the L2 application, the Landlord sought to withdraw this claim. In accordance with subsection 200(4) of the *Residential Tenancies Act, 2006*, I consent to the withdrawal of the application.
20. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Landlord is unaware of any circumstances that would justify relief from eviction.
21. **Based on my finding on the L2 application, the tenancy is terminated and so there can be no opportunity to void termination by paying the outstanding arrears claimed on the L1 application.**
22. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The Landlord's L2 application with respect to the section 89 damage claim is dismissed as withdrawn.
2. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before November 28, 2021.
3. The Tenants shall pay to the Landlord \$5,673.02 (less any amount paid by the Tenants to the Landlord after the application was filed with the Board)*, which represents the amount of rent owing and compensation up to November 17, 2021, less the rent deposit and interest the Landlord owes on the rent deposit.
4. The Tenants shall also pay to the Landlord \$31.89 per day for compensation for the use of the unit starting November 18, 2021 to the date the Tenants move out of the unit.
5. The Tenants shall also pay to the Landlord \$201.00 for the cost of filing the application.

6. If the Tenants do not pay the Landlord the full amount owing* on or before November 28, 2021, the Tenants will start to owe interest. This will be simple interest calculated from November 29, 2021 at 2.00% annually on the balance outstanding.
7. If the unit is not vacated on or before November 28, 2021, then starting November 29, 2021, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord, on or after November 29, 2021.



Sonia Anwar-Ali
Member, Landlord and Tenant Board

November 17, 2021
Date Issued

South West-RO
150 Dufferin Avenue, Suite 400, 4th Floor
London ON N6A5N6

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 May 29, 2022 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.

* Refer to section A on the attached Summary of Calculations.

**Schedule 1
SUMMARY OF CALCULATIONS**

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2021 CanLII 146751 (ON LTB)

A. Amount the Tenants must pay if the tenancy is terminated:

| Reasons for amount owing | Period | Amount |
|---|--|----------------------|
| Arrears: (up to the termination date in the Notice of Termination) | January 1, 2021 to March 29, 2021 | \$2,141.00 |
| Less the amount the Tenants paid to the Landlord | | - |
| Plus compensation: (from the day after the termination date in the Notice to the date of the order) | March 30, 2021 to November 17, 2021 | \$7,430.37 |
| Less the rent deposit: | | - |
| | | \$950.00 |
| Less the interest owing on the rent deposit: | December 3, 2018 to March 29, 2021 | -\$38.35 |
| Amount owing to the Landlord on the order date:(total of previous boxes) | | \$5,673.02 |
| Additional costs the Tenants must pay to the Landlord: | | \$201.00 |
| Plus daily compensation owing for each day of occupation starting November 18, 2021: | | \$31.89 (per day) |

| | |
|--|---|
| Total the Tenants must pay the Landlord if the tenancy is terminated: | \$5,874.02, + \$31.89 per day starting November 18, 2021 |
|--|---|