



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

**Citation:** Rocca v Simpson, 2024 ONLTB 3740

**Date:** 2024-01-23

**File Number:** LTB-L-063084-23

**In the matter of:** 2949 REGENT ST  
SUDBURY ON P3E5H6

**Between:** Ambrosina Rocca Landlord

**And**

Heather Simpson and Richard Fawcett Tenants

Ambrosina Rocca (the 'Landlord') applied for an order to terminate the tenancy and evict Heather Simpson and Richard Fawcett (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on January 3, 2024.

The Landlord, Landlord's legal representative Angie Gravelle, and the Tenants attended the hearing.

**Determinations:**

1. The Landlord served the Tenants with a valid 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 submit they vacated the rental unit on September 1, 2023. The Landlord submits they did not know the Tenants vacated, and only gained confirmation of such at the hearing.
4. Mr. Fawcett testified that he had a strained relationship with the Landlord so most communication went through the Landlord's brother. Mr. Fawcett allegedly told the Landlord's brother that the Tenants were vacating by September 1, 2023. In addition, Mr. Fawcett testified that he had purchased several appliances for the rental unit and was gifting them to the Landlord. When they vacated September 1, 2023, the Tenants left the door unlocked and keys in the sunroom.
5. The Landlord testified that she had no knowledge of the Tenants vacating whatsoever. In addition, the Landlord never received the keys back from the Tenants. The Landlord admitted that she entered the property on November 13, 2023 as she noticed a window was open. She witnessed several large appliances in the rental unit and assumed the

Tenants were still occupying the rental unit. The next day, on November 14, 2023, she was notified by the utility provider that the Tenants had taken their name off the account.

6. I find that the Tenants' attempt at notifying the Landlord by contacting their brother is insufficient. Orally notifying a relative of the Landlord that they vacated the rental unit is not proper notice per section 44 the *Residential Tenancies Act, 2006*.
7. In *in 1162994 Ontario Inc. Bakker, 2004 CanLII 59995*, the Court of Appeal indicated that possession of a rental unit refers to whether a tenant exercises some form of control over the unit. Considering all of the circumstances here, I find on a balance of probabilities that the Tenants were in possession of the rental unit until November 14m 2023, at which point the Landlord knew or ought to have known that they had vacated on November 14, 2023. The Landlord had numerous opportunities to follow-up with the Tenants about the utility account being switched into the Landlord's name but she chose not to. This was a telltale sign that something was occurring at the rental unit but the Landlord remained wilfully blind to the Tenants vacating.
8. As a result, I find that the Tenants vacated the rental unit on November 14, 2023. Rent arrears are calculated up to the date the Tenants vacated the unit.
9. The lawful rent is \$1,150.00. It was due on the 1st day of each month.
10. The Tenants have not made any payments since the application was filed.
11. The rent arrears owing to November 14, 2023 are \$6,317.15.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
13. The Landlord collected a rent deposit of \$1,250.00 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.
14. Interest on the rent deposit, in the amount of \$48.39 is owing to the Tenants for the period from October 21, 2021 to November 14, 2023.

s.82 Issues

15. The Tenants attempted to raise section 82 issues at the hearing. The issues were not disclosed at all to the Landlord prior to the hearing. I assessed prejudice to the Tenants if they were unable to raise their issues and determined that none would be suffered. The Tenants only submitted their issues to the Board on December 27, 2023, therefore there is no prejudice surrounding limitations if the Tenants were to file their own applications.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated as of November 14, 2023, the date the Tenants moved out of the rental unit.
2. The Tenants shall pay to the Landlord \$5,204.76. This amount includes rent arrears owing up to the date the Tenants moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit is 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 February 3, 2024, the Tenants will start to owe interest. This will be simple interest calculated from February 4, 2024 at 7.00% annually on the balance outstanding.

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**January 23, 2024**  
**Date Issued**

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**Brett Lockwood**  
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 Tenants must pay as the tenancy is terminated**

Rent Owing To Move Out Date	\$6,317.15
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,250.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$48.39
<b>Less</b> the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenants are entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$5,204.76</b>

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