



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

**Citation:** Richmond Property Ltd. v Burton, 2024 ONLTB 855

**Date:** 2024-01-08

**File Number:** LTB-L-023961-22

**In the matter of:** 404, 205 CHANCELLORS WAY  
GUELPH ON N1G5K1

**Between:** Richmond Property Ltd. Landlord

**And**

Paige Burton, Kassandra Szmidt, Emma Stevens, Kenzie Lancaster Tenants

Richmond Property Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Paige Burton, Kassandra Szmidt, Emma Stevens, and Kenzie Lancaster (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on December 12, 2023.

The Landlord's legal representative, Jeff Shabes ('JS'), the Landlord's agent, Phil Offierski ('PO'), and the Tenants, Kassandra Szmidt ('KS'), Emma Stevens ('ES'), Kenzie Lancaster ('KL'), and ES's agent, Allena Goodyear ('AG'), attended the hearing.

As of 1:50 p.m., the Tenant, Paige Burton ('PB'), was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the evidence of ES, KS, KL, AG, and the Landlord.

**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 entered into a joint tenancy agreement with the Landlord for the rental unit commencing on May 1, 2021 for a one year term ending April 30, 2022. KS, ES, and KL all moved out of the rental unit by April 30, 2023.
4. PO said that the Landlord accepted that KS, ES, and KL would vacate the rental unit, and it was clearly explained to PB that she would remain responsible for the full monthly rent for the rental unit beginning in May 2022.

5. ES and KL both entered new tenancy agreements with the Landlord for other units in the residential complex, and KS moved in with her mother by April 30, 2022.
6. ES presented a text message chain between herself, PB and KL. PB wrote: "@Emma Goodyear-Stevens @Kenzie Lancaster this message is to obtain written confirmation that as of todays date, Monday January 31, 2022, that you both confirm that you have signed new leases for alternate units and will no longer be residing at unit 404 chancellors come may 1, 2022 at 12:00am. I have multiple interested candidates who are looking to fill your vacancies, so I will let you know when I am doing showings. Thank you." (*sic*). Both KL and ES responded in this text message chain, confirming they would be vacating the rental unit by April 30, 2023. In response to KL's confirmation message, PB wrote "[c]an't wait".
7. Both KL and KS said that KS had already made it clear to PB that she would be moving in with her mother, which is why PB's text message, quoted above, was directed only at ES and KL.
8. AG also presented as evidence an email from the Landlord's property manager to PB on March 11, 2022 confirming that ES, KS, and KL were all vacating the rental unit, and asking PB to confirm that PB would pay the full rent by pre-authorized payment. PB responded by advising that she had new prospective tenants who wanted to join her as tenants. The Landlord replied by refusing to amend the lease further to add new tenants.
9. Section 202 of the Act mandates the LTB to ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so may disregard the outward form or a transaction, and may have regard to the pattern of activities relating to the residential complex and the rental unit.
10. Based on all of the evidence before me, I find that the real substance of what occurred in this case was that all of the Tenants and the Landlord agreed that as of April 30, 2023, ES, KL, and KS would terminate their respective interests in the joint tenancy, and that PB would remain as the sole tenant. PB may have intended to have new tenants added to the lease or for new occupants to move into the rental unit after that date. The evidence before me was that no new tenants were added to the lease. Whether or not any new occupants moved into the rental unit is immaterial to the allocation of liability for the rent arrears.
11. Because this was a joint tenancy, as of May 1, 2022, PB was solely responsible for the rent for the rental unit. The Landlord's evidence was that the monthly rent increased from \$2,340.00 to \$2,368.00 as of May 1, 2022.
12. PB vacated the rental unit on December 29, 2022. PO said that a maintenance person attended the rental unit to change a filter on this date and found the unit empty. The Landlord recovered possession of the unit on that date. Rent arrears are calculated up to the date PB vacated the unit.
13. The lawful rent is \$2,368.00. It was due on the 1st day of each month.
14. The Tenants paid \$3,510.00 to the Landlord since the application was filed.
15. After the application was filed, the Tenants received a credit of \$1,710.00. At the hearing, the Landlord agreed to waive the \$1,710.00 owing for the month of April 2022. Because this amount accrued before ES, KL, and KS's respective interests in the tenancy ended, all

of the Tenants would have been responsible for this amount. The Landlord and ES, KL, and KS agreed that the Landlord would not seek recovery of rent arrears from ES, KL, or KS, so the Landlord agreed to simply waive these arrears. All other rent arrears sought by the Landlord accrued after April 30, 2022.

16. The rent arrears owing to December 29, 2022 are \$15,323.65.
17. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
18. The Landlord collected a rent deposit of \$2,340.00 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.
19. Interest on the rent deposit in the amount of \$46.93 is owing to the Tenants for the period from May 1, 2021 to December 29, 2022.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated. The tenancy between the Landlord and ES, KS, and KL terminated as of April 30, 2022 by agreement of the parties. The tenancy between the Landlord and PB terminated as of December 29, 2022, the date PB moved out of the rental unit
2. Paige Burton shall pay to the Landlord **\$13,167.72**. This amount includes rent arrears owing up to the date Paige Burton 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. See Schedule 1 for the calculation of the amount owing.
3. If Paige Burton does not pay the Landlord the full amount owing on or before January 19, 2024, she will start to owe interest. This will be simple interest calculated from January 20, 2024 at 7.00% annually on the balance outstanding.

**January 8, 2024**  
**Date Issued**

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Mark Melchers  
Member, Landlord and Tenants 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	\$20,588.65
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	- \$3,510.00
<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	- \$2,340.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$46.93
<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 is entitled to	- \$1,710.00
<b>Total amount owing to the Landlord</b>	<b>\$13,167.72</b>

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