



**Order under Section 69 and 88.2
Residential Tenancies Act, 2006**

Citation: Carling Realty Company Ltd. v Allard, 2023 ONLTB 77157

Date: 2023-12-08

File Number: LTB-L-060750-22

In the matter of: C, 72 BROCKINGTON CRES
OTTAWA ON K2G5L1
Carling Realty Landlord Company Ltd.

Between:

And

Dan Allard Tenants Lynn Allard

L1 Application

Carling Realty Company Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Dan Allard and Lynn Allard (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

L2 Application

The Landlord also applied for an order to terminate the tenancy and evict the Tenants because the Tenants have been persistently late in paying their rent.

The Landlord also applied for an order requiring the Tenants to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenants' failure to pay utility costs that the Tenants were required to pay under the terms of the tenancy agreement.

These two applications were heard by videoconference on November 15, 2023. The Landlord's agent, Susan Szalai, attended the hearing. As of 9:32 am the Tenants were 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 Landlord's evidence.

Determinations:

L1 Application – Rent Arrears

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment 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 December 12, 2022. Rent arrears are calculated up to the date the Tenants vacated the unit.
4. The lawful rent is \$1,328.00. It was due on the 1st day of each month.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to December 12, 2022 are \$3,154.17.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,238.40 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 \$69.16 is owing to the Tenants for the period from January 1, 2020 to November 15, 2023.

L2 Application – Out of Pocket utility costs

10. On September 28, 2022 the Landlord served the Tenants with an N8 Notice to End the Tenancy (N8), with a termination date of November 30, 2022, for persistently paying the rent late. The Landlord filed the L2 application with the Board on October 19, 2022.
11. The Landlord's agent submitted that given that the Tenants have vacated the rental unit, the Landlord no longer seeks an order to terminate the tenancy on the basis of persistently late rent payments; however, the Landlord seeks compensation of \$276.01 for the Tenants' failure to pay for water utility costs from July 15, 2022 to December 12, 2022.
12. The Landlord's agent testified that both Tenants signed a tenancy agreement on October 7, 2011, and paragraph 5 of that agreement requires the Tenants to pay for water utility costs during their tenancy. The Landlord submitted City of Ottawa water utility invoices for the unit of \$102.45 covering the period of July 15, 2022 to September 12, 2022, an invoice of \$129.33 covering the period of September 13, 2022 to November 11, 2022, and a final invoice of \$85.61 for the period of November 12, 2022 to January 10, 2023. The agent noted that the final invoice was prorated to \$44.23 reflecting the out-of-pocket utility expenses incurred by the Landlord for that period until the Tenants vacated the unit. The

Landlord's agent testified that the Landlord paid these water utility costs, but never received any compensation from the Tenants.

13. In the L2 application, the Landlord only requested compensation for out-of-pocket utility expenses for the first invoice of \$102.45. An L2 application does not include a provision for a landlord to claim future utility costs after the application has been filed. To claim additional utility costs incurred after filing, a landlord must request an amendment to the L2.
14. The Landlord never requested, before the hearing, an amendment to the L2 application for additional utility out-of-pocket expenses pursuant to s. 200(1) of the *Residential Tenancies Act, 2006* (the "Act") or in accordance with the Board's Rules of Procedure 15.1. Given that the Tenants were not provided notice that the Landlord would seek more out-of-pocket utility compensation at the hearing, in addition to the \$102.45 stated in the L2, it would not be fair to the Tenants to grant an amendment to the Landlord's L2 at the hearing, in accordance with the Board's Rules of Procedure 15.4. Accordingly, I will only consider the out-of-pocket utility costs requested in the L2.
15. On the basis of the Landlord's uncontested evidence, I am satisfied that over the period of July 15, 2022 to September 12, 2022, the Tenants did not pay \$102.45 for the water utility costs of the rental unit, as required pursuant to their tenancy agreement.
16. I therefore find that, pursuant to s. 88.2 of the Act, the Landlord has incurred reasonable out-of-pocket expenses of \$102.45 as a result of the Tenants' failure to pay required utility costs.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated as of December 12, 2022, the date the Tenants moved out of the rental unit.
2. The Tenants shall pay to the Landlord \$2,032.61. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
3. The Tenants shall also pay to the Landlord \$102.45, representing compensation for the Landlord's out-of-pocket utility expenses.
4. If the Tenants do not pay the Landlord the full amount owing of **\$2,135.06** on or before December 19, 2023, the Tenants will start to owe interest. This will be simple interest calculated from December 20, 2023 at 7.00% annually on the balance outstanding.

**December 8, 2023 Date
Issued**

Frank Ebner
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	\$3,154.17
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,238.40
Less the amount of the interest on the last month's rent deposit	- \$69.16
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$2,032.61

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