



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

Citation: Gill v McDougall, 2023 ONLTB 56442

Date: 2023-08-17

File Number: LTB-L-067318-22

In the matter of: 8 Bethune Avenue
Welland ON L3B0H5

Between: Bhupinder Gill Landlord

And

Josh McDougall and Tashina Pinkerton Tenants

Bhupinder Gill (the 'Landlord') applied for an order to terminate the tenancy and evict Josh McDougall and Tashina Pinkerton (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on July 6, 2023.

The Landlord, their representative Samila Waslat, and the Tenant Josh McDougall attended the hearing.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice) with a termination date of February 5, 2021.
2. The Landlord alleges that the Tenants vacated the rental unit on January 19, 2022. The Tenant Josh McDougall 'J.M' alleges that the Tenants vacated nearly a year earlier on February 1, 2021 and prior to the termination date in the N4 notice.
3. The Landlord testified that he attended the rental unit on January 14, 2022 and found a TV, a BBQ, clothing and other items he described as "junk" still in the rental unit. He also said there was food in the refrigerator.
4. The Landlord testified that he also attended the rental property sometime in 2021 after serving the N4 notice, but before 2022, but could not remember exactly when. The Landlord's evidence is that at that time the Tenants were still living in the rental unit.
5. The Landlord testified that he did not receive any notice from the Tenants that they were vacating, nor did he receive the keys back.
6. The Landlord introduced into evidence documentation from Welland Hydro that shows there was an active hydro account for the rental unit until February 15, 2022.

7. Kurt Anderson ('K.A') is best friends with the Tenant J.M. K.A testified that on February 1, 2021 he helped the Tenants move out of the rental unit. He testified that everything of

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value was removed from the rental unit, but a few toys and a small bed were left behind. He also testified that J.M left the keys on the counter.

8. J.M testified that the Tenants vacated the rental unit on February 1, 2021. He introduced into evidence a copy of a lease the Tenants signed for a new rental unit with a commencement date of February 1, 2021. J.M also introduced evidence about a hydro account he opened for this new unit on January 31, 2021.
9. J.M testified that he sent the Landlord a letter indicating that the Tenants had vacated and that the keys were left in the rental unit. However, J.M is no longer in possession of a copy of the letter.
10. J.M testified that he operates multiple businesses, and it is possible he was still paying for hydro at the rental unit without realizing.
11. I find on a balance of probabilities that the Tenants vacated the rental unit on February 1, 2021. I make that finding for the following reasons.
12. First, I found both the Tenant J.M and K.A to be credible witnesses as their testimony was offered in a forthright manner and withstood cross examination well.
13. The Landlord submitted that K.A was uncredible because in an affidavit he wrote “..we had to make multiple trips to ensure that everything was taken and nothing was left behind..” and “Josh and I walked through the house thoroughly on our last trip to ensure that all belongings were accounted for...” but then at the hearing he mentioned that there were some items left behind. I do not find this to be an inconsistency such to render K.A uncredible. The Tenants took with them everything of value that they intended to take and K.A’s testimony clarified that some abandoned items were left behind.
14. Second, I had a reliability concern about the Landlord’s evidence that he visited the rental unit sometime after the N4 notice was served but sometime prior to the January 14, 2022. This is because the Landlord was unable to say when exactly that visit occurred or provide any other specifics or corroborating evidence.
15. Third, while there were possessions still in the rental unit in January 2022, I accept the Tenant’s testimony that those were abandoned. It also sounds like there were only a few possessions left in unit, and not a fully furnished home that someone might be living in. The Landlord also did not submit any photographs of the food they claimed was still in the fridge and as such I’m not satisfied that there were fresh groceries or other such items that support that someone was living in the unit.
16. Fourth, while I have considered that there was still an active hydro account for the unit, I accept the Tenant J.M’s explanation that he may have been paying for the account with

automatic payments without realizing. Additionally, when I weigh the active hydro account with the other evidence I have also considered, the active hydro account alone does not satisfy me that the Tenants maintained possession of the rental unit until 2022.

17. As the Tenants vacated the rental unit on February 1, 2021 they were not in possession of when the application was filed on April 6, 2021. An L1 application for eviction and nonpayment of rent must be filed when the Tenants are still in possession. As such, the Landlord's application is dismissed.

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It is ordered that:

1. The Landlord's application is dismissed.

August 17, 2023
Date Issued

Amanda Kovats
Member, Landlord and Tenants Board

15 Grosvenor Street, 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.