



**Order under Section 87 & 89
Residential Tenancies Act, 2006**

Citation: VENANZIO PINGUE v GERTRUDA VRUGTEVEEN, 2023 ONLTB 47705

Date: 2023-07-27

File Number: LTB-L-031927-22

2023 ONLTB 47705 (CanLII)

In the matter of: B205, 6 1/2 SMYTHE STREET EAST
ST CATHARINES ONTARIO L2P2G8

Between: VENANZIO PINGUE Landlord

And

Former Tenants

ANITA VRUGTEVEEN
GERTRUIDA VRUGTEVEEN

VENANZIO PINGUE (the 'Landlord') applied for an order requiring GERTRUIDA VRUGTEVEEN and ANITA VRUGTEVEEN (the 'Former Tenants') to pay the rent and daily compensation that the Former Tenants owe.

The Landlord also applied for an order requiring the Former Tenants to pay the Landlord's reasonable out-of-pocket expenses that the Landlord has incurred or will incur to repair or replace damaged materials to the rental unit or residential complex as a result of the wilful or negligent conduct of the Former Tenants, an occupant of the rental unit or someone the former Tenants permitted in the residential complex.

This application was heard by videoconference on April 20, 2023.

The Landlord, the Landlord's legal representative, Lisa Barder, the Tenants and the Tenants' father and representative, Peter Vrugteveen, attended the hearing. The Tenants spoke with Tenant Duty Counsel on the hearing date.

Determinations:

1. The application is amended to properly name both the Landlord and the Former Tenants for the purpose of these proceedings.
2. The application is also amended to include a request for compensation for damages to the rental unit. I am satisfied that the Landlord served the Former Tenants with a copy of the amended application on March 16, 2023 as recognized by Canada Post tracking as being delivered on this date to the Former Tenants.

3. I am satisfied that the Landlord served the Former Tenants with the application and Notice of Hearing in accordance with subsection 191(1.0.1) of the *Residential Tenancies Act, 2006* (the 'Act') and Rules 3.3 and 5.8 of the LTB's Rules of Procedure.
4. The application was filed within one year after the Former Tenants ceased to be in possession of the rental unit.
5. The Former Tenants vacated the rental unit on February 28, 2022.
6. The lawful rent was \$1,715.00. It was due on the 1st day of each month.
7. The Former Tenants have not made any payments to the Landlord since the application was filed.
8. The Landlord claims rent arrears for the period of February 1, 2022 to March 31, 2022 on the basis that the Former Tenants did not give notice in accordance with the Act.
9. The Former Tenants gave the Landlord notice of their intent to vacate the rental unit on January 28, 2022 by text and email. The Notice was only 30 days and not in accordance with section 44 of the Act, which would have been 60 days notice and the last day of a rental period. Essentially, the earliest date could have been March 31, 2022.
10. The Former Tenants testified that they left as a result of an N5 notice that was served on them around the end of January 2022. The termination date in the notice is February 9, 2022. However, the Former Tenants could not recall on which date the notice was served.
11. It is the Landlord's position that the Former Tenants did not vacate as a result of the N5 notice as the Former Tenants voided the notice and left after the termination date. The 30-day limitation period after the termination date in the notice to file an application with the Board for the N5 notice is irrelevant as the Former Tenants had voided the notice within the remedy period.
12. The Landlord did not notice the damage until after the new Tenants moved in and started to complain about the smell when the weather warmed up around the middle to end of May 2022.
13. When the Former Tenants vacated the rental unit they left it very clean and took pictures of the unit with a shining floor freshly washed.
14. The Landlord mitigated their losses for the short notice by listing the unit and getting it re-rented for April 15, 2022.
15. On a balance of probabilities, I am unable to find that the Former Tenants left as a result of the N5 notice. The correspondence to the Landlord regarding their termination date mentioned nothing about the N5 Notice in it. More likely than not, the Former Tenants believed they only had to give 30 days notice to terminate. Consequently, the Former Tenants are obligated to pay the Landlord rent for February 1, 2022 to March 30, 2022.

Since there was a last month's rent deposit that would cover the rent for March, the Former Tenants will be required to pay the rent for February in the amount of \$1,715.00.

16. With respect to the claim for undue damage to the rental unit, I find that the Former Tenants caused damage to the rental unit that was undue and negligent as a result of their dogs urinating on the corner wall and the floor at the bedroom door.
17. Although the Former Tenants assert that they did not cause the damage, on a balance of probabilities I find that they did. The Former Tenants first denied damage and then admitted to using a urine removing product for when the dogs would urinate on the floor. The Former Tenants also admitted to placing urine pads on the floor in case of the accidents.
18. The urine issue was so extensive that it soaked down through the subfloor into the insulation between the floors. The Landlord had to replace the flooring as a result of the damage. I therefore find that the Landlord is entitled to their reasonable out-of-pocket expenses for the damage in the amount of \$4,407.50
19. The application is further amended to include that the Landlord collected a rent deposit of \$1,625.00 from the Former Tenants. This amount will be applied to reduce the amount the Former Tenants owe.
20. The Landlord owes the Former Tenants interest on the deposit for the period from October 1, 2020 to February 28, 2022 in the amount of \$8.07 and this amount will be applied to reduce the amount the Former Tenants owe.
21. The Landlord also incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The tenancy between the Landlord and the Former Tenants is terminated as of March 31, 2022.
2. The Former Tenants shall pay to the Landlord \$1,706.93, which represents rent and compensation owing to March 31, 2022. The amount of the rent deposit and interest has been deducted from the amount owing by the Former Tenants.
3. The Former Tenants shall also pay to the Landlord \$4,407.50, which represents the reasonable costs the Landlord incurred as a result of the undue damage.
4. The Former Tenants shall also pay to the Landlord \$201.00 for the cost of filing the application.
5. The Total amount the Former Tenants owe the Landlord is \$6,315.43.
6. If the Former Tenants do not pay the Landlord the full amount owing on or before August 31, 2023, the Former Tenants will start to owe interest. This will be simple interest calculated from September 1, 2023 at 6.00% annually on the balance outstanding.

July 27, 2023

Date Issued

Terri van Huisstede
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.

*Note: When the LTB directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay as the tenancy is terminated

Rent Owing To March 31, 2022 (LMR + \$1,715.00)	\$3,340.00
Application Filing Fee	\$201.00
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	- \$1,625.00
Less the amount of the interest on the last month's rent deposit	- \$8.07
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Plus the amount for undue damage	\$4,407.50
Total amount owing to the Landlord	\$6,315.43