



**Order under Section 135  
Residential Tenancies Act, 2006**

**Citation:** Carol King v Blackfriar Management/Capreit, 2023 ONLTB 39977

**Date:** 2023-05-31

**File Number:** LTB-T-003116-23

**In the matter of:** 305, 55 Bridgesburg Drive  
Etobicoke ON M9R2K7

**Between:** Carol King Tenant

**And**

Blackfriar Management/Capreit Landlord

Carol King (the 'Tenant') applied for an order determining that Blackfriar Management/Capreit (the 'Landlord') has collected or retained money illegally (T1 Application).

This application was heard by videoconference on May 16, 2023 at 09:00 am.

The Landlord Representative Geoff Paine and the Tenant attended the hearing.

**Determinations:**

1. At the outset of the hearing the Landlord Representative requested that I dismiss the Tenant's application citing section 197(1) of the *Residential Tenancies Act, 2006* (the "Act") which states:
 

**197 (1)** The Board may dismiss an application without holding a hearing or refuse to allow an application to be filed if, in the opinion of the Board, the matter is frivolous or vexatious, has not been initiated in good faith or discloses no reasonable cause of action.
2. It was the Landlord Representative's submission that the Tenant's application disclosed no reasonable cause of action, specifically, the claim that the Landlord didn't apply the Last month's rent deposit to the last month of the tenancy, was factually wrong.
3. The Landlord Representative submitted that the Tenant had signed a 1-year fixed term lease, commencing on February 15, 2022 and ending on February 28, 2023.
4. On February 25, 2022, the Tenant signed a N9 Notice to terminate the tenancy effective the same day, February 25, 2022. Both the lease and N9 Notice were entered in evidence.
5. It was the Landlord's position that given the Tenant had failed to provide 60 days notice pursuant to section 44(4) of the Act, and that the Landlord was unable to re-rent the rental unit until April 01, 2022, due to a high number of units being available within the rental

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complex, this was supported by advertisements for the rental unit and the new lease which indicated the unit was re-rented on April 2022

6. Therefore, the last month rent deposit was retained to cover the rent for that period.
7. In response the Tenant testified that she had to vacate the rental unit due to a family emergency and that she had given the Landlord notice at the earliest date available. She also testified that when she went to the rental office, they put the N9 Notice to her and told her that she would have to complete and submit. It was her position that, due to the stress of the situation she felt coerced into signing the document and should be entitled to the return of her last month's rent deposit.
8. The Tenant further testified that she had read the N9 Notice prior to signing it and understood that 60 days notice was a requirement, but reiterated that it was her belief that these were exceptional circumstances given the family emergency that necessitated her vacating the rental unit.

### *Analysis*

9. The relevant sections of the Act state:

**16** When a landlord or a tenant becomes liable to pay any amount as a result of a breach of a tenancy agreement, the person entitled to claim the amount has a duty to take reasonable steps to minimize the person's losses.

**44(4)** A notice under section 47, 58 or 144 to terminate a yearly tenancy shall be given at least 60 days before the date the termination is specified to be effective, and that date shall be on the last day of a yearly period on which the tenancy is based.

**88 (1)** If a tenant abandons or vacates a rental unit without giving notice of termination in accordance with this Act and no agreement to terminate has been made or the landlord has not given notice to terminate the tenancy, a determination of the amount of arrears of rent owing by the tenant shall be made in accordance with the following rules:

1. If the tenant vacated the rental unit after giving notice that was not in accordance with this Act, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in the notice, had the notice been given in accordance with section 47, 96 or 145, as the case may be.

**88(3)** Despite subsections (1) and (2), if the landlord enters into a new tenancy agreement with a new tenant with respect to the rental unit, the tenant who abandoned or vacated the rental unit is not liable to pay an amount of arrears of rent that exceeds the lesser of the following amounts:

1. The amount of arrears of rent determined under subsection (1) or (2).
2. The amount of arrears of rent owing for the period that ends on the date the new tenant is entitled to occupy the rental unit.

**106(10)** A landlord shall apply a rent deposit that a tenant has paid to the landlord or to a former landlord in payment of the rent for the last rent period before the tenancy terminates

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10. Having given consideration to the evidence and testimony before me I am in agreement with the Landlord Representative's submission, the Tenant's application discloses no reasonable cause for action. I base this determination on the following reasons.
11. The Tenants N9 notice was not valid because it did not provide 60 days notice to terminate the tenancy as required by section 44(4) of the Act. The earliest termination date the Tenant could have properly specified on the N9 notice given to the Landlord on February 25, 2022, was April 30, 2022. However, I am satisfied that the Landlord reasonably mitigated their losses by taking steps to re-rent the unit to a new tenant on April 01, 2022. Therefore, the Tenant's obligation to pay rent ended on March 31, 2022 and the Landlord was entitled to apply the last month's rent deposit to the month of March 2022 .
12. Although I acknowledge it may have been a stressful time for the Tenant, they did admit to reading and signing the N9 Notice, as such they ought to have known they were obligated to give 60 days notice.
13. Accordingly, for the reasons above I must dismiss the Tenant's application.

**It is ordered that:**

1. The Tenant's application is dismissed.

**May 31, 2023**  
**Date Issued**

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Kelly Delaney  
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

