



Order under Section 69  
Residential Tenancies Act, 2006

Citation: Morguard NAR Canada Limited Partnership v Glen Stutley, 2023 ONLTB 35816  
Date: 2023-05-12  
File Number: LTB-L-030389-22

In the matter of: 1714, 2869 BATTLEFORD RD  
MISSISSAUGA ON L5N2S6

Between: Morguard NAR Canada Limited Partnership Landlord

And

Glen Stutley Tenant

Morguard NAR Canada Limited Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Glen Stutley (the 'Tenant') because the Tenant has been persistently late in paying the Tenant's rent.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on April 18, 2023.

Only the Landlord's legal representative, Faith McGregor ('FM'), attended the hearing.

As of 9:48 a.m., the Tenant 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 Landlord's evidence.

Determinations:

1. At the outset of the hearing, FM advised me that the Tenant died on April 11, 2023. The Tenant was the sole tenant of the Rental Unit. As of the hearing date, the Tenant's estate was still in possession of the rental unit. The tenancy has not yet terminated by operation of the Residential Tenancies Act, 2006 (the 'Act'). Under section 91 of the Act, the tenancy would terminate 30 days after the Tenant's death, being May 11, 2022.
2. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy shall be terminated effective May 11, 2023, the same date the tenancy would terminate by operation of section 91 of the Act.

## N8 Notice of Termination

3. On May 20, 2022, the Landlord gave the Tenant an N8 notice of termination, deemed served on May 25, 2022. The notice of termination contains the following allegations: that

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the Tenant paid the rent late for every month between June 1, 2021 and May 1, 2022, with the sole exception of November 2021.

4. The Tenant persistently failed to pay the rent on the date it was due. The rent is due on the 1<sup>st</sup> day of each month. The rent was paid late 11 times in 12 months immediately preceding the service of the N8 notice. The only exception was that the rent for November 2021 was paid on November 1, 2021.
5. After service of the N8 notice, the Tenant paid the rent late for the months of June, July, August, September, and October 2022. The rent for all of these months was paid on October 20, 2022. The Tenant then paid the rent on time for the months of November and December 2022, and for January, February, and March 2023. The rent for April 2023 was paid late, on April 4, 2023.
6. The Tenant was required to pay the Landlord \$16,545.63 in daily compensation for use and occupation of the rental unit for the period from August 1, 2022 to April 18, 2023.
7. Based on the Monthly rent, the daily compensation is \$63.39. This amount is calculated as follows:  $\$1,928.21 \times 12$ , divided by 365 days.
8. Since the termination date in the notice of termination, the Tenant paid the Landlord \$17,353.89 in rent.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. The Landlord collected a rent deposit of \$1,981.56 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$19.40 is owing to the Tenant for the period from January 1, 2022 to April 18, 2023 .
11. In accordance with subsection 106(10) of the Residential Tenancies Act, 2006, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

## Section 83 analysis

12. After service of the N8 notice, the Tenant continued paying the rent late. Beginning in November 2022, the Tenant began paying the rent on time, and did so each month until the rent for April 2023 was paid three days late. While the Tenant did appear to be getting on track with paying his rent on time, since he has now passed away and was the sole tenant of the rental unit, I find that it would be unfair to grant relief from eviction.

13. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Residential Tenancies Act, 2006 (the 'Act'), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before May 11, 2023.

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2. If the unit is not vacated on or before May 11, 2023, then starting May 12, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after May 12, 2023.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
5. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the amount the Landlord is entitled to by \$(1,811.81).
6. However, the Landlord is authorized to deduct from amount owing to the Tenant \$63.39 per day for compensation for the use of the unit starting April 19, 2023 to the date the Tenant moves out of the unit.
7. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

May 12, 2023

Date Issued

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Mark Melchers

Member, Landlord and Tenant 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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on November 12, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.