



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

Citation: Folarin v Moriarty, 2023 ONLTB 33629

Date: 2023-05-08

File Number: LTB-L-023912-22

In the matter of: 89 TODD CRES
DUNDALK ON N0C1B0

Between: Abiola Folarin Landlord

And

Crystal Moriarty Tenant
Ganesh Beharry

Abiola Folarin (the 'Landlord') applied for an order to terminate the tenancy and evict Crystal Moriarty and Ganesh Beharry (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant; and, the Tenant has been persistently late in paying the Tenant's rent. The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

This application was heard by videoconference on March 22, 2023.

Only the Landlord's representative S. Teal and the Landlord attended the hearing.

As of 10:41am, the Tenants were not present or represented at the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

L1 Application

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment 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 October 2, 2022. Rent arrears are calculated up to the date the Tenants vacated the unit.
4. The lawful rent is \$1,965.10. 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 October 2, 2022 are \$11,849.92.
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 \$1,900.00 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 \$61.85 is owing to the Tenant for the period from November 16, 2019 to October 2, 2022.

Out-of-pocket expenses (the “Section 88 Expense Claim”)

10. The Landlord’s L2 Application seeks \$1,236.05 for reasonable out-of-pocket expenses incurred as a result of the Tenants’ substantial interference with the Landlord’s reasonable enjoyment or lawful right, privilege or interest. In particular, the Landlord’s claim is based upon the Tenants’ unpaid water utility accounts: \$1125.16 which was applied against the Landlord’s municipal property taxes in October 2021, the balance of which was simply unpaid. At the hearing, the Landlord produced copies of the Tenants’ unpaid utility billing charges.
11. The Landlord’s claim for unpaid water utility charges is denied. In this case, the Landlord’s claim is brought under section 88.1 of the Act and not under section 88.2 of the Act which allows a Landlord to apply for an order requiring a tenant to pay unpaid utilities.
12. Sections 88.1 of the Act allow a landlord to apply to the Board for an order requiring a tenant to pay the Landlord’s “reasonable out-of-pocket expenses” that a landlord has/will incur as a result of “substantial interference” with the reasonable enjoyment and/or lawful right, privilege or interest of the Landlord. Section 88.1(4) further provides that in an application under section 88.1 – such as the current one - the Landlord may not recover those “costs that the landlord may recover in an application under section 88.2”. As section 88.2 of the Act enables a Landlord to apply for an order for unpaid utility charges, the Landlord’s claim for reimbursement of unpaid utilities in this application is denied.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated as of October 2, 2022, the date the Tenant moved out of the rental unit
2. The Tenants shall pay to the Landlord \$10,074.07. 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 Tenant. See Schedule 1 for the calculation of the amount owing.
3. If the Tenants do not pay the Landlord the full amount owing on or before May 19, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 20, 2023 at 6.00% annually on the balance outstanding.

May 8, 2023
Date Issued

Peter Nicholson
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 Move Out Date	\$11,849.92
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	- \$1,900.00
Less the amount of the interest on the last month's rent deposit	- \$61.85
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	\$10,074.07