



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

Citation: Dhanoa v Cann, 2023 ONLTB 31459

Date: 2023-04-25

File Number: LTB-L-028763-22

In the matter of: 14751 Hwy 12
Port Perry ON L9L1B5

Between: Parminder Dhanoa Landlord

and

Chris Cann Tenant

Parminder Dhanoa (the 'Landlord') applied for an order to terminate the tenancy and evict Chris Cann (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (the "L1 Application").

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;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises;
- the number of persons living in the unit on a continuing basis is more than permitted by health, safety or housing standards (Second N5 Notice); and
- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year (N12 Notice).

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date (the "L2 Application").

This application was heard by videoconference on February 6, 2023. The Landlord's Representative, Jonathan Solomon, the Landlord, the Landlord's husband, Stephen Ryan, and the Tenant attended the hearing. The hearing was adjourned as the Tenant had not received a copy of, nor information to access a copy of, the application. In addition, the Tenant indicated they wished to retain representation.

At the return on March 31, 2023, the Landlord's Representative, Jonathan Solomon, the Landlord, and the Tenant attended the hearing. The Landlord's husband, Stephen Ryan, was present as support for the Landlord.

Determinations:

Preliminary Issues

1. At the hearing on February 6, 2023, the parties agreed the Tenant had vacated the rental unit – what was disputed was when the tenancy terminated. As a result, the Landlord elected to withdraw their L2 Application based on a Second N5 Notice and N12 Notice and the LTB consented to this request.
2. At the return on March 31, 2023, the Tenant wished to raise issues under section 82 of the *Residential Tenancies Act, 2006* (the "Act") regarding events that took place in and after June 2022.
3. The Tenant did not provide the Landlord written notice describing the issues he intended to raise 7 days in advance of the hearing as required by the LTB's Rules and I was not satisfied the Tenant could not have done so.
4. While documents had been received by the Landlord, the Landlord's Representative submitted the Landlord was not in a position to respond without understanding to what issues the documents related.
5. In the above circumstances, the Tenant was not permitted to raise issues under section 82 of the Act.
6. While I considered adjourning to permit the Tenant's section 82 issues to be addressed at the same time as the L1 Application, I was ultimately not satisfied this was required in order for an adequate hearing to be held on the issues of arrears owed and the hearing proceeded. I also note under section 29 of the Act, a tenant is able to file an application for events that took place up to and including one year earlier.

Determinations on L1 Application

7. The Landlord served the Tenant with a Notice to End Tenancy Early for Non-payment of Rent (N4 Notice) on May 2, 2022. The Tenant 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.
8. The Tenant was in possession of the rental unit on the date the application was filed.

9. As set out above, the parties agree the tenancy has terminated but disagree on when the Tenant vacated the rental unit.
10. The Landlord's Representative submitted the Landlord was not aware the Tenant had vacated until January 27, 2023, when she was so advised at the hearing of the Tenant's T2 Application for events up to and including June 3, 2022, LTB-T-031750-22.
11. However, at this hearing the Landlord testified she was aware the Tenant had vacated the rental unit on January 2, 2023 as she was left open and she noticed their things were gone.
12. The Tenant confirmed all belongings were removed from the rental unit on January 2, 2023. The Tenant submitted he and the occupants of the rental unit were forced out of the rental unit on or about June 6, 2022, following a flooding event and the Landlord turning off Hydro. He also submitted the Landlord's actions made it challenging for them to collect their belongings including refusing entry to movers on August 18, 2022.
13. Nonetheless, the Tenant admitted he had access to the rental unit until January 2, 2023, attended the rental unit on a number of occasions to retrieve belongings, and confirmed in discussions with the Landlord's Representative he had not abandoned the rental unit.
14. In the above circumstances, I find the Tenant vacated the rental unit on January 2, 2023.
15. Rent arrears are calculated up to the date the Tenant vacated the unit.
16. The lawful rent is \$1,200.00. It was due on the 1st day of each month.
17. The Tenant has not made any payments since the application was filed.
18. The rent arrears owing to January 2, 2023, are \$9,678.90.
19. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
20. The Landlord collected a rent deposit of \$1,200.00 from the Tenant and admitted this was applied to the month of May 2022. It was also admitted interest on the rent deposit was payable up to the date of termination.
21. Having determined the tenancy terminated on January 2, 2023, I find interest on the rent deposit in the amount of \$56.09 owing to the Tenant for the period from July 1, 2019, to January 2, 2023.

Set-off from related proceedings

22. Order LTB-T-031750-22 issued February 24, 2023 (the "T2 Order"), ordered the Landlord to pay the Tenant \$1,080.00 on or before March 7, 2023 or else interest would start to run. In the alternative, the T2 Order ordered the Landlord shall deduct \$1,080.00 from the total arrears owed by the Tenant. The Landlord submitted it was appropriate the \$1,080.00 now be deducted from the arrears.
23. The parties disputed whether interest was payable on the \$1,080.00 as the Tenant was first advised the Landlord would be setting off the \$1,080.00 against the arrears during this

hearing. Any interest payable would be less than the minimum prescribed amount for an LTB order. As a result, I decline to rule on this issue but accept the \$1,080.00 amount will be deducted from the arrears.

Date by which arrears must be paid

24. The Tenant advised he intends to bring an application to address the issues he was not permitted to raise today. The Tenant submitted payment of arrears and interest should be deferred until determination of these issues to permit set-off. In the alternative, the submitted he did not have financial means to pay the arrears at this time and could pay approximately \$50.00 a month as part of a payment plan.
25. I accept the Landlord's submissions that without an application having been filed, or I note alternatively without an admission an amount is owed, an order in the alternative for set-off is speculative. Additionally, as the tenancy has terminated, I do not find there is jurisdiction to order a payment plan.
26. However, subsection 207(7) of the Act provides the LTB with the authority to delay the start of interest accruing:

207(7) The Board may set a date on which payment of money ordered by the Board must be made and interest shall accrue on money owing only after that date at the post-judgment interest rate under section 127 of the *Courts of Justice Act*.

27. In light of the circumstances before me, including the Tenant's financial situation, I have extended the date by which the Tenant is to pay the arrears and interest will start to run for a period of one year.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of January 2, 2023, the date the Tenant moved out of the rental unit
2. The Tenant shall pay to the Landlord \$7,489.36. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. The rent deposit, interest the Landlord owes on the rent deposit, and the amount the Landlord owes the Tenant under Order LTB-T-031750-22 issued February 24, 2023, is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
3. If the Tenant does not pay the Landlord the full amount owing on or before April 25, 2024, the Tenant will start to owe interest. This will be simple interest calculated from April 26, 2024 at 6.00% annually on the balance outstanding.
4. The Landlord's L2 Application is dismissed.

April 25, 2023

Date Issued

Rebecca Case

Vice Chair, 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

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

Rent Owing To Move Out Date	\$9,639.45
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	- \$1,200.00
Less the amount of the interest on the last month's rent deposit	- \$56.09
Less the amount the Landlord owes the Tenant under Order LTBT-031750-22 issued February 24, 2023	- \$1,080.00
Total amount owing to the Landlord	\$7,489.36

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