



**Order under Subsection 87(1)
Residential Tenancies Act, 2006**

Citation: CAT v HAGEN, 2023 ONLTB 30722

Date: 2023-04-11

File Number: LTB-L-059393-22

In the matter of: 69 OBERMEYER DRIVE
KITCHENER ONTARIO N2A1P5

Between: TON CAT Landlord

And

PAULINE HAGEN Tenant

TON CAT (the 'Landlord') applied for an order requiring PAULINE HAGEN (the 'Tenant') to pay the rent that the Tenant owes.

This application was heard by videoconference on March 28, 2023.

Only the Landlord's Legal Representative, Diane Digiandomenico, attended the hearing.

As of 10:30 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. The Tenant vacated the rental unit on December 2, 2022. The Tenant was in possession of the rental unit on the date the application was filed.
2. The Tenant did not pay the total rent they were required to pay for the period from July 1, 2022 to December 31, 2022.
3. The lawful rent is \$1,123.00. It is due on the 1st day of each month.
4. The Tenant has not made any payments since the application was filed.
5. The Landlord's Legal Representative submitted that the Landlord is seeking the rent owing to December 31, 2022; the Tenant did not give any notice to terminate. On December 2,

2022, neighbours called the Landlord and advised that the Tenant was in the process of moving out. The Tenant left the keys inside the rental unit. The Landlord took vacant possession on December 6, 2022.

6. The Tenant is no longer in possession of the rental unit. The tenancy was not lawfully terminated in accordance with a notice of termination, LTB order or agreement to terminate the tenancy. Therefore, the Tenant's obligation to pay rent ends on December 6, 2022, the date the Landlord took vacant possession of the unit.

File Number: LTB-L-059393-22

7. Section 88 of the Residential Tenancies Act, 2006 (the 'Act'), says:

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.

2. If the tenant abandoned or vacated the rental unit without giving any notice, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in a notice of termination had the tenant, on the date that the landlord knew or ought to have known that the tenant had abandoned or vacated the rental unit, given notice of termination in accordance with section 47, 96 or 145, as the case may be.

8. Section 88(1) of the Act does not apply in this circumstance because the Landlord took vacant possession of the unit, as such the Tenant is not responsible for rent after that date.
9. The rent arrears and daily compensation owing to December 6, 2022 are \$5,816.67.
10. The Landlord collected a rent deposit of \$1,050 from the Tenant and this deposit is still being held by the Landlord; it was collected on October 1, 2028. The rent deposit is applied to the arrears of rent because the tenancy is terminated.
11. Interest on the rent deposit, in the amount of \$55.80 is owing to the Tenant for the period from December 6, 2022.
12. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The Tenant shall pay to the Landlord \$4,911.87. This amount includes rent arrears owing up to December 6, 2022 and the cost of the application minus the rent deposit and interest owing.
2. If the Tenant does not pay the Landlord the full amount owing on or before April 22, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 23, 2023, at 6.00% annually on the balance outstanding.

April 11, 2023

Diane Wade

Date Issued

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

File Number: LTB-L-059393-22

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