



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

**Citation:** Frederick v Bernier, 2023 ONLTB 25628

**Date:** 2023-03-27

**File Number:** LTB-L-076221-22

**In the matter of:** 1040 Howard Avenue  
Windsor Ontario N9A1S7

**Between:** Ray Frederick

Landlord

**And**

Jean-Francois Bernier and Samantha Gillis

Tenant

Ray Frederick (the 'Landlord') applied for an order requiring Jean-Francois Bernier and Samantha Gillis (the 'Tenant') to pay the rent that the Tenant owes.

This application was heard by videoconference on December 21, 2022.

The Landlord and the Tenants attended the hearing.

**Analysis:**

1. The Tenant vacated the rental unit on October 4, 2020. The Tenant was in possession of the rental unit on the date the application was filed. As such, the only issue before me is rent arrears and compensation as termination is now moot.

2. The Tenant did not pay the total rent they were required to pay for the period from December 1, 2020 to December 31, 2020.
3. The lawful rent is \$1050.00 It is due on the 1st day of each rental period.
4. The Tenants are no longer in possession of the rental unit. The tenancy was not lawfully terminated in accordance with s. 44(3) of the Act. Therefore, the Tenant's obligation to pay rent ends on December 31, 2020, the last day of the term of the yearly tenancy. For the reasons that follow, the Landlord is entitled to compensation for rent for the period of December 1, 2020 to December 31, 2020 in the amount of \$1050.00, and the application filing fee of \$201.00.
5. The Tenant's testified that they gave the Landlord notice by email on October 4, 2020. The Tenants told the Landlord they were vacating the rental unit November 30, 2020 and that their last month's rent would be applied to rent for November 1, 2020 – November 30, 2020.

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6. The Landlord disputed the notice because the Tenant's signed a lease agreement from Jan 1, 2020 to December 31, 2020.
7. Section 44 (3) of the Act sets out the requirements for the notice period that a Tenant Period a Tenant is required to give in respect to a yearly tenancy.

44 (3) 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.

Calculating rent arrears owing by the Tenants is set out in s. 88(1) of the Act.

**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:

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.

8. In this case the Tenant's decided to move out November 30, 2020. They did not terminate the Tenancy in accordance with s. 44(3). The Landlord did not accept the Tenant's notice as they did not provide 60 days notice where the tenancy would end on the last day of the yearly tenancy agreement. The last day of their yearly tenancy agreement was December 31, 2020.

9. The Tenant's testified that the Landlord should have mitigated his losses by attempting to rent the unit for the month of December 2020 as set out in s. 16 of the Act.

**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. The Tenants having left the rental unit on November 30, 2020 had testified that they left a set of keys on the counter and another set of keys in the mailbox. The Landlord disputed this and testified he did not received keys back from the Tenants. .

10. The Landlord testified that he was not aware that the Tenant's had vacated until he went to the rental unit on December 9, 2022. The Landlord testified that he could not rent the unit in the condition it was left in and that there were several items that he was left to dispose of.

11. I agree with the Landlord's submissions that it would not be possible to have rental unit rented in December because he was left to dispose of the Tenant's property and had to do work to bring the rental unit to a good state after the Tenant's vacated.

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12. The Tenants testified that they left items in the rental unit. Some of these items included a mattress, laundry and "small items". In this case the Landlord mitigating his loss would not be possible. There was property left for the Landlord to dispose of and the state of the rental unit interfered with the Landlord's ability to rent the unit for the month of December. The Tenant's also raised that several months later the Landlord decided to sell the rental unit. I find the sale of the home several month's later is irrelevant to the issue of December's rent.

13. The Tenant's vacated the rental unit on November 30, 2020 and they told the Landlord that they would apply their last month's rent deposit to rent for November 1, 2020 to November 30, 2020. I find that the Landlord is entitled to rent in accordance with s. 44(3) of the Act, the Landlord is entitled to rent for December 1, 2020-December 31, 2020 in the amount of \$1050.00.

14. 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 owes the Landlord rent arrears owing up to December 31, 2020 in the amount of \$1050.00 and the cost of the application filing fee of \$201.00.
2. The total amount the Tenants owe the Landlord is \$1251.00
3. If the Tenant does not pay the full amount owing on or before March 24, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 25, 2023 at 5.00% annually on the balance outstanding.

**March 27, 2023**

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**Date Issued**

**Maria Shaw**

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.