



**Order under Section 69 / 88.2
Residential Tenancies Act, 2006**

Citation: Gamboa v Sykes, 2023 ONLTB 15780

Date: 2023-02-24

File Number: LTB-L-010520-22

In the matter of: 3733 NIGHTSTAR DRIVE
MISSISSAUGA ON L5M7Z8

Between: Wilma Gamboa Landlord

And

Phillip Tachit and Wendy Sykes Tenants

Wilma Gamboa (the 'Landlord') applied for an order to terminate the tenancy and evict Phillip Tachit and Wendy Sykes (the 'Tenants') because:

- the Tenants did not pay the rent that the Tenants owe (L1 Application); and
- the Tenants, another occupant of the rental unit or someone the Tenants 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 Tenants have been persistently late in paying the Tenants' rent (L2 Application).

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

The Landlord also applied for an order requiring the Tenants to pay the Landlord's reasonable out-of-pocket costs that are the result of the Tenants' failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

This application was heard by videoconference on January 10, 2023.

Only the Landlord and the Landlord's Legal Representative P. Balatidis attended the hearing.

As of 11:20 a.m., the Tenants were 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 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 April 30, 2022. Rent arrears are calculated up to the date the Tenants vacated the unit.
4. The lawful rent is \$2,600.00. 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 April 30, 2022 are \$7,800.00.
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 \$2,600.00 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 \$5.73 is owing to the Tenants for the period from February 1, 2021 to April 30, 2022

L2 Application

10. As explained below, the Landlord has proven on a balance of probabilities the grounds for the claim for compensation in the application with the exceptions noted below. Therefore, the Tenants shall pay to the Landlord the amount of \$1,425.10.
11. The Tenants were in possession of the rental unit on the date the application was filed.
12. The Tenants vacated the rental unit on April 30, 2022.

N5 Notice of Termination

Substantial interference

13. On February 7, 2022, the Landlord gave the Tenants an N5 notice of termination deemed served on February 12, 2022. The notice of termination contains the following allegation:
 - the Tenants failed to compensate the Landlord for water tank rental, heat, and water as required by the rental agreement.
14. The Tenants did not correct the omission within seven days after receiving the N5 notice of termination.
15. The Landlord submitted the rental agreement which indicates that the Tenants are responsible for heat, water, and water tank rental payments.
16. It was the Landlord's uncontested testimony that she paid the utility bills in question and either emailed or physically delivered the bills to the Tenants, and that the Tenants did not make the payments to her as required under the lease.
17. I find that the Tenants' failure to pay the utility bills as required under the rental agreement substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord.

Water and Sewer

18. In support of her claim, the Landlord provided the following bills from the Region of Peel for water and sewer, totalling \$643.59:

- April 26, 2022: \$194.58
- October 25, 2021: \$190.34
- July 26, 2021: \$258.67

Heat and Hot Water Tank

19. The Landlord provided the following bills from Reliance Home Comfort:

- January 4, 2022: \$76.54
- December 1, 2021: \$75.10
- November 1, 2021: \$75.10
- October 1, 2021: \$75.10
- September 1, 2021: \$75.10
- August 3, 2021: \$75.10
- July 2, 2021: \$75.10
- June 10, 2021: \$12.12
- June 1, 2021: \$66.06
- May 1, 2021: \$66.06
- April 1, 2021: \$66.06
- March 1, 2021: \$66.06*
- February 1, 2021: \$77.22*
- January 29, 2021: \$72.53*

20. The application was filed on February 28, 2022. Under section 29(2) of *Residential Tenancies Act, 2006* (the "Act"):

No application may be made under subsection (1) more than one year after the day the alleged conduct giving rise to the application occurred.

21. The bill dated March 1, 2021 shows a charge of \$21.99 for the period February 2, 2021 to March 1, 2021, which falls outside of the limitation period and will not be considered.

22. The bill dated February 1, 2021 shows a balance forward from January 2021, which falls outside of the limitation period and will not be considered. The bill dated January 29, 2021 reflects charges owing to February 27, 2021 which also fall outside the limitation period and will not be considered.

23. The total amount owing for heat and hot water tank rental is \$781.51.

24. Based on the uncontested evidence of the Landlord, I am satisfied that the Tenants did not make these payments and therefore, the Tenants did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).

Compensation for unpaid utilities

25. The Tenants failed to pay heat, water, and water tank rental costs that they were required to pay under the terms of the tenancy agreement.
26. The Landlord has incurred reasonable out-of-pocket expenses of \$1,425.10 as a result of the Tenants' failure to pay heat, water, and water tank rental costs as discussed above.

N8 Notice of Termination

27. Because the Tenants vacated the rental unit on April 30, 2022, this ground of the application is dismissed.
28. The Landlord collected a rent deposit of \$2,600.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$5.37 is owing to the Tenants for the period from February 1, 2021 to April 30, 2022.
29. In accordance with subsection 106(10) of the Act, the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated as of April 30, 2022, the date the Tenants moved out of the rental unit
2. The Tenants shall pay to the Landlord \$5,380.27. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
3. The Tenants also shall pay to the Landlord \$1,425.10, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs.
4. The total amount the Tenants owe the Landlord is **\$6,805.37**.
5. If the Tenants do not pay the Landlord the full amount owing on or before March 7, 2023, the Tenants will start to owe interest. This will be simple interest calculated from March 8, 2023 at 5.00% annually on the balance outstanding.

February 24, 2023

Date Issued

Margo den Haan

Member, Landlord and Tenants 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 Tenants must pay as the tenancy is terminated

Rent Owing To Move Out Date	\$7,800.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,600.00
Less the amount of the interest on the last month's rent deposit	- \$5.73
Plus the amount owing for unpaid utilities	\$1,425.10
Total amount owing to the Landlord	\$6,805.37