



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

Citation: Ghalib v Lewis, 2023 ONLTB 20532

Date: 2023-02-15

File Number: LTB-L-047055-22

In the matter of: BASEMENT, 35 FRESNEL RD
BRAMPTON ON L7A4Z2

Between: Tariq Ghalib Landlord

And

Marlon Raig Lewis Tenant

Tariq Ghalib (the 'Landlord') applied for an order to terminate the tenancy and evict Marlon Raig Lewis (the 'Tenant') because:

- The Tenant did not pay the rent that the Tenant owes. **(L1 Application)**
- The Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex. **(L2 Application)**
- The Tenant has been persistently late in paying the Tenant's rent. **(L2 Application)**

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

This application was heard by videoconference on February 7, 2023.

Only the Landlord's Legal Representative, Jasleen Narula and the Landlord attended the hearing.

As of 9:21 am, 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.

L2 Application (N7 and N8 Notice)

1. The Tenant is no longer in possession of the rental unit, having vacated on November 9, 2022.
2. As the tenancy has already terminated, the Landlord's application seeking termination of the tenancy is moot and will therefore not be considered.

Determinations:

3. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). 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.

4. The Tenant was in possession of the rental unit on the date the application was filed.
5. The Tenant vacated the rental unit on November 9, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit.
6. The lawful rent is \$1450.00. It was due on the 1st day of each month.
7. The Tenant has not made any payments since the application was filed.
8. The rent arrears owing to November 9, 2022 are \$7,679.03.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. There is no last month's rent deposit.

Landlord's Uncontested Evidence

11. The Landlord submits the Tenant abandoned the rental unit and did not provide proper notice to the Landlord.
12. The Landlord testified that on November 9, 2022, a neighboring tenant notified him that the Tenant had vacated the rental unit.
13. He testified he waited one week and entered the rental unit on February 16, 2022. At the time of inspection all the Tenant's personal belongings were gone except for a bed frame. He states the neighboring tenant confirmed with him that the Tenant told him that he could take the bed frame. The Landlord disassembled the bed frame and gave it to the neighboring tenant. He states that the Tenant did not leave the keys to the rental unit inside.
14. He testified the reason he waited one week after being notified by the neighboring tenant on November 9, 2022, was because he did not trust the information that he had received and wanted proof that the Tenant had vacated. He states during that period he was able to have the neighboring tenant show him text messages that confirmed the Tenant had vacated the rental unit.
15. He testified he sent several messages to the Tenant trying to confirm if the Tenant had vacated the rental unit, which he did not get a response to.
16. He testified that he re-rented the rental unit as of December 16, 2022.
17. The Landlord requested rent arrears to be paid up until December 15, 2022, the day before the Landlord re-rented the rental unit.

Analysis

18. The Landlord was notified by the neighboring tenant on November 9, 2022 that they believed the Tenant had vacated the rental unit. The Landlord waited one week until

November 16, 2022, to inspect the rental unit. The Landlord should have posted 24-hour written notice and inspected the rental unit in a timely manner. The Landlord states he did not trust the information from the neighboring tenant and wanted additional proof that the Tenant had vacated. It is not the responsibility of a neighboring tenant to provide proof of this to the Landlord. An inspection of the rental unit in a timelier manner would have satisfied the Landlord as to whether the Tenant had vacated the rental unit. Therefore, I find on the balance of probabilities, that the Tenant vacated the rental unit on November 9, 2022.

19. Paragraph (b) of subsection 87(1) of the *Residential Tenancies Act, 2006* (the 'Act') permits a landlord to apply for an order for the payment of arrears of rent if the tenant is in possession of the rental unit. The effect of this section is that if the tenant is not in possession of the rental unit on the date the application is filed, the Board does not have jurisdiction to issue an order requiring the tenant to pay the arrears of rent. In the case of tenants who have vacated the rental unit after a landlord filed an L1 Application, but prior to the hearing, the landlord may only claim compensation to the date that the tenants were in possession of the unit.
20. In situations where a tenant vacates the rental unit having served either an invalid notice of termination or no notice at all and the landlord has not served a notice of termination, subsection 88(1) of the Act allows the landlord to claim compensation to the end of the rental period for which the tenant could have served a valid notice of termination:

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:

- a) 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.
- b) 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.

21. However, because the Landlord in this instance served the Tenant with the N4 notice this provision does not apply. The Landlord believes the Tenant abandoned the rental unit as the Tenant did not inform the Landlord that the Tenant planned to vacate, and the termination date was not agreed upon. However, as he had already served the Tenant with the N4 notice of termination, his consent to this termination date was not required and he was not authorized to insist upon at least sixty days notice pursuant to section 44 of the Act.

22. As a result, the Board has no jurisdiction to order compensation beyond the last date that the Tenant remained in possession of the rental unit. By vacating the rental unit when the Tenant did, the Tenant was complying with the N4 Notice, albeit several months after the termination date in the N4 notice being August 19, 2022.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of November 9, 2022, the date the Tenant moved out of the rental unit and gave vacant possession of the rental unit to the Landlord.
2. The Tenant shall pay to the Landlord \$7,865.03. 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. 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 February 26, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 27, 2023 at 5.00% annually on the balance outstanding.

February 15, 2023

Date Issued

Trish Carson

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.

**Schedule 1
SUMMARY OF CALCULATIONS**

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

Rent Owing To Move Out Date	\$7,679.03
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	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
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	\$7,865.03