



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

Citation: Kiama v Simpson, 2023 ONLTB 13424

Date: 2023-01-03

File Number: LTB-L-002714-22

In the matter of: 7 AVONMORE ST
BRAMPTON ON L6W2S5

Between: Jane Kiama\n Joshua Kiama Landlord

And

Renae Simpson Tenant

2023 ONLTB 13424 (CanLII)

Jane Kiama, Joshua Kiama (the 'Landlord') applied for an order to terminate the tenancy and evict Renae Simpson (the 'Tenant') because:

- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

Jane Kiama, Joshua Kiama (the 'Landlord') applied for an order requiring Renae Simpson (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

This application was heard by videoconference on October 4, 2022.

The Landlords, and the Tenant, attended the hearing. The Landlord's witness, Tansie Bartozzi, also attended the hearing.

Determinations:

1. The Tenant is in possession of the rental unit.
2. This is a month to month tenancy in which rent is due on the first of the month in the amount of \$2,500.00.
3. The rental unit is a detached house and the Tenant is renting the main floor and upper floor of the house. The Landlords are living in the basement one bedroom apartment.

4. On February 19, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of April 30, 2022 pursuant to subsection 48(1) of the Residential Tenancies Act, 2006 (the 'Act').
5. The Landlords collected a rent deposit of \$2,500.00 on March 1, 2021 from the Tenant. The Landlords says he applied the last month's rent deposit to the April 1, 2022 rent. The Landlords are ("*Landlords are not allowed...*") not allowed to do this. Subsection 106(10) states the last month's rent deposit can only be applied to the rent due for the last month of the tenancy. Therefore, I find that the Landlords are deemed to still be holding a last month's rent deposit and any interest owing on the deposit, which should be credited to the Tenant whenever her last month is determined to be.
6. The Landlords stated they have not, within two years prior to filing this application, given any other notice under section 48, 49 or 50 of the Residential Tenancies Act, 2006 (the "Act") in respect of the same or a different rental unit.
7. Pursuant to s.48(1), the Landlord compensated the Tenant in the amount equal to one month's rent by notifying the Tenant that compensation would be given in lieu of the March 2022 lawful rent payment.
8. Pursuant to s.72(1) of the Act, the Landlord filed the declaration required stating that they intend to move into the rental unit for no less than one year.

PRELIMINARY MATTER: COMPENSATION NOT PAID

9. The Tenant was not disputing that compensation was paid, but claimed the compensation was not provided before the termination date specified in the notice. It was the testimony of the Tenant that she had received a previous N12 in February 2022 with a termination of March 1, 2022 which would make the compensation paid after the termination date. The Tenant also testified she received the N12 notice that was submitted to the Board in the beginning of May 2022.
10. The Tenant claims the Landlord served a previous N12, however the Tenant did not support her claim with any documentary evidence submissions to support her claim. Further, there is no record with the Board that the Landlord filed a prior N12 on the Tenant. The N12 filed with the Board has a termination date of April 30, 2022 and the Tenant is not disputing she received compensation in lieu of March 1, 2022 rent.
11. I find with the evidence before me the compensation is paid by the Landlord and the Landlords have met their obligation under the legislation.
12. It was the testimony of the Landlords that they require the upper unit of the rental unit because they require more room than their current living accommodations. Both Landlords work from home and require more space to be able to have an in home office. The Landlords also testified they were planning on having children and starting a family and require more space to accommodate a growing family.

LANDLORD REQUESTING UNPAID UTILITIES

13. In the Landlords' L2 application, the Landlords claimed the Tenant failed to pay heat, electricity and/or water costs that they were required to pay under the terms of the tenancy agreement. The outstanding utility costs the Landlords are claiming are as follows:

- a) Gas bill: \$1,113.60
- b) Water bill: \$693.54
- c) Electricity Bill: \$185.93

14. The position of the Landlords is that since serving the Tenant with the N12 notice, the Tenant had stopped paying her portion of the rent. The Landlords submitted the lease into evidence that showed the Tenant agreed to pay 70% of the utility bills on a monthly basis. The Landlords submitted evidence in the form of monthly utility bills and a detailed ledger of the payments received by the Tenant.
15. The Tenant disputed the amount the Landlords was claiming for utilities, but did not support her claim with any documentary evidence submissions to the Board. At the hearing the Tenant was given the opportunity to submit her bank records from her mobile phone, but was unable to produce the payments she was claiming to have made.
16. While the Tenant says she does not owe utility costs in the amount the Landlords are claiming, I am not persuaded by the Tenant's testimony on this point. In the absence of any documentary evidence submissions by the Tenant and the Tenant's lack of particulars and specific details are such that I am not satisfied the Tenant has met that burden of proof. I am also persuaded by the Landlord's credible testimony and the ample documentary evidence, specifically the detailed ledger, the Landlord provided in support of their testimony.
17. I find the Landlord has incurred reasonable out-of-pocket expenses of \$1,993.07 as a result of the Tenant's failure to pay heat, electricity and/or water costs.

LAW AND ANALYSIS

18. According to s.48(1) of the Act:

A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by,

- a) the landlord;
- b) the landlord's spouse;
- c) a child or parent of the landlord or the landlord's spouse; or
- d) a person who provides or will provide care services to the landlord, the landlord's spouse, or a child or parent of the landlord or the landlord's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile home park or land lease community in which the rental unit is located.

19. Based on the Landlord's evidence, I find, on a balance of probabilities, that the Landlords intend in good faith to occupy the rental unit and use it for their own personal residential purposes for no less than one year. I also find that the Landlord has met all the requirements under the Act with respect to the N12 served pursuant to s.48(1).

RELIEF FROM EVICTION

20. The remaining issue to be determined is whether a termination of tenancy should be granted, and the impact on both parties depending on all their circumstances.
21. The Tenant has a fourteen year old son, that goes to school in the area and walks to school. The Tenant testified she does not have any relatives or friends that she could stay with. The Tenant has attempted to look for new housing but testified the market is very difficult and there are very few options for her and her son's housing requirements. The Tenant requested a termination date of ninety days to find suitable housing.
22. The Landlords currently reside in the basement unit. The unit is a single bedroom unit and the Landlords do not have children. The Landlords are requesting a standard order.
23. Weighing the Tenant's circumstances of having to find new housing accommodations for her and her teenage son, against the Landlords' current situation living in the one bedroom basement apartment, I find a delayed eviction is not unreasonable. While I understand this may present some inconvenience to the Landlords, I don't find the Landlords' circumstances rise to the level of granting the Landlords the request for a quick termination. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Residential Tenancies Act, 2006 (the 'Act'), and find that it would

not be unfair to postpone the eviction until February 28, 2023 pursuant to subsection 83(1)(b) of the Act.

24. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
25. This order contains all reasons for the determinations and order made. No further reasons will be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before February 28, 2023.
2. If the unit is not vacated on or before February 28, 2023 then starting March 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after March 1, 2023.
4. The Tenant shall pay to the Landlord \$1,993.07, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs.
5. The Landlords shall apply the last month's rent deposit in the amount of \$2,500.00 to the last month of the tenancy.
6. If the Tenant does not pay the Landlord the full amount owing on or before January 14, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 15, 2023 at 4.00% annually on the balance outstanding.

January 3, 2023

Date Issued

Greg Brocanier

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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on June 11, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

