



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

**Citation:** Clearview On The Park Inc. v Chemama, 2022 ONLTB 9319

**Date:** 2022-11-18

**File Number:** LTB-L-034780-22

**In the matter of:** 107, 31 Clearview Heights  
Toronto Ontario M6M2A2

**Between:** Clearview On The Park Inc. Landlord

**And**

Gabriel Chemama Tenant

Clearview On The Park Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Gabriel Chemama (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on August 3, 2022.

Only the Landlord's representative, Samuel Korman 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 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.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Tenant vacated the rental unit on March 31, 2022.
4. LTB Interpretation *Guideline 11 – Rent Arrears* sets out the Board's usual practice in this circumstance:

In some cases, the evidence may establish that the tenant moved out of the rental unit after the L1 Application was filed, but before the hearing date. In that case, the LTB's order will generally include a determination that the tenancy ended on the date the tenant moved out. Further, the order will generally: (1) end the tenancy effective the date the tenant moved out of the rental unit without ordering enforcement through the Court Enforcement Office (Sheriff); and (2) require the tenant to pay rent arrears ending on the date the tenancy ended.

5. The Landlord's representative submitted that the tenancy should not terminate on the date the Tenant vacated the rental unit. It is the Landlord position that the change of wording in the Board's new L1 application form speaks to eviction not termination. Therefore, according to the Landlord, a tenant abandons the rental unit if they vacate the rental unit after the application is filed but before the hearing and the Board should apply section 88 of the Act in such a circumstance. In short, the Landlord can seek a minimum of an additional 60 days of rent.
6. I do not agree with the Landlord's position and will follow the approach described in Guideline 11.
7. In addition, it's the wording of the legislation that is determinative, not the application which is written in plain language so as to be more accessible to all parties. In this case, the Landlord served a notice of termination for rent arrears under section 59 of the Act and then filed this L1 application under section 69(1) of the Act. That section states:

**69 (1)** A landlord may apply to the Board for an order terminating a tenancy and evicting the tenant if the landlord has given notice to terminate the tenancy under this Act or the *Tenant Protection Act, 1997*. [emphasis added]

8. It is therefore clear that the Landlord has caused this tenancy to be terminated by serving the N4 notice and then filing this application.
9. As per s.134(1.1) of the Act, a Landlord cannot collect rent for any period of time after the tenancy has terminated and the Tenant has vacated:

(1.1) No landlord shall, directly or indirectly, with respect to any rental unit, collect or require or attempt to collect or require from a former tenant of the rental unit any amount of money purporting to be rent in respect of,

(a) any period after the tenancy has terminated and the tenant has vacated the rental unit; or

(b) any period after the tenant's interest in the tenancy has terminated and the tenant has vacated the rental unit.

10. In addition, section 88(1) of the Act clearly states that it does not apply if the landlord has given the tenant a notice to terminate the tenancy.
11. Therefore, I find that the tenancy, and the Tenant's obligation to pay rent, ended on the date that the Tenant vacated the rental unit.
12. The Tenant has not made any payments since the application was filed.
13. The rent arrears owing to March 31, 2022 are \$5,295.00.
14. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.

15. The Landlord collected a rent deposit of \$1,325.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
16. Interest on the rent deposit, in the amount of \$4.88 is owing to the Tenant for the period from to August 3, 2022.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated as of March 31, 2022, the date the Tenant moved out of the rental unit
2. The Tenant shall pay to the Landlord \$4,166.12. 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. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. 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 November 29, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 30, 2022 at 4.00% annually on the balance outstanding.

**November 18, 2022**  
**Date Issued**

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Camille Clyne  
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	\$5,295.00
Application Filing Fee	\$201.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,325.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$4.88
<b>Total amount owing to the Landlord</b>	<b>\$4,166.12</b>