



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

**Citation:** Nkemngu v Messiri, 2022 ONLTB 10982

**Date:** 2022-11-10

**File Number:** LTB-L-050179-22

**In the matter of:** 217, 80 Saint Patrick Street  
Toronto Ontario M5T2X6

**Between:** Njinkeng Nkemngu Landlord

**And**

Orizekevwe Messiri Tenant

Njinkeng Nkemngu (the 'Landlord') applied for an order requiring Orizekevwe Messiri (the 'Tenant') to pay the rent that the Tenant owes.

This application was heard by videoconference on October 25, 2022 at 1:00 pm.

The Landlord and the Tenant attended the hearing.

**Testimony:**

1. The Landlord gave the following testimony:

- a. They entered into a year long fixed term lease agreement with the Tenant. It commenced on February 05, 2022 and it was to end on January 31, 2023;
- b. The lawful rent for the rental unit was \$1100.00. The Landlord collected a rent deposit of \$900.00 for last months rent
- c. They are seeking \$2,200.00 representing the arrears for the period March 01, 2022 to May 01 2022 plus the filing fee, for a total of \$2,201.00;
- d. They notified the Tenant of their failure to pay the March rent on March 03 and March 04, 2022. This was supported by emails entered into evidence;
- e. On March 11, 2022 the Tenant sent him an email that they were going to move out of the rental unit at the end of March 2022. In response he had advised her that would be a breach of their lease agreement;
- f. The Tenant then requested to assign the rental unit, which was approved on March 16, 2022. This was supported by an email entered into evidence;

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- g. Sometime after this, the Tenant abandoned the rental unit and sent him a text on March 30, 2022 informing him that the keys were inside her bedroom in the rental unit;
- h. Having confirmed the Tenant had vacated; they immediately relisted the unit for rent;
- i. The rental unit was vacant for the months of April and May 2022 but was re-rented effective June 1, 2022

2. The Tenant gave the following testimony:

- a. They were never served with a notice of termination;
- b. They had served the Landlord with an N9 notice on March 11, 2022, requesting to terminate their lease agreement;
- c. They lived in the rental unit from February 11 to March 30, 2022;
- d. They never received any disclosure regarding the amount of arrears alleged owing nor as to how long the rental unit went vacant; and
- e. They sent a list of issues they intended to raise to the Board but didn't know they were responsible for providing a copy to the Landlord. A review of the file showed no such submissions were received by the Board;

**Determinations:**

- 3. The Tenant vacated the rental unit on March 30, 2022. The Tenant was in possession of the rental unit on the date the application was filed.
- 4. The lawful rent was \$1,100.00. It was due on the 1st day of each month.
- 5. The Tenant has not paid any rent from March 1, 2022, onwards and has not made any payments since the application was filed.
- 6. Section 88 (1) of *the Residential Tenancies Act, 2006* ("the Act") contains rules that govern how much rent a tenant may owe if they vacate a rental unit and the tenancy was not lawfully terminated in accordance with a notice of termination, LTB order or agreement to terminate the tenancy, as was the case here. It states:

**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:

- 1. 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.

2. 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.
7. Pursuant to sections 44 and 47 of the Act, the earliest termination date the Tenant could have properly specified on a notice of termination given to the Landlord on March 30, 2022 was January 31, 2023, the last day of the period of the tenancy.
8. Given the Tenant vacated the rental unit on March 30, 2022 and the tenancy was not lawfully terminated in accordance with a notice of termination, LTB order or agreement to terminate the tenancy, the Tenant's obligation to pay rent ended by no later than January 31, 2023, which would have been the earliest termination date specified if a notice had been given by the Tenant on March 30, 2022.
9. Further, since the Landlord, upon learning that the rental unit was vacated, immediately sought to re rent it, I am satisfied on the balance of probabilities that they took all reasonable steps to minimize their losses.
10. As the Landlord re-rented the unit effective, June 1, 2022, the Tenant's obligation to pay arrears ended on May 30, 2022, in accordance with subsection 88(3) of the Act.
11. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$900.00 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.
13. Interest on the rent deposit, in the amount of \$7.20 is owing to the Tenant for the period from February 05, 2022 to October 25, 2022.
14. The Tenant did not pay the total rent they were required to pay for the period from March 1, 2022 to May 30, 2022. The total arrears owing for that period are \$2,200.00

**It is ordered that:**

1. The Tenant shall pay to the Landlord \$1,493.80. This amount includes rent arrears owing up to May 30, 2022, the cost of the application, less the rent deposit and the interest owing.
2. If the Tenant does not pay the Landlord the full amount owing on or before November 20, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 21, 2022 at 4.00% annually on the balance outstanding.

**November 10, 2022**  
**Date Issued**

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 Kelly Delaney  
 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.