



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

**Citation:** The Valiant Group of Companies v Littley, 2022 ONLTB 11244

**Date:** 2022-11-08

**File Number:** LTB-L-004084-22

**In the matter of:** 107, 1265 PENTLAND ST  
OSHAWA ON L1G3S9

**Between:** The Valiant Group of Companies Landlord

**and**

Janet Littley Tenant

The Valiant Group of Companies (the 'Landlord') applied for an order to terminate the tenancy and evict Janet Littley (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 24, 2022.

The Landlord's Legal Representative, Carrie Aylwin, attended the hearing.

As of 9:58 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB.

**Determinations:**

*Background*

1. The Tenant was an Assistant Superintendent employed by the Landlord. In exchange for the performance of her duties she was required to reside in the residential complex and provided accommodation in the rental unit. This was valued at \$18,000.00 per annum in the employment contract signed by the parties on May 11, 2021.
2. In October 2021, the Tenant became ill and could no longer perform her duties.
3. The contract between the Landlord and Tenant does not address what occurs when the Tenant is on a leave of absence. It merely specifies the Tenant's accommodation is provided in exchange for the performance of the Tenant's duties, and, if the employment ends, requires the Tenant to vacate in accordance with the *Residential Tenancies Act, 2006* (the 'Act') and *Employment Standards Act*.
4. As of October 18, 2021, the Tenant was on a leave of absence and the Landlord began to charge the Tenant rent.
5. On January 4, 2022, the Landlord served the Tenant with a Notice to End Tenancy Early for Non-payment of Rent (N4 Notice).

6. On January 10, 2022, the Tenant gave notice she would not be returning to her duties as an Assistant Superintendent. As the Tenant was on leave when she provided this notice, the Landlord accepted this notice of resignation effective the same day.
7. The Landlord filed the within application on January 24, 2022.
8. The Tenant vacated the rental unit on January 29, 2022. Given the Tenant has vacated the Landlord is proceeding with a claim for arrears only.
9. The Tenant has not made any payments since the application was filed.

*Form of proceeding for arrears*

10. The Act contains specific provisions for when a landlord and tenant are also in an employment relationship i.e. where the tenant is also a Superintendent. In particular, sections 93 and 94 of the Act provide:

93(1) If a landlord has entered into a tenancy agreement with respect to a superintendent's premises, unless otherwise agreed, the tenancy terminated on the day on which the employment of the tenant is terminated.

(2) A tenant shall vacate a superintendent's premises within one week after his or her tenancy is terminated.

(3) A landlord shall not charge a tenant rent or compensation or receive rent or compensation from a tenant with respect to the one-week period mentioned in subsection (2).

94 The landlord may apply to the Board for an order terminating the tenancy of a tenant of superintendent's premises and evicting the tenant if the tenant does not vacate the rental unit within one week of the termination of his or her employment.

11. The Landlord's Representative submitted while the Tenant was on a leave and her employment had not terminated, it was not appropriate to commence an application under section 94 to evict an overholding Superintendent. I agree with this interpretation.
12. Where a tenant/superintendent has not paid rent during the course of their employment, a landlord should be entitled to use the Act's provisions intended to address rent arrears, which include serving an N4 Notice and filing an L1 application.
13. In this case, I find that the Tenant was on an unpaid leave of absence starting October 18, 2021. The terms of the employment agreement provide the Tenant will not be charged rent in exchange for her performing assistant superintendent duties. It follows that when the Tenant began her unpaid leave, she was no longer entitled to live in the rental unit without paying rent.
14. Were this a standard employment relationship and an employee ceased to be paid by their employer, it would be up to the employee to commence proceedings to claim for any unpaid wages to which they alleged they were entitled. However, here, as the Tenant's pay was her accommodation, the result is that the Landlord was not paid rent and it fell to the Landlord to claim for any alleged unpaid rent.

15. The Tenant was provided with notice rent was being sought up to the date she vacated.
16. As the Tenant was a Superintendent, in accordance with section 93(1) of the Act, I find her tenancy terminated on January 10, 2022, the date her employment terminated and find under section 93(3) of the Act, she is not required to pay rent for the seven days after her employment terminated. This was not disputed by the Landlord's Representative.
17. While there are different adjudicative approaches to daily compensation for overholding Superintendents, as set out in *Drewlo Holdings Inc v Boyle*, 2021 CanLII 119428 (ON LTB), I prefer the approach that landlords are able to claim daily compensation for overholding former superintendents. This also accords with the approach to the calculation of rent arrears on an L1 Application where a tenant vacates the unit in advance of the hearing.
18. Section 1 of the Act provides:

18(1). The purposes of this Act are to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes.

[Emphasis added]

19. Further, section 183 of the Act provides:

183. The Board shall adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.

20. In the above circumstances, where the Tenant had notice of the rent sought and the Tenant's entitlement to no rent for seven days under section 93(3) was not disputed, I find requiring the Landlord to file two applications, one to cover the time before the employment ended and the other to cover the time after, is unnecessary and would not accord with the Board's obligation to adopt the most expeditious method of determining.
21. I further find interpreting the Act to require the Landlord to claim for the return of the value of the accommodation provided to the Tenant while she was on unpaid leave i.e. rent, in another forum would not accord with the purposes of the Act, nor the fact that the Act specifically addresses the particular circumstances of Superintendent relationships.
22. As a result, I find the Landlord is entitled to claim arrears of rent on this application for the period starting on October 18, 2021, and ending on January 29, 2022, the date the Tenant vacated, with the exception of the seven-day period after the tenancy terminated.

#### *Arrears owed*

23. While the employment contract provides the annual taxable value of a standard two-bedroom apartment, which the rental unit was, was \$18,000.00 per annum (equal to

\$1,500.00 per month), the Landlord's application calculates the rent arrears based on a monthly rent of \$1,107.70.

24. The Tenant was not provided with notice that rent would be sought in the amount of \$1,500 per month. As a result, the Landlord's Representative advised the Landlord waived any resultant difference between the claims for arrears based on a monthly rent of \$1,500.00 and a monthly rent of \$1,107.70.
25. Therefore, the daily rent/compensation based on the monthly rent of \$1,107.70 is \$36.42. This amount is calculated as follows:  $\$1,107.70 \times 12$  divided by 365.
26. I find the rent arrears owing from October 18, 2021 to January 29, 2022, less the rent owing for seven days after the tenancy terminated, are: \$3,526.52.
27. The Landlord also incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
28. There is no last month's rent deposit.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated as of January 29, 2022, the date the Tenant moved out of the rental unit
2. The Tenant shall pay to the Landlord \$3,712.52. 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 November 19, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 20, 2022 at 4.00% annually on the balance outstanding.

**November 8, 2022**

**Date Issued**

\_\_\_\_\_  
Rebecca Case

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               | \$3,526.52        |
| Application Filing Fee                    | \$186.00          |
| NSF Charges                               | \$0.00            |
| <b>Total amount owing to the Landlord</b> | <b>\$3,712.52</b> |