



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

Citation: 2816738 Ontario Inc v Przybyszewski, 2022 ONLTB 9832

Date: 2022-10-31

File Number: LTB-L-002401-21

In the matter of: 1, 167 MISSISSAGA ST E
ORILLIA ON L3V1V8

Between: 2816738 Ontario Inc Landlord

And

Dana Przybyszewski Tenant

2816738 Ontario Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Dana Przybyszewski (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 22, 2022.

The Landlord's agent Erica Nobel(EN), the Landlord's representative Allison Macsporrán, and the Tenant attended the hearing

Determinations:

1. On November 05, 2021, the Landlord served the Tenant with a Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The termination date on the N4 Notice is November 29, 2021.
2. The Landlord alleged in her application that the Tenant owes \$1,550.00 in arrears for the period from November 01, 2021, to December 31, 2021.
3. I accept the Tenant's testimony that he returned from the hospital on November 18, 2021 and permanently vacated the rental unit on November 23, 2021. EN testified that the Landlord became aware on December 14, 2021, that the Tenant had vacated the unit when a neighbour called the police to conduct a welfare check due to a smell coming from the Tenant's unit. However, there is no evidence that the Landlord made any effort to determine whether the Tenant vacated the unit by November 29, 2021, in accordance with the N4 Notice.
4. Section 37 (2) of the *Residential Tenancies Act, 2006* ("Act") states:
 - (2) If a notice of termination is given in accordance with this Act and the Tenant vacates the rental unit in accordance with the notice, the tenancy is terminated on the termination date set out in the notice.
5. Therefore, the tenancy lawfully terminated on November 29, 2021, the termination date on the N4 Notice. As the Tenant left in accordance with the Landlord's notice of termination, the Tenant was not required to provide the Landlord with any notice.

6. Section 134(1.1) of the Act states that a landlord can collect or attempt to collect from a former tenant any amount of money purporting to be rent in respect of any period after the tenancy has terminated and the tenant has vacated the rental unit. Therefore, the Landlord cannot seek any arrears for the period after the tenancy ended on November 29, 2021.
7. The Landlord did not dispute that she is holding the Tenant's last month's rent deposit of \$775.00.
8. Section 106 (10) of the RTA states:
 - (10) A landlord shall apply a rent deposit that a tenant has paid to the Landlord or to a former landlord in payment of the rent for the last rent period before the tenancy terminates.
9. The last month's rent deposit currently being held by the Landlord must be applied to the last rent period of the tenancy, which is the month of November 2021. Therefore, once the rent deposit is applied the Tenant does not owe any rent arrears for this tenancy.
10. I further find that the Landlord should not have filed this application with the Board and is therefore not entitled to an order requiring the Tenant to pay the filing fee. The tenancy had already been lawfully terminated before this application was filed on December 22, 2021, and the Tenant did not owe any rent arrears when the application was filed.

It is ordered that:

1. The tenancy between the Landlord and the Tenant terminated as of November 29, 2021, the date the Tenant moved out of the rental unit
2. The Landlord's application is dismissed

October 24, 2022
Date Issued

Percy Laryea
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.

*Note: When the LTB directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice.