



**Order under Section 21.2 of the
Statutory Powers Procedure Act and the
Residential Tenancies Act, 2006**

Citation: Gupta v Gurna, 2024 ONLTB 12164

Date: 2024-02-28

File Number: LTB-L-079296-23-IN

In the matter of: 1, 4 DALIA ST
BRAMPTON ON L6X0L7

Between: Priyanka Gupta

And

Puneetpal Singh Gurna
Barinderjeet Singh Walia

I hereby certify this is a
true copy of an Order dated

Feb. 28, 2024

Landlord and Tenant Board

Landlord

Tenants

Interim Order

Priyanka Gupta (the 'Landlord') applied for an order to terminate the tenancy and evict Puneetpal Singh Gurna and Barinderjeet Singh Walia (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe (L1 Application).

The Landlord also applied for an order to terminate the tenancy and evict the Tenants because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant; and impaired the safety of another person (L2 Application).

This application was heard by videoconference on January 3, 2024 and February 7, 2024. The Landlord, the Tenant's Legal Representative, S. Teal, and the Tenants attended the hearing.

Preliminary Issue:

The Tenants alleged that the Notice to End your Tenancy Early For Non-payment of Rent (N4), the Notice to End your Tenancy for Interfering with Others, Damage or Overcrowding (N5), and the Notice to End your Tenancy for Causing Serious Problems in the Rental Unit or Residential Complex (N7) were all defective because the unit is identified as unit 1 even though the address in the tenancy agreement does not show it as unit 1. The Tenants requested a dismissal of the application because the Landlord has not properly identified the unit.

The Landlord stated that at the time the tenancy agreement was signed, the basement, which she identified as unit 2 was not completed. After the completion of the basement unit, the Landlord addressed the rental unit as unit 1.

The tenancy agreement, dated June 1, 2023, identifies the unit simply as 4 DALIA ST. However, the Landlord's evidence that the basement unit was completed after the commencement of the tenancy was not disputed. As that completion meant there were 2 units at 4 DALIA ST, it is reasonable for the Landlord to identify the rental unit as unit 1 since the Tenants were not renting the entire home. Besides, page 3 of the agreement shows that the Landlord anticipated the completion of the basement by stating that if "... *Unit2/basement is not rented, then unit 1 – Tenants are responsible to pay for 100% for utilities ...*". I find the Landlord substantially complied with the requirement respecting the content of the notice pursuant to section 212 of the *Residential Tenancies Act, 2006* ('the Act').

Determinations:

L1 Application

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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 Tenants are in possession of the rental unit.
3. The lawful rent is \$3,600.00. It is due on the first day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$118.36. This amount is calculated as follows: \$3,600.00 x 12, divided by 365 days.
5. The Tenants have paid \$1,500.00 to the Landlord since the application was filed.

Section 82 Issues

6. The Tenants raised issues pursuant to section 82 of the Residential Tenancies Act, 2006 ('the Act'):

Restricted Access to Garage

7. The Tenants testified that the Landlord locked the garage a week after they moved into the unit because they placed their items there. After two weeks, the Landlord told them they had no access to the garage. The Tenants claim they cannot get to their items in the garage.
8. The Landlord stated that the use of the garage was not a part of the agreement and that the Tenants were entitled to two outdoor parking spots only. The Landlord who resides in the basement unit, stated that she has a storage room in the garage and denied the claims that the Tenants stored their belongings there.

Thermostat and Electrical Outlet

9. On October 10, 2023, the city inspected the unit and sent a Notice of Violation to the Landlord requiring her to immediately ensure the heating in each room is maintained at 20 degrees Celsius. A copy of the notice was presented as evidence by the Tenants, who further stated that on October 30, 2023, they asked the Landlord to turn on the breakers because they had no heat or electricity. The email to the Landlord shows the Tenants

informed her that the electrical outlets in three rooms had no power. The Landlord fixed the outlets about two days later.

10. The Tenants also presented pictures of the thermostat from October 10, 2023, showing the temperature at 19 degrees, and an 'Enter PIN to unlock' message. One of the Tenants showed the temperature at 17 degrees during the hearing on January 3, 2024.
11. The Landlord stated that on October 8, 2023, she was surprised by the police who showed up at her brother's home to ask about heat in the unit. The Landlord denied knowledge of any issue and when the police called to ask the Tenants if they told her about the problem, they responded in the negative. On October 10, 2023, officers from the city called to ask the Landlord about the thermostat.
12. On October 30, 2023, the Landlord went to the residential complex with the police who observed that the Tenants had left the windows open and did not open the door to the police. The Landlord denied having any access to the thermostat which is in the rental unit and controlled by the Tenants. The Landlord has never installed a PIN on the thermostat and believes the Tenants did.

Analysis

13. The tenancy agreement shows that the Tenants are entitled to two outdoor parking spots and there is no mention of the use of the garage. Therefore, I am not satisfied that the Tenants were entitled to the use of the garage for any purpose and do not find them credible in their statements that they have items in the garage. Despite several communications with the Landlord, which they provided as evidence, none contains a claim that they have belongings in the garage. On the contrary, they asked the Landlord to remove her items from the garage.
14. Regarding the thermostat, I prefer the evidence of the Landlord that the Tenants are in control of the thermostat which she never installed a PIN on. The Tenants presented a picture showing a request for a PIN but that does not prove that the Landlord has the PIN or that she locked the thermostat. The Tenants did not provide any correspondence with the Landlord that contains a request for the PIN from the time they moved into the unit.
15. The Landlord's claim that the Tenants left the windows open when she attended the unit with the police were not disputed. Leaving windows open on October 30, 2023, while complaining about the lack of heat in the unit, leads me to the conclusion that the section 82 issues raised by the Tenants are completely meritless, raised only to delay the termination of the tenancy and an order for the payment of the outstanding arrears. I find both the reading on the thermostat on October 10, 2023 and at the hearing on January 3, 2024, disingenuous.
16. On the electrical outlets, the Tenants in their testimony stated that the issue was resolved by the Landlord two days after their complaints were made. I do not find the Landlord in breach of their responsibilities under the Act. The request of the Tenants for an abatement of rent is denied.
17. The rent arrears owing to February 29, 2024 are \$20,100.00.

18. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
19. The Landlord collected a rent deposit of \$3,600.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
20. Interest on the rent deposit, in the amount of \$32.05 is owing to the Tenant for the period from October 1, 2023 to February 7, 2024.
21. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Residential Tenancies Act, 2006 (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenants informed the Board that they intend to vacate the unit on February 29, 2024.

L2 Application

22. There was insufficient time to hear the L2 application, therefore that portion of the application is adjourned to a future date.

It is ordered that:

L1 Application

1. The interim order issued on January 8, 2024 is cancelled.
2. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
3. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$20,286.00 if the payment is made on or before February 29, 2024. See Schedule 1 for the calculation of the amount owing.
- OR**
 - \$23,886.00 if the payment is made on or before March 10, 2024. See Schedule 1 for the calculation of the amount owing.
4. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after March 10, 2024 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
5. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before March 10, 2024**
6. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$13,882.47. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the

application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.

7. The Tenant shall also pay the Landlord compensation of \$118.36 per day for the use of the unit starting February 8, 2024 until the date the Tenant moves out of the unit.
8. If the Tenants do not pay the Landlord the full amount owing on or before March 10, 2024, the Tenants will start to owe interest. This will be simple interest calculated from March 11, 2024 at 7.00% annually on the balance outstanding.
9. If the unit is not vacated on or before March 10, 2024, then starting March 11, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 11, 2024.

L2 Application

11. This hearing shall be adjourned to the next available date and new hearing notices shall be issued to the parties.
12. No later than seven days prior to the hearing, both the Landlord and the Tenants shall give to the other and upload to the Board's online portal, a copy of any documents, receipts, photographs, recordings or like things the party intends to rely on at the hearing BY E-MAIL.
13. Pursuant to Rule 19.7 a party who fails to comply with an order for disclosure may not be permitted to rely on evidence that is not properly disclosed.

February 28, 2024

Date Issued



Jitewa Edu

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 expires on September 11, 2024 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 29, 2024

Rent Owing To February 29, 2024	\$21,600.00
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,500.00
Total the Tenant must pay to continue the tenancy	\$20,286.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before March 10, 2024

Rent Owing To March 31, 2024	\$25,200.00
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,500.00
Total the Tenant must pay to continue the tenancy	\$23,886.00

C. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$18,828.52
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,500.00
Less the amount of the last month's rent deposit	- \$3,600.00
Less the amount of the interest on the last month's rent deposit	- \$32.05
Total amount owing to the Landlord	\$13,882.47
Plus daily compensation owing for each day of occupation starting February 8, 2024	\$118.36 (per day)