



Order under Section 69
Residential Tenancies Act, 2006

File Number: TNL-31479-21


In the matter of: UPPER UNIT, MAIN, 131 ANGUS DRIVE
NORTH YORK ON M2J2W9

Between: Mohammad Heydari
Shokouh Tajzadeh

Landlords

and

Gauvin Sarah Jeannine

I hereby certify this is a true copy of an Order dated
June 6, 2022

Landlord and Tenant Board

Tenants

Mohammad Heydari and Shokouh Tajzadeh (the 'Landlords') applied for an order to terminate the tenancy and evict Gauvin Sarah Jeannine and Mishra Dibyesh (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by video conference on April 25, 2022.

The Landlords and the Landlord's legal representative, Ali Golabgir attended the hearing. A previously named Tenant, , Mishra Dibyesh (MD), and his legal representative, Rajan Mahavalirajan, attended the hearing. The first named Tenant, Gauvin Sarah Jeannine (GSJ), was not present or represented at the hearing although properly served with notice of this hearing by the Board.

Determinations:

PRELIMINARY ISSUE

1. The application was filed on March 22, 2021, and names MD and GSV as Tenants. The Tenants entered into the tenancy as a joint tenancy with both Tenants paying one sum of rent as per the lease. At some point in the tenancy, a relationship developed between the Tenants which started to deteriorate in early 2021 resulting in MD filing an N15 and eventually vacating the unit. There is no dispute that MD vacated the unit prior to the application being served. The dispute is regarding the date MD vacated.
2. MD says he vacated the unit on January 31, 2021, and submitted evidence to support this claim with an email he sent to the Landlord's legal representative, prior to moving out and a follow up email after he moved out. The Landlord says MD moved out February 10, 2021, but submitted no further evidence to support the Landlord's testimony.

3. Subsection 87(1)(b) of the Act permits a landlord to apply for an order for the payment of arrears of rent if the tenant is in possession of the rental unit. The effect of this section is that if the tenant is not in possession of the rental unit on the date the application is filed, the Board does not have jurisdiction to issue an order requiring the tenant to pay the arrears of rent. This is consistent with the decision of the Ontario Court of Appeal in *1162994 Ontario Inc. v. Bakker et al.* (2004 CanLII 59995 (ON CA)), based on the previous, but identical legislation.
4. While the exact date is moot since the application was filed after the dates claimed by the Tenant and the Landlord, for the purpose of this order, I find that based on the Tenants credible testimony and the evidence before me, the day MD vacated the unit is January 31, 2021. As the application was filed on March 22, 2021, MD was not in possession of the rental unit when the application was filed and he must therefore be removed from the application.
5. The Tenant GSV will remain on the order as she was the Tenant still in possession of the unit when the Landlord's application was filed.
6. The Tenant vacated the rental unit on November 8, 2021.
7. The Tenant has not paid the total rent the Tenant was required to pay for the period from March 1, 2021 to July 31, 2021. Because of the arrears, the Landlords served a Notice of Termination effective March 18, 2021.
8. The Landlords collected a rent deposit of \$2,500.00 from the Tenants and this deposit is still being held by the Landlords.
9. Interest on the rent deposit is owing to the Tenant for the period from October 23, 2020 to March 18, 2021.
10. The Landlords incurred costs of \$186.00 for filing the application and they are entitled to reimbursement of those costs.
11. The Tenant paid \$2,500.00 after the application was filed.

It is ordered that:

1. The Tenant shall pay to the Landlords \$15,793.10*, which represents the amount of rent owing and compensation up to November 8, 2021, less the rent deposit and interest the Landlords owe on the rent deposit.
2. The Tenant shall also pay to the Landlords \$186.00 for the cost of filing the application.
3. If the Tenant does not pay the Landlords the full amount owing* on or before June 17, 2022, the Tenant will start to owe interest. This will be simple interest calculated from June 18, 2022 at 2.00% annually on the balance outstanding.



Greg Brocanier
Member, Landlord and Tenant Board

June 6, 2022
Date Issued

Toronto North-RO
47 Sheppard Avenue East, Suite 700, 7th Floor
Toronto ON M2N5X5

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

* Refer to section A on the attached Summary of Calculations.

**Schedule 1
SUMMARY OF CALCULATIONS**

File Number: TNL-31479-21

A. Amount the Tenants must pay to the Landlord.

Reasons for amount owing	Period	Amount
Arrears: (up to the termination date in the Notice of Termination)	March 1, 2021 to March 18, 2021	\$1,479.45
Less the amount the Tenants paid to the Landlords		-\$2,500.00
Plus compensation: (from the day after the termination date in the Notice to the date of the order)	March 19, 2021 to November 8, 2021	\$19,314.65
Less the rent deposit:		-\$2,500.00
Less the interest owing on the rent deposit:	October 23, 2020 to March 18, 2021	-\$1.00
Amount owing to the Landlords on the order date: (total of previous boxes)		\$15,793.10
Additional costs the Tenants must pay to the Landlords:		\$186.00
Total the Tenants must pay the Landlord.		\$15,979.10