



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

Citation: Tewari v Jones, 2023 ONLTB 28810

Date: 2023-04-04

File Number: LTB-L-037364-22

In the matter of: Upper Unit, 110 CASTLEHILL RD
BRAMPTON ON L6X4C4

Between: Gangesh Tewari and Neeta Tewari

And

Jemila C Jones and Wendy Gray

I hereby certify this is a
true copy of an Order dated
APR 4, 2023
Landlord and Tenant Board

Landlord

Tenant

Gangesh Tewari and Neeta Tewari (the 'Landlord') applied for an order to terminate the tenancy and evict Jemila C Jones and Wendy Gray (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes ('L1' Application)

Gangesh Tewari and Neeta Tewari (the 'Landlord') applied for an order to terminate the tenancy and evict Jemila C Jones and Wendy Gray (the 'Tenant') 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;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises;
- the Tenant has been persistently late in paying the Tenant's rent.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

Gangesh Tewari and Neeta Tewari (the 'Landlord') also applied for an order requiring Jemila C Jones and Wendy Gray (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

Gangesh Tewari and Neeta Tewari (the 'Landlord') also applied for an order requiring Jemila C Jones and Wendy Gray (the 'Tenant') to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex ('L2' Application)

This application was heard by videoconference on March 6, 2023.

The Landlord Gangesh Tewari, the Landlord's Agent Saurabh Tewari, the Landlord's Legal Representative Silvat Syed, and the Tenants attended the hearing. Prior to the commencement of the hearing, the Tenants spoke with Tenant Duty Counsel.

Determinations:

The L1 Application:

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant 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. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$2,600.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$85.48. This amount is calculated as follows: \$2,600.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to March 31, 2023 are \$37,211.74.
7. The Tenant submits that rent was not paid to the Landlord because of vermin being in the rental unit however the Tenant did not file a section 82 issues form with the Board, did not send any communication to the Landlord about vermin nor have they filed a Tenant application.
8. Under section 82 of the *Residential Tenancies Act*, 2006 (the 'Act'), a tenant may raise any issue that could be the subject of a tenant application during a hearing for rent arrears however, the tenant must give the landlord and Board a written description of each issue at least 7 days before the hearing. As I received no satisfactory explanation as to why the Tenant did not comply with the above noted requirements, I did not consider them under section 82 of the *Act*.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. The Landlord collected a rent deposit of \$2,600.00 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.
11. Interest on the rent deposit, in the amount of \$73.23 is owing to the Tenant for the period from July 14, 2020 to March 6, 2023.

The L2 Application:

12. The Landlord filed an L2 application based on a N5 notice to end your tenancy for interfering with others, damage or overcrowding, an N8 notice to end your tenancy at the end of the term as well as requesting reimbursement from the Tenants pursuant to section 88.2 of the *Act* as they did not pay water utility costs that they were required to pay under the terms of the tenancy agreement. The Landlord also sought compensation for alleged damages in their L2 application.

N5 notice of termination:

13. The Landlord served the Tenant with a N5 notice of termination on June 10, 2022 which indicated a termination date of July 8, 2022 alleging that the Tenant has substantially interfered with another tenant's or the Landlord's reasonable enjoyment of the residential complex and/or the Landlord's lawful rights, privileges or interests and that the Tenant, someone visiting or living with the Tenant has wilfully or negligently damaged the rental unit. The N5 notice of termination indicates that in order to void the N5 notice of termination, the Tenants could stop the activities or correct the behaviour, pay \$644.10 which was the estimated cost to repair the damaged property as described in the N5 notice of termination within 7 days after receiving the notice.

14. The N5 notice of termination alleges that the Landlord incurred an expense of \$644.10 as a result of repairs it made to the electrical receptacles and switches that were broken. The N5 notice of termination also alleges that the Tenants have failed to pay their portion of the water bills despite the tenancy agreement

15. The Landlord's Legal Representative submits that the Tenants did not void the N5 notice of termination.

16. The Landlord's Agent Saurabh Tewari ('ST') testified that electricians went into the rental unit and noticed electrical receptacles were broken which required updating and changing right away. It was submitted that the damage to the receptacles and switches were not normal wear and tear. An invoice and photographs were submitted into evidence to substantiate the Landlord's claims.

17. The Tenant Wendy Gray ('WD') submits that she doesn't believe the damage pertains to her rental unit as the electricians were initially in the upstairs unit because of renovations and only came to her unit to check on the electrical panel. WD states that from the photographs, none of the broken receptacles are from her rental unit but that some plate covers had cracks in them which were replaced due to normal wear and tear.

18. WD also submits that the invoice in the amount of \$644.10 from the electrician does not identify an address to which it pertains to.

Analysis/Law – N5 – wilful or negligent damage

19. Subsection 62(1) of the *Act* provides:

62(1) a landlord may give a tenant notice of termination of the tenancy if the tenant, another occupant of the rental unit or a person whom the tenant permits in the

residential complex willfully or negligently causes undue damage to the rental unit or the residential complex.

20. To succeed on this claim, the Landlord must establish the following:

- (a) physical damage to the rental unit or the residential complex;
- (b) physical damage that is “undue”, meaning not normal wear and tear; and
- (c) physical damage that is willfully or negligently caused by the tenant, another occupant of the rental unit or a person whom the tenant permitted in the residential complex.

21. On an application before the Board the person who alleges any particular incident or event occurred has the burden of leading sufficient evidence to establish that it is more likely than not that their version of events is true. In this case, that burden falls on the Landlord. For the reasons that follow, the Board finds that the Landlord has not led sufficient evidence to establish that the Tenant, or someone visiting or living with the Tenant, willfully or negligently damaged the rental unit.

22. Upon review of the evidence and submissions, I am not satisfied that the damage incurred in the rental unit was as result of the Tenants’, or someone visiting or living with the Tenant, wilful or negligent actions. I say this as there was insufficient evidence that the Landlord observed the alleged damage in the Tenants’ rental unit and the invoice tendered at the hearing only indicates an address of “51 Temple Hill Brampton, ON” and does not indicate in any way that the invoice pertains to the Tenant’s rental unit. The Landlord did not summon anyone from Triac Electric to testify as to the details of the invoice and the work allegedly involved at the rental unit.

23. Given the evidence and submissions before the Board, I am not satisfied, on a balance of probabilities, that the Landlord has established that the Tenant or someone living or visiting the Tenant, wilfully or negligently caused undue damage to the rental unit.

Analysis/Law - N5 notice – substantial interference

24. Section 64 of the *Act* states that:

A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

25. The Landlord alleges in the N5 notice that by not paying the water bills, the Tenant has substantially interfered with the Landlord’s lawful rights, privileges or interests. The Landlord submitted water bills from the Region of Peel and also documentation that the unpaid water bills were transferred to the Landlord’s property taxes which he paid.

26. The Tenant disputes the outstanding amounts and states that because she was never advised of the bills, and as another Tenant in another unit within the residential complex did not pay their portion of the utilities, she should not be responsible.
27. Upon review of the lease agreement tendered at the hearing, it clearly indicates the following: "70% of all utilities by tenant" and that electricity, heat and water are the responsibility of the Tenant.
28. I accept the testimony of the Landlord that the Tenant has substantially interfered with the Landlord's lawful rights, privileges and interests by failing to pay her utility bills as required by the terms of the tenancy agreement which resulted in the Landlord having to make the payments.

N8 notice of termination:

29. The Landlord served an N8 notice of termination on the Tenants on June 10, 2022 which indicated a termination date of August 31, 2022. The lease was month-to-month at the time of service and rent was due on the 1st day of every month.
30. The Landlord's Legal Representative submits that the Tenant has failed to pay rent on the date it is due. As at the date of the hearing, the Tenant has been late in paying rent 8 out of 9 months. The Landlord's Legal Representative also stated that rent for March, 2022 rent had not been paid yet.
31. The pattern of late payments is unmistakable and persistent. As at the date of the hearing, the Tenants' have a substantial amount in rent outstanding. The Landlord's Legal Representative stated that the Landlord that has attempted to speak to the Tenants about the rent being persistently late by sending reminders to them. The Landlord's Legal Representative submits that the Landlord is a senior citizen, relies on the rental income but has exhausted his own personal savings and defaulted on the mortgage due to the Tenants being persistently late and not paying rent.
32. The Tenant does not dispute the Landlord's allegations but states they would tell the Landlord they would be late paying rent on specific dates as they could only pay rent when they were paid.
33. Based on the evidence and submissions before me, and on a balance of probabilities, I am satisfied that the Tenants have been persistently late in paying rent to the Landlord.

s.88.2 – utility costs:

34. The Landlord's Legal Representative stated that up to the end of January, 2023 the outstanding water bills now total \$5,836.75 and now seeks an amendment to their L2 application to reflect the additional water bills that have become outstanding since filing the L2 application.
35. I am satisfied that based on the documentation tendered at the hearing, being statements of account, utility charges from the Region of Peel, and provided to the Tenants, the Tenants were aware of the Landlord's intention to seek reimbursement of the further water bills, albeit for a higher amount, the amendment is granted to reflect the amount of

\$5,836.75 as the total water utility costs outstanding from December, 2018 to January 26, 2023.

36. The Board gained the jurisdiction to order a tenant to pay unpaid utilities effective September 1, 2021, when section 88.2 of the *Residential Tenancies Act, 2006* (the 'Act') came into force:

88.2 (1) A landlord may apply to the Board for an order requiring a tenant or former tenant to pay costs described in subsection (4) if,

(a) while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant failed to pay utility costs that they were required to pay under the terms of the tenancy agreement; and

(b) in the case of a tenant or former tenant no longer in possession of the rental unit, the tenant or former tenant ceased to be in possession on or after the day section 20 of Schedule 4 to the *Protecting Tenants and Strengthening Community Housing Act, 2020* comes into force. 2020, c. 16, Sched. 4, s. 20.

...

88.2(4) The costs referred to in subsection (1) are reasonable out-of-pocket expenses that the landlord has incurred or will incur as a result of a tenant's or former tenant's failure to pay utility costs that they were required to pay under the terms of the tenancy agreement.

37. The tenancy agreement, submitted as evidence, states that the Tenants are responsible for 70% of the utility costs.
38. It was submitted that the water bills were in the Landlord's name initially but the Tenants were made aware of the amounts and were to pay them. As the Tenants did not pay their share, the Landlord was billed this expense on his property taxes. The Region of Peel's statement of account utility charges for the period of December, 2018 up to and including January, 2023 states "c/o Wendy Gray and Jemila Jones". As at March, 2020, the water account was transferred in the Tenants' name.
39. The Landlord's Legal Representative submits that the Tenants have failed to pay the water utility costs as they were required to pay under the terms of the tenancy agreement.
40. The Tenant WD submits that she did not at times receive the mail from the Region of Peel and that she refused to pay the water bill because the other Tenant in the residential complex did not pay their portion so why should she. As well, the Tenant WD feels she should not have to pay the water bills because of vermin in the house.
41. The Tenant WD also submits that they had no idea of any water bills as they did not come in the mail addressed to them. The bills were addressed to the Landlord, they would advise the Landlord of mail received and the Landlord would come by the rental unit every so often to pick up the mail. The Landlord states that the Tenants were specifically advised in February, 2021 of water bills outstanding.

42. Based on the evidence and submissions before the Board, I find, on a balance of probabilities that the Landlord has incurred reasonable out-of-pocket expenses of \$5,836.75 as a result of the Tenants' failure to pay water utility costs.

Section 89(1) Damage claim:

43. Included in the Landlord's application is for compensation in the amount of \$644.10 for damage to the rental unit.

44. In order for an application for compensation for damages made pursuant to section 89(1) of the *Act* to succeed, a landlord must establish the following:

(a) there was property damage to the rental unit or residential complex;

(b) the damage is "undue" meaning that it is not normal wear and tear and it is not insignificant; and

(c) the damage was a result of wilful or negligent conduct by the Tenants, occupant or guest.

45. In this context, the word "property" refers to the physical objects such as walls, ceilings, floors, appliances and fixtures in a residential complex.

46. If all of these factors are met, then the Board can award the Landlord the reasonable cost of repair, or the replacement if it is not reasonable for the damage to be repaired.

47. As stated earlier, the Landlord's Agent Saurabh Tewari ('ST') testified that electricians went into the rental unit and noticed electrical receptacles were broken which required updating and changing right away. The Landlord alleges that the Tenant damaged the electrical receptacles and switches in the rental unit and provided photographs at the hearing which depict damage to the receptacles and switches.

48. With respect to the above noted damage, based on the evidence and submissions before me, and on a balance of probabilities, I find that the undue property damage was not as a result of the Tenant's negligent and wilful conduct. The Landlord was unable to demonstrate that the alleged damage was actually in the Tenant's rental unit and the accompanying invoice detailing the cost to repair the damaged items does not indicate it pertained to the Tenant's rental unit. This claim will be dismissed.

49. This order contains all of the reasons in this matter and no further reasons will be issued.

Relief from eviction:

50. The Landlord seeks a standard eviction order and submits that the arrears are substantial and will shortly surpass the Board's monetary jurisdiction.

51. As previously stated, the Tenants submit that they did not pay rent because of vermin in the rental unit. The Tenants testified that they do have access to money to pay rent but they want to move out of the rental unit and have been looking for somewhere else to live.

52. The Tenants did not substantiate their claims and provided insufficient evidence with respect to their allegations of vermin in the rental unit other than stating that there were mice and squirrels in the attic and that they keep coming back into the rental unit. As there was insufficient evidence to corroborate their allegations, I could not consider it.
53. The Tenants state they would need until at least May to find alternative accommodations to meet the needs of the family of 7 which includes her daughter and grandchildren ages 1, 4, 11, 15 and 18 years old.
54. Pursuant to section 83(2) of the *Act*, the Board is required to consider “all of the circumstances” to determine whether or not it would be unfair to refuse eviction, delay eviction or put in place some sort of conditional order.
55. Given all of the evidence before me, I am not satisfied that it would be unfair to the Landlord to give the Tenants some additional time to move however the Tenants’ submission of having until May, if not longer, in my opinion, is not reasonable considering the circumstances before me and the quantum of arrears in this case. I heard insufficient evidence from the Tenant WD with respect to whether she has family or friends nearby to assist the Tenants but as the Tenants have small children living in the unit, four of which are under the age of 15 years, I am satisfied that the Tenants shall be afforded an opportunity to locate alternative accommodations.
56. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until April 30, 2023 pursuant to subsection 83(1)(b) of the Act.
57. This order contains all of the reasons in this matter and no further reasons shall be issued.

It is ordered that:

The L1 Application:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$39,997.74 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after April 30, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before April 30, 2023.**
5. The total amount to be paid by the Tenant under paragraphs 2, 3 and 4 is capped at the Board’s monetary jurisdiction of \$35,000.00.

6. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$32,637.39. 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 \$85.48 per day for the use of the unit starting March 7, 2023 until the date the Tenant moves out of the unit.
8. If the Tenant does not pay the Landlord the full amount owing on or before April 15, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 16, 2023 at 5.00% annually on the balance outstanding.
9. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
10. If the unit is not vacated on or before April 30, 2023, then starting May 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
11. 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 May 1, 2023.

L2 Application – N5 notice and utility costs

12. The tenancy between the Landlord and the Tenant is terminated. The Tenants must move out of the rental unit on or before April 30, 2023.
13. If the unit is not vacated on or before April 30, 2023, then starting May 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
14. 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 May 1, 2023.
15. The Tenant shall pay to the Landlord \$5,836.75 which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid water utility costs.
16. If the Tenant does not pay the Landlord the full amount owing on or before April 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 1, 2023 at 6.00% annually on the balance outstanding.

April 4, 2023

Date Issued


Heather Chapple
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 November 1, 2023 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 April 30, 2023

Rent Owing To April 30, 2023	\$39,811.74
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$39,997.74

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

Rent Owing To Hearing Date	\$35,124.62
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,600.00
Less the amount of the interest on the last month's rent deposit	- \$73.23
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$32,637.39
Plus daily compensation owing for each day of occupation starting March 7, 2023	\$85.48 (per day)