



**Order under Section 69 and 88.2
Residential Tenancies Act, 2006**

Citation: Kouziaeva v Bodak, 2023 ONLTB 59663

Date: 2023-09-15

File Number: LTB-L-065350-22

In the matter of: 2110, 4011 BRICKSTONE MEWS
MISSISSAUGA ON L5B0J7

Between: Maria Kouziaeva
Tatiana Kouziaeva

And

Angel Bodak

I hereby certify this is a
true copy of an Order dated
SEP 15, 2023
Landlord and Tenant Board

Landlords

Tenant

Maria Kouziaeva and Tatiana Kouziaeva (the 'Landlords') applied for an order to terminate the tenancy and evict Angel Bodak (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; and
- the Tenant has been persistently late in paying the Tenant's rent.

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

The Landlords also applied for an order requiring the Tenant to pay the Landlords' reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs the Tenant was required to pay under the terms of the tenancy agreement.

This application was heard by videoconference on August 22, 2023. Landlord Tatiana Kouziaeva and the Landlords' representative, Elina Vasilieva, attended the hearing. As of 10:35 am, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlords' evidence.

Preliminary Issues:

N8 Notice of Termination

1. The Landlords mailed an amended N8 notice to the Tenant on November 9, 2022. The N8 was deemed to be served to the Tenant five days later on November 14, 2022. The Landlords filed their L2 application with the Board on November 10, 2022, four days before the N8 notice was served to the Tenant.

2. Section 69(1) of the *Residential Tenancies Act, 2006* (the "Act") only allows a landlord to file an application to terminate a tenancy if the landlord has given notice to the tenant to terminate the tenancy. In this matter, the L2 application was filed with the Board before the N8 notice was served to the Tenant. Accordingly, the Board has no jurisdiction to consider the Landlords' L2 application for a termination of the tenancy on the basis of the N8 notice for persistently late rent payments.

L2 Application Amendment

3. The Landlords' representative submitted that the Landlords requested an amendment to their L2 application to reflect the current utility costs of \$2,058.81 owed to the Landlords. The representative asserted that the amended L2 and utility ledgers were filed with the Board, and emailed to the Tenant at abodak1@gmail.com, on August 16, 2023.
4. I accept that the Tenant's email address abodak1@gmail.com is the contact email on file with the Board, and that this email address is routinely used by the Landlords to correspond with the Tenant. I am therefore satisfied that on August 16, 2023 the Tenant received the Landlords' request to amend the L2 application with updated utility costs. Given the cumulative nature of on-going utility expenses, and the additional utility invoices submitted by the Landlords, I am also satisfied that this amendment was necessary, requested in good faith, and filed as soon as the need for it was known.
5. For the reasons provided in paragraph 4 above, I find that the amendment to the Landlords' L2 application seeking \$2,058.81 in compensation for utility expenses is appropriate, does not prejudice the Tenant, and is consistent with a fair and expeditious proceeding. Accordingly, the L2 amendment request is granted pursuant to s. 200(1) of the Act, and the Board's Rules of Procedure 15.1 and 15.3.

Determinations:

6. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy between the Landlords and the Tenant is terminated, and the Tenant must move out of the rental unit on or before September 26, 2023. As of the day of this hearing, the total amount the Tenant owes the Landlords is \$20,994.84.

N5 Notice of Termination

7. On November 2, 2022 the Landlords served the Tenant with an N5 notice to end the tenancy for substantial interference. The date of termination in the N5 notice was November 23, 2022. I am satisfied that the N5 was properly served and complied with s. 64 of the Act.
8. The N5 alleges that the Tenant, on October 15, 2022, failed to pay ND Energy heat and water bills totaling \$347.08 over the period of June 2022 to August 2022, and on October 18, 2022, also failed to pay an Alectra electricity bill of \$201.48 for electrical costs since July 2022. The N5 alleges that these payment failures are a breach of the tenancy agreement, and substantially interfered with the Landlord's rights, privileges and interests in the rental unit.

9. In accordance with s. 64(3) of the Act, the Tenant had an opportunity to void the N5 notice within 7 days from being served, from November 3, 2022 to November 9, 2022, by paying the bills as listed in paragraph 8 above.
10. On November 10, 2022, the Landlord filed an L2 application with the Board seeking to terminate the tenancy on the basis of the N5 notice, and seeking compensation for the utility expenses. The Tenant was in possession of the rental unit on the date the application was filed, and remains in possession of the unit as of the day of the hearing. I am satisfied that the L2 application complied with sections 69 and 70 of the Act.

Landlords' Uncontested Evidence

11. The Landlord testified that on May 31, 2019 she signed a lease agreement with the Tenant, and paragraph 6 of the agreement explicitly lists the Tenant as being responsible to pay for heat, water, and electricity expenses.
12. The Landlord testified further that the Tenant, on October 15, 2022, failed to pay two ND Energy heat and water bills totaling \$347.08 over the period of June 2022 to August 2022, and on October 18, 2022, also failed to pay an Alectra electricity bill of \$201.48 for electrical costs since July 2022. The Landlord submitted to the Board the two ND Energy bills, one for \$240.58 and the second for \$106.50, as well as the single Alectra bill for \$201.48.
13. The Landlord asserted that the Tenant's failure to pay these bills not only breached the tenancy agreement, but it substantially interfered with the Landlords' lawful rights, privileges, and interests to receive on-time payment for these expenses.
14. The Landlord stated that when the Tenant stopped paying for these utilities in October 2022, she approached the Tenant regarding the lack of payment, but the Tenant never responded to her queries and never provided an explanation why she stopped paying for the utilities.
15. The Landlord testified that the Tenant did not pay the utility bills listed in the N5 notice during the void period from November 3, 2022 to November 9, 2022.

Analysis

16. On the basis of the Landlords' uncontested evidence, I am satisfied that the Tenant did not pay the NG Energy heat and water bills of \$240.58 and \$106.50, or the Alectra electricity bill of \$201.48, during the N5 void period from November 3, 2022 to November 9, 2022. I therefore find that the Tenant did not void the N5 notice in accordance with s.64(3) of the Act.
17. Only the incidents in the N5 notice can be considered as grounds for termination of the tenancy.
18. On the basis of the Landlords' uncontested evidence, I am satisfied that the Tenant's failure to pay the two NG Energy bills totaling \$347.08 over the period of June 2022 to August 2022, and the Tenant's failure to pay the Alectra electricity bill of \$106.50 for electrical costs since July 2022, were breaches of the consensual provisions of the tenancy agreement. Accordingly, on the basis of these breaches, I find that the Tenant

substantially interfered with the Landlords' lawful rights, privileges and interests to receive on-time payment for utility costs.

Daily Compensation, Costs and Rent Deposit

19. The Tenant was required to pay the Landlord \$21,284.00 in daily compensation for use and occupation of the rental unit for the period from November 24, 2022 to August 22, 2023. The Landlords' representative submitted that the Tenant did not make any rent payments over the period of November 24, 2022 to August 22, 2023.
20. Based on the monthly rent, the daily compensation is \$78.25. This amount is calculated as follows: \$2,380.00 x 12, divided by 365 days.
21. The Landlords incurred costs of \$186.00 for filing the application and are entitled to reimbursement of those costs.
22. The Landlords collected a rent deposit of \$2,380.00 from the Tenant and this deposit is still being held by the Landlords. Interest on the rent deposit, in the amount of \$153.97, is owing to the Tenant for the period from June 1, 2019 to August 22, 2023.
23. In accordance with subsection 106(10) of the Act, the last month's rent deposit shall be applied to the rent for the last month of the tenancy if the tenancy is terminated.

Compensation for Unpaid Utilities

24. The Landlords' representative submitted that the Tenant has not paid the Landlords for any ND Energy heat and water utilities over the period of June 7, 2022 to June 7, 2023, representing \$1,405.63 in out-of-pocket expenses for the Landlords. The Landlords submitted an ND Energy utility ledger showing no Tenant payments over this time period, as well as 15 ND Energy invoices.
25. The Landlords' representative submitted further that the Tenant has not paid the Landlords for any Alectra electricity over the period of June 12, 2022 to July 12, 2023, representing \$653.18 in out-of-pocket expenses for the Landlords. The Landlords submitted an Alectra utility ledger showing no Tenant payments over this time period, as well as 13 Alectra invoices.
26. On the basis of the Landlords' uncontested evidence, I am satisfied that the Tenant failed to pay heat, water, and electricity costs that the Tenant was required to pay under the terms of the tenancy agreement. I therefore find that the Landlords have incurred reasonable out-of-pocket expenses of \$2,058.81 as a result of the Tenant's failure to pay heat, water, and electricity costs. Accordingly, the Landlords' request for out-of-pocket utility expenses of \$2,058.81 is granted pursuant to s. 88.2 of the Act.

Relief from Eviction

27. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
28. I am satisfied that the Tenant has not paid utility expenses for heat, water and electricity since June 2022, as required by the tenancy agreement. I am also satisfied that the Tenant has not responded to coordination efforts of the Landlords to mitigate their out-of-

pocket utility expenses, resulting in significant and constantly accumulating utility costs for the Landlords.

29. The Landlords and the Landlords' representative were not aware of any circumstances that should be considered in a determination of whether to provide the Tenant with eviction relief, nor was the Tenant or her representative present at the hearing to provide submissions with respect to the Tenant's relief from eviction.
30. For the reasons provided in paragraph 28 and 29 above, I find that offering the Tenant full relief from eviction, or relief conditional upon on-time payment of the utilities, or a delay in the eviction, would result in prolonged out-of-pocket utility expenses for the Landlords and undue financial hardship. Accordingly, I find that it would be unfair to the Landlords to grant the Tenant with eviction relief.

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before September 26, 2023.
2. If the unit is not vacated on or before September 26, 2023, then starting September 27, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after September 27, 2023.
4. The Tenant shall pay to the Landlords \$21,284.00, which represents compensation for the use of the unit from November 24, 2022 to August 22, 2023.
5. The Tenant shall also pay the Landlords compensation of \$78.25 per day for the use of the unit starting August 23, 2023 until the date the Tenant moves out of the unit.
6. The Tenant shall also pay to the Landlords \$2,058.81, which represents the reasonable out-of-pocket expenses the Landlords have incurred or will incur as a result of the unpaid utility costs.
7. The Tenant shall also pay to the Landlords \$186.00 for the cost of filing the application.
8. The Landlords owe the Tenant \$2,533.97 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenant.
9. The total amount the Tenant owes the Landlords is \$20,994.84.
10. If the Tenant does not pay the Landlords the full amount owing on or before September 26, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 27, 2023 at 6.00% annually on the balance outstanding.

September 15, 2023
Date Issued

Frank Ebner
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 of the Tenant expires on March 27, 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.