



**JAN 25, 2023**

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

**File Number:** LTB-L-013747-22

**In the matter of:** Upper Unit, 936 SOMERVILLE ST N  
OSHAWA ON L1G4J7

**Between:** Shariq Saeed Muhammad Landlord

**And**

Jeffrey Burbidge and Julie Aldred Tenants

Shariq Saeed Muhammad (the 'Landlord') applied for an order to terminate the tenancy and evict Jeffrey Burbidge and Julie Aldred (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 Tenants have substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord and because the Tenants have wilfully or negligently caused damage to the premises (L2 application).

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

The Landlord also claimed compensation for undue damage and unpaid utilities.

This application was heard by videoconference on January 12, 2023.

The Landlord, their Representative Sergey Bogdanov, and the Tenant Jeffrey Burbidge ('J.B') attended the hearing.

**Determinations:**

L2 Application

1. The Landlord withdrew the portion of their eviction application that related to persistent late payment of rent (N8 Notice of Termination).
2. The Landlord served the Tenants with an N5 Notice of Termination ('N5') on February 16, 2022 with a date of termination of March 14, 2023. The basis of the N5 is that the Tenants failure to pay utilities and other related charges substantially interferes with the Landlord's lawful right, privilege, and interest and that the Tenants caused a flood through negligence which led to property damage.

3. The Tenants did not void the notice by paying either the utility and related charges or the amount to repair the property damage.
4. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy in the L2 application.

### Utilities and Related Charges

5. The Landlord alleges that the Tenants have substantially interfered with his lawful, right, privilege or interest contrary to section 64 of the Act and seeks termination of the tenancy on that ground.
6. The Landlord testified that the Tenants have failed to pay \$2,080.61 in sewage, gas, water, and electricity bills that they are required to pay under their lease. In support of that proposition the Landlord introduced into evidence an overview document prepared by Landlord that explains the charges in detail, copies of the bills, and a copy of lease that states that the Tenants are responsible for 70% of the utility bills. I accept all that evidence and have no reason to doubt it's authenticity. Additionally, the Tenant J.B does not contest that he owes the Landlord \$2,080.61 in unpaid sewage, gas, water, and electricity bills.
7. The Landlord testified that the affect that the Tenants not paying the bills has had on him is that he has had to pay the bills himself. The Landlord testified that he had to take out a loan to do this and sold his only car to cover the payments. The Landlord testified that this has had an affect on the health of both himself and his family.
8. I find on a balance of probabilities that the Tenants failure to pay the utility and related charges has substantially interfered with the Landlord's lawful, right, privilege and interest because the Landlord has had to pay the bills himself which has resulted in the Landlord taking out loans, losing his car, and affecting his physical health.
9. The Landlord requests an order for payment of the utility charges pursuant to section 88.2 of the Act. The definition of utilities under the Act is limited to heat, electricity and water. As such I do not have the authority to grant payment of the sewage costs. The sewage charges are roughly 58% of the combined water and sewage bills that the Landlord introduced into evidence. Therefore, I will remove 58% of the combined water and sewage charges that the Landlord lists in their declaration. The charges for gas and electricity will be awarded in full. The total amount that the Tenant owes the Landlord in utility fees is \$1,551.43.

### Damage

10. The Landlord alleges that the Tenants willfully or negligently caused damaged to the rental property contrary to section 62 of the Act and seeks termination of the tenancy on that ground.
11. The N5 alleges that on July 28, 2021 the Tenant caused a flood that led to water leaking into the basement. The N5 states that this damaged the ceiling and caused water to pool in some of the fixtures downstairs. The Landlord states that the damage cost \$847.50 to fix

and introduced into evidence the invoice for that work. The invoice states that some drywall had to be removed and patched.

12. The Landlord testified that he heard about the flood from the tenant in the downstairs unit who called him to complain and that he also spoke to the Tenant J.B who said that the flood was caused by him leaving the sink on while doing dishes.
13. The Tenant J.B testified that the flood was caused by him when he left his kitchen tap on unattended for approximately 4 minutes.
14. I accept on a balance of probabilities that the Tenants caused the flood on July 28, 2021 by leaving the kitchen tap on unattended and this action was negligent. I make this finding based on the testimony of both parties. I accept from the invoice of the repair work that there was damage to the drywall caused by this flood.
15. The Landlord applies for compensation for the damage under section 89 of the Act. I find the \$847.50 that the Landlord paid to have the drywall fixed to be reasonable and I have already determined that the damage was caused by the Tenants' negligence. As such, the Tenants shall pay the Landlord \$847.50 in compensation for damage caused by the flood.

#### L1 Application – Non-Payment of Rent

16. 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.
17. As of the hearing date, the Tenants were still in possession of the rental unit.
18. The lawful rent is \$2,450.00. It is due on the 1 day of each Monthly.
19. Based on the Monthly rent, the daily rent/compensation is \$80.55. This amount is calculated as follows:  $\$2,450.00 \times 12$ , divided by 365 days.
20. The Tenants have paid \$5,400.00 since the application was filed.
9. The rent arrears owing to January 31, 2023 are \$23,950.00.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$2,450.00 from the Tenants and this deposit is still being held by the Landlord. The rent deposit will be applied to the last rental period of the tenancy as the tenancy as the tenancy is terminated.
15. Interest on the rent deposit, in the amount of \$31.42 is owing to the Tenants for the period from June 1, 2021 to January 12, 2023.

Relief from Eviction

16. The Tenant J.B requested relief from eviction in the form of a repayment plan. Imposing a repayment plan would not be fair in the circumstances because I do not think the Tenants would abide by it. The outstanding arrears are extremely high and the Tenant J.B testified that after rent and utilities there is only approximately \$300.00 left of the household income. That does not leave enough money to pay off the outstanding arrears.
17. The Tenant J.B requested that the eviction be delayed by 90 days so that he and his family can find new living arrangements. J.B testified that he has two special needs children, aged 13 and 17, who live with him and his partner. He testified that the children go to school in the neighbourhood, and they need time to find somewhere suitable to live. The Tenant J.B also testified that the special needs of his children are one of the reasons he has been unemployed in the past. The Tenant J.B also testified that he has 6 diagnosed mental disorders and that the stress of receiving the notices of termination resulted in him having to stop working temporarily. The Tenant J.B currently works seasonally about 8 hours a week.
18. The Landlord is opposed to a postponement of the eviction because of the large amount of arrears and the financial toll that the Tenants' non-payment has had on him.
19. 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 February 11, 2023 pursuant to subsection 83(1)(b) of the Act. I make that determination so that the Tenants and their family have time to find new living arrangements. However, I have declined to postpone the eviction any further than February 11, 2023 because of the large amount of arrears, utilities, and damage costs outstanding to the Landlord and because of the high financial impact on the Landlord by the Tenants non-payment.

**It is ordered that:**

1. Pursuant to the L2 Application, the tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before February 11, 2023.
2. The Tenants shall pay the Landlord \$22,570.11. This amount includes rent arrears owing up to the date of the hearing, unpaid utility costs, damage costs, and the Landlord's filing fee. The amount of 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 a calculation of this amount.
3. The Tenants shall also pay the Landlord compensation of \$80.55 per day for the use of the unit starting January 13, 2023 to the date the Tenants move out of the unit.
4. If the Tenants do not pay the Landlord the full amount owing on or before February 11, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 12, 2023 at 5.00% annually on the balance outstanding.

5. If the unit is not vacated on or before February 11, 2023, then starting February 12, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 February 12, 2023.

**January 25, 2023**

**Date Issued**



Amanda Kovats

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 August 12, 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 as the tenancy is terminated**

Rent Owing To January 12, 2023	\$ 27,866.60
Application Filing Fee	\$ 186.00
Unpaid Utilities	\$1,551.43
Damage	\$847.50
NSF Charges	\$ 0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$5,400
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$ 2,450.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$31.42
<b>Total amount owing to the Landlord</b>	<b>\$22,570.11</b>
Plus daily compensation owing for each day of occupation starting January 13, 2023:	\$ 80.55 (per day)