



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

Citation: Toney v Ominde, 2023 ONLTB 49259

Date: 2023-07-05

File Number: LTB-L-017523-22

In the matter of: MAIN FLOOR, 97 MARBURY CRES
NORTH YORK ON M3A2G3

Between: Risha Toney

And

Owen Ominde



Landlord

Tenant

Risha Toney (the 'Landlord') applied for an order to terminate the tenancy and evict Owen Ominde (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. (L1 application)

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Tenant has been persistently late in paying the Tenant's rent. The Landlord also applied for an order requiring 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. (L2 application)

These L1 and L2 applications were heard by videoconference on February 8, 2023.

Only the Landlord attended the hearing.

As of 10:32 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 Landlord's evidence.

Determinations:

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. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Tenant vacated the rental unit on May 1, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit.
4. The lawful rent is \$2,200.00. It was due on the 1st day of each month.

5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to May 1, 2022 are \$4,472.33.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$2,200.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
9. Interest on the rent deposit, in the amount of \$22.93 is owing to the Tenant for the period from June 19, 2021 to May 1, 2022.

L2 Application

10. As the Tenant had vacated the rental unit, the Landlord requested that the part of the L2 application concerning the allegation of persistent lateness in paying rents, be withdrawn. As this presented no prejudice to the Tenant, I consented to this request.
11. Instead, the Landlord limited her presentation/submissions to just the allegation that the Tenant failed to pay utility costs he was required to pay under the terms of the tenancy agreement.
12. The Landlord testified that the Tenant moved into the rental unit on June 1, 2021 and their tenancy agreement for the unit was that the Tenant would pay 50% of all utilities. Based on the copy of the lease led into evidence (LL#1 -paragraph 5b of lease), I find the Tenant was responsible for 50% of the gas, hydro and water bills.
13. The Landlord then led into evidence a series of unpaid gas (Enbridge) and hydro (Toronto Hydro) bills totalling \$1,709.98 – exhibits LL#2 and LL#3. These bills went up to the beginning of May 2022. The Landlord submitted that 50% of this amount was required to be paid by the Tenant but was not. That 50% amount is \$854.99.
14. Based on the Landlord's submissions and evidence, I find that The Tenant failed to pay gas and electricity costs that he was required to pay under the terms of the tenancy agreement. In that regard, I also find that the Landlord incurred reasonable out-of-pocket expenses of \$854.99 as a result of the Tenant's failure to pay gas and electricity up to the termination of the tenancy. The order below requires the Tenant to reimburse the Landlord for this out-of-pocket expenses.

It is ordered that:

L1 Application

1. The tenancy between the Landlord and the Tenant is terminated as of May 1, 2022, the date the Tenant moved out of the rental unit
2. The Tenant shall pay to the Landlord \$2,435.40. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.

L2 Application

3. The Tenant shall pay to the Landlord \$854.99, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs.

For Both the L1 and L2 Applications

4. If the Tenant does not pay the Landlord the **full amount of \$3,290.39 owing** (that is, \$2,435.40 plus \$854.99) on or before July 16, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 17, 2023 at 6.00% annually on the balance outstanding.



Alex Brkic
Member, Landlord and Tenant Board

July 5, 2023
Date Issued

15 Grosvenor St, 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.

Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenant must pay as the tenancy is terminated

Rent Owing To Move Out Date	\$4,472.33
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	- \$2,200.00
Less the amount of the interest on the last month's rent deposit	- \$22.93
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	\$2,435.40