



Order under Section 69
Residential Tenancies Act, 2006

File Number: TNL-28329-20

In the matter of: MAIN/UPPER FLOOR, 14 ANGUS DRIVE
NORTH YORK ON M2J2X1

Between: Sogol Eslami-Kashi Landlord

and

Jason Maddigan Tenant

Sogol Eslami-Kashi (the 'Landlord') applied for an order to terminate the tenancy and evict Jason Maddigan (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 Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on October 29, 2021. The Landlord and the Landlord's representative, Karen Goncalves, attended the hearing. The Tenant was not present or represented at the hearing although properly served notice of this hearing by the Board.

Determinations:

N5 Notice

1. On September 15, 2020 the Landlord served the Tenant with an N5 Notice of Termination (N5) with a termination date of October 6, 2020 to end the tenancy as a result of the Tenant failing to pay utility overage charges and refusing to allow the Landlord entry into the rental unit. I am satisfied that the N5 was properly served.
2. The N5 gave the Tenant an opportunity to void the notice within 7 days, from September 16, 2020 to September 22, 2020, by paying for utility overage charges, and by permitting the Landlord to inspect the unit after the Landlord provided 24-hour notification.

Landlord's Uncontested Evidence

3. The Landlord's representative submitted that the Tenant emailed the Landlord in early July 2021 with his intention to vacate the rental unit on August 1, 2021. The representative stated that the Tenant vacated the unit on August 1, 2021.
4. On the basis of the Landlord's evidence I find that the tenancy terminated on August 1, 2021.

5. The representative submitted further that the Landlord no longer requires to inspect the rental unit or to receive compensation for each day that the Tenant remained in the rental unit after the termination date of October 6, 2020.
6. The representative noted that the Tenant did not pay for utility overage charges, or permit the Landlord to inspect the unit, during the 7-day N5 void period from September 16, 2020 to September 22, 2020.
7. The Landlord's representative stated that the Landlord now requests to amend her L2 application to seek compensation from the Tenant for utility overage charges of \$1154.00 over the period of September 2019 to April 2021. The representative submitted that although the Tenant has already vacated the rental unit, the Tenant was in possession of the rental unit on the date of the Landlord's L2 application to the Board. The Tenant vacated the rental unit on August 1, 2021, and the Landlord submitted this application for substantial interference on September 24, 2020.
8. The Landlord's representative submitted Schedule A of the tenancy lease agreement. Paragraph 3 of the agreement states: "Utilities for the Tenant are inclusive in the rent which includes gas, electricity, and water/waste up to the amount of \$450.00 per month for the whole house. Tenant will pay 2/3 of any amount exceeding \$450/month for utilities."
9. The representative provided a utility ledger with itemized gas, electricity, and waste/water payments made by the Landlord over the period of September 2019 to April 2021. The ledger also identified the utility payments made by the Landlord that exceeded \$450.00. Over the period in question, these additional (overage) payments totaled \$1731.00. The representative stated that as per the tenancy lease agreement, the Tenant was responsible to pay for two-thirds of the \$1731.00 overage, for a total of \$1154.00; however, the Landlord never received this payment, or any portion of it, from the Tenant.
10. The representative also submitted a letter from her to the Tenant, dated May 12, 2021, advising the Tenant of the utility overages that he was required to pay to the Landlord, as detailed in utility ledger attached to the letter.

Analysis

11. The Landlord's application as filed on September 24, 2020 did not include a claim for unpaid utilities, nor did the Landlord file a request to amend the application to add this claim prior to the hearing.
12. The Board gained the jurisdiction to order a tenant to pay unpaid utilities effective September 1, 2021, when section 88.2 of 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.

Application under subs. (1)

- (2) An application under subsection (1) may be made,
 - (a) while the tenant is in possession of the rental unit; or
 - (b) no later than one year after the tenant or former tenant ceased to be in possession of the rental unit. 2020, c. 16, Sched. 4, s. 20.

Same

- (3) If the Board makes an order requiring payment under subsection (1) and for the termination of the tenancy, the Board shall set off against the amount required to be paid by the tenant the amount of any rent deposit or interest on a rent deposit that would be owing to the tenant on termination. 2020, c. 16, Sched. 4, s. 20.

Compensation for failure to pay utility costs

- (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. 2020, c. 16, Sched. 4, s. 20.

Application

- (5) This section applies with respect to,
 - (a) a failure described in clause (1) (a), even if the failure occurred before the day section 20 of Schedule 4 to the *Protecting Tenants and Strengthening Community Housing Act, 2020* comes into force; and
 - (b) out-of-pocket expenses described in subsection (4), even if the expenses were incurred before that day.

13. With respect to the Landlord's request to amend her application during the hearing to add a new claim for \$1154.00 in utility overage charges, s. 201(1)(f) of the Act states:

The Board may, before, during or after a hearing, on its own motion and on notice to the parties, amend an application if the Board considers it appropriate to do so and if amending the application would not be unfair to any party.

14. LTB Rule of Procedure 15 states that an applicant seeking to amend their application shall request this amendment in writing by serving the amended application to all other parties and filing the amended application and a Certificate of Service with the Board. The request to amend the application is then decided at the hearing. However, Rule 15.4 allows the Board to exercise its discretion to grant a request to amend made at the hearing if satisfied the amendment is appropriate, would not prejudice any party, and is consistent with a fair and expeditious proceeding.
15. Given that the Landlord's N5 listed the Tenant's ongoing failure to pay for utility overage charges as one of the reasons for the notice, and given that the Landlord submitted a letter with a utility ledger to the Tenant regarding the specific utility arrears, in advance of the hearing, I find that the Landlord's amendment is not a new claim, but rather an amendment to an existing claim. On the basis of the uncontested evidence of the Landlord, I am satisfied that the Tenant was aware of the Landlord's claim for utility charges in May 2021, well in advance of the hearing date. I find that it would not be procedurally unfair to the Tenant to grant the Landlord's request to amend her application. Therefore, pursuant to s. 201(1)(f) of the Act, the Landlord's request to amend her application at the hearing is granted.
16. I also accept that the Landlord may experience prejudice if her request to amend her application is not granted.
17. I accept the uncontested evidence of the Landlord and find that the Tenant did not pay the Landlord two-thirds of the utility overage charges, a sum of \$1154.00 over the period of September 2019 to April 2021, as required by the tenancy lease agreement. I am also satisfied that the Tenant was in possession of the rental unit as of the date that the application was filed. I am therefore, pursuant to s.88.2(1)(a) of the Act, granting the Landlord's request for an order requiring the Tenant to pay the Landlord \$1154.00 in utility overage costs.

It is ordered that:

1. The tenancy between the Landlord and the Tenant terminated on August 1, 2021.
2. The Tenant shall pay to the Landlord \$1154.00, which represents two-thirds of the utility overage charges for the period of September 2019 to April 2021.
3. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlord the full amount owing on or before November 26, 2021, the Tenant will start to owe interest. This will be simple interest calculated from November 27, 2021 at 2.00% annually on the balance outstanding.

November 15, 2021

Date Issued



Frank Ebner

Member, Landlord and Tenant Board

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