



Order under Section 69 Residential Tenancies Act, 2006

Citation: Wadiae v Taylor, 2024 ONLTB 17981

Date: 2024-03-11

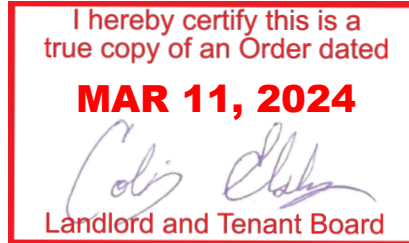
File Number: LTB-L-061871-22

In the matter of: Basement Unit, 21 PLAYER DR
BARRIE ON L4M6W1

Between: Enest Wadiae

And

Leah Taylor
Lacia Choma



Landlord

Tenant

Enest Wadiae (the 'Landlord') applied for an order to terminate the tenancy and evict Leah Taylor and Lacia Choma (collectively referred to as the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes (**L1 Application**); and
- 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 (**N5- L2 Application**); and
- the Landlord requires possession of the rental unit in order to demolish the unit (**N13- L2 Application**).

This application was heard by videoconference on January 23, 2024.

Only the Landlord and their legal representative, Erli Bregu, attended the hearing.

As of 2:15pm, 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:

L2 Application

1. At the outset of the hearing, the Landlord sought to withdraw the N13 portion of their L2 Application, and I consented to this.

Amending the Application

2. At the hearing, the Landlord sought to amend the application to include additional utility costs that only became known to the Landlord after the Landlord filed the application.
3. The Landlord testified that on January 12, 2024, they sent a copy of the amended application and additional outstanding utility bills to the Tenant by email. The Landlord provided a certificate of service and a copy of the evidence book in support of this statement.
4. Based on the evidence provided, I am satisfied that the Tenant had notice of the additional costs the Landlord was seeking and the Landlord's request to amend the application is granted. The application is amended to state that the Landlord is seeking \$2,957.40 in reasonable out-of-pocket expenses the Landlord incurred or will incur as a result of the unpaid utilities.

N5 Notice

5. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the and the claim for compensation in the application. Therefore, the tenancy is terminated.
6. The Tenant was in possession of the rental unit on the date the application was filed.
7. On October 14, 2022, the Landlord gave the Tenant an N5 notice of termination. The notice of termination contains the following allegations:

The tenants for the basement unit are required to pay 40% of the total utilities, as stated in their lease agreement.

The tenants, Leah Taylor, Keegan Taylor, Lacia Choma, and Sharon Taylor-Romanko, have not paid their share of the Alectra bill that was issued on August 25th, 2022, for the period of July 21st, 2022 – August 19th, 2022. The tenants lease agreement began on August 1st, 2022. The bill has a total owing of \$82.41, which equals \$2.84 per day, for the 29 days. The tenants lease agreement was active for 19 days during this billing period. This is a total of \$53.93 for 19 days. The tenants owe 40% of the \$53.93 balance. The tenants owe a total of \$21.57.

The tenants have not paid their share of the Alectra bill that was issued on September 27th, 2022, for the period of August 19th, 2022 – September 21st, 2022. The bill has a total owing of \$233.55. The tenants owe a total of \$93.42.

The tenants have not paid their share of the Enbridge bill that was issued on October 7th, 2022, for the period of September 2nd, 2022 – October 5th, 2022. The bill has a total owing of \$29.14. The tenants owe a total of \$11.66.

The total amount the tenants are owing for all utilities to date is \$126.65.

Please pay this amount by October 27th, 2022, in order to void the N5 Notice and avoid eviction under the N5 Notice.

8. The Landlord submitted a copy of the lease that indicates that the Tenant is responsible for 40% payment of the utilities. The Tenant failed to pay the utility bills as required by the terms of the tenancy agreement within seven days of receiving the N5 notice of termination.
9. The Tenant did not correct the omission within seven days after receiving the N5 notice of termination. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).
10. Based on the uncontested evidence before me, I find that the Tenant has not paid for utility costs (water and electricity) they are responsible for. I therefore find that the Tenant has substantially interfered with a lawful right, interest or privilege of the Landlord by failing to pay the water bill on an ongoing basis.
11. As noted, the Tenant did not attend the hearing of this matter and thus I did not have the opportunity to hear their evidence regarding their circumstances. or to dispute the Landlord's application for an eviction order.
12. 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.

Compensation for unpaid utilities

13. The Tenant failed to pay utility costs that they were required to pay under the terms of the tenancy agreement.
14. The Landlord has incurred reasonable out-of-pocket expenses of \$2,957.40 as a result of the Tenant's failure to pay the utilities and the Landlord is entitled to reimbursement of those costs pursuant to section 88.1 of the *Residential Tenancies Act, 2006* (the 'Act').

L1 Application

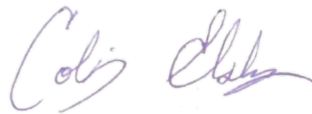
15. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
16. As of the hearing date, the Tenant was still in possession of the rental unit.
17. The lawful rent is \$2,000.00. It is due on the 1st day of each month.
18. Based on the Monthly rent, the daily rent/compensation is \$65.75. This amount is calculated as follows: \$2,000.00 x 12, divided by 365 days.
19. The Tenant has not made any payments since the application was filed.
20. The rent arrears owing to January 31, 2024, are \$32,700.00.
21. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

22. The Landlord collected a rent deposit of \$2,000.00 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.
23. Interest on the rent deposit, in the amount of \$72.47 is owing to the Tenant for the period from August 13, 2022 to January 23, 2024.
24. Because the tenancy is being terminated for both the unpaid utilities and non-payment of rent, the eviction is not voidable under section 74 of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before March 22, 2024.
2. If the unit is not vacated on or before March 22, 2024, then starting March 23, 2024, the Landlord 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 Landlord on or after March 23, 2024.
4. The Tenant shall pay to the Landlord \$30,325.78. 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.
5. The Tenant shall also pay to the Landlord \$2,957.40, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs.
6. The Tenant shall also pay the Landlord compensation of \$65.75 per day for the use of the unit starting January 24, 2024 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before March 22, 2024, the Tenant will start to owe interest. This will be simple interest calculated from March 23, 2024 at 7.00% annually on the balance outstanding.

March 11, 2024
Date Issued



Colin Elsby
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 September 23, 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

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

Rent Owing To Hearing Date	\$32,212.25
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	- \$2,000.00
Less the amount of the interest on the last month's rent deposit	- \$72.47
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	\$30,325.78
Plus daily compensation owing for each day of occupation starting January 24, 2024	\$65.75 (per day)