



**Order under Section 69 / 88.1 / 88.2  
Residential Tenancies Act, 2006**

**Citation:** Mazhar v Hamid, 2023 ONLTB 16230

**Date:** 2023-01-23

**File Number:** LTB-L-041862-22

**In the matter of:** Basement, 3516 REBECCA ST  
OAKVILLE ON L6L6X9

**Between:** Bushra Mazhar Landlord

**And**

Sania Hamid  
Tenant

Bushra Mazhar (the 'Landlord') applied for an order to terminate the tenancy and evict Sania Hamid (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the building has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord in a building that has three or fewer residential units and the Landlord resides in the building.

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

Bushra Mazhar (the 'Landlord') also applied for an order requiring Sania Hamid (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.

Bushra Mazhar (the 'Landlord') also applied for an order requiring Sania Hamid (the 'Tenant') to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

Bushra Mazhar (the 'Landlord') also applied for an order requiring Sania Hamid (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

This application was heard by videoconference on January 17, 2023.

The Landlord and the Tenant attended the hearing.

### **Determinations and Reasons:**

#### Preliminary Issue – multiple L2 applications

1. The Board file contained two different and distinct L2 applications filed by the Landlord.
2. On the date of the hearing, the Landlord said she realized she had made an error and refiled. The correct version is the L2 application containing lesser amounts.
3. The Tenant confirmed she received both versions and understood the Landlord intended to rely on the version containing the lesser amounts claimed.
4. The Landlord applied for an order to terminate the tenancy on August 2, 2022.
5. The Tenant was in possession of the rental unit on the date the application was filed.
6. On the date of the hearing, the Landlords testified that the Tenant vacated the rental unit on or about November 29, 2022, returning vacant possession to the Landlord. Accordingly, the Landlord's N7 notice of termination is moot.

#### The L2 Application

7. The final claim in the application is made by way of the following provisions of the Act; s.88.1 for substantial interference, 88.2 for failure to pay utility costs and 89(1) for damages.

#### *Substantial interference:*

8. The Landlord claimed the amount of \$200.00 for frequent "harassment text messages" and parking violation and disrespectful behaviour. The Landlord said the out-of-pocket expenses incurred as a result of the conduct was for legal services. No details or documentary evidence was provided to support this proposition.

#### *Utility Costs:*

9. The Landlord states that the Tenant, as per the lease agreement states that the Tenant is required to pay 15% of the total utility costs if the Tenant has guests who stay for more than 2 weeks. The agreement was signed by the Tenant.

10. Then the Landlord said the Tenant's parents stayed for more than 2 weeks in June and July.
11. The Tenant did not dispute that her parents stayed at the rental unit for more than 2 weeks but takes the position that she understood the lease to mean any 2 week period per month and her parents' visit overlapped June and July 2022.
12. The Landlord forwarded the utility bill to the Tenant claiming a total of \$78.28. However, it was noted that the bill included May, June and July, 2022 and the Tenant's parents were not visiting during May 2022. Accordingly, the Landlord reduced the total utility cost to \$50.00. Although the total, based on the invoice submitted would translate to \$52.18 covering 15% for June and July 2022, I accepted the Landlord's amended request in the amount of \$50.00.

*Damage Claim:*

13. The final claim in the application is in the amount of \$200.00 for the Tenant "altering the wall paint colour..." Additionally the Landlord claimed the Tenant damaged the walls in the rental unit. The Landlord submitted photos to support her claim.
14. The Tenant said that she did not damage the walls and that she hung items on the walls.

Law and Analysis

*Substantial Interference:*

15. Additional provisions of the Act were proclaimed on September 1, 2021, broadening the Board's jurisdiction to award compensation for a Landlord's out-of-pocket expenses.
16. The Landlord has sought out-of-pocket expenses on the L2 application, claiming the amount under reason 5, which provides for the following reason for seeking compensation:

"The tenant or someone else visiting or living in the rental unit substantially interfered with landlord's reasonable enjoyment or lawful right, privilege or interest. The tenant must pay the reasonable out-of-pocket expenses I incurred as a result of this conduct." The application alleges that the Tenant's behaviour required the Landlord to seek legal advice. 17. Section 88.1(4) limits recovery under section 88.1 to "reasonable out-of-pocket expenses that the landlord has incurred or will incur as a result of an interference" by the tenant. On the face of section 88.1, a successful claim is limited to a cash outlay by a landlord for conduct by a tenant that falls within the limits of the section.

18. The onus on this application rests with the Landlord.
19. Based on the evidence before the Board and on a balance of probabilities I am not satisfied that the Tenant's behaviour as alleged in the application met the definition of substantial interference. I considered the fact that that no evidence was led by the Landlord to support this claim. The "chat history" provided did not rise to any level of

harassment as alleged by the Landlord. Additionally, the Landlord acknowledged that no invoices were submitted to support her out of pocket expense claim. Accordingly, this portion of the claim must be dismissed.

*Unpaid Utilities:*

20. The Landlord also claims under s.88.1 of the Act, unpaid utilities in the amount of \$50.00. The provision reads as follows:

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

21. Based on the evidence before the Board and on a balance of probabilities, I find the Tenant did not pay the required utility charge when her guests stayed more than 2 weeks as per the lease agreement. The total cost is \$50.00 and this portion of the Landlord's application shall be granted.

*Damage Claim:*

22. The Landlord's claim for damages is pursuant to s.89(1) of the Act. That provision reads as follows:

A landlord may apply to the Board for an order requiring a tenant to pay reasonable costs that the landlord has incurred or will incur **for the repair of or, where repairing is not reasonable, the replacement of damaged property**, if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex wilfully or negligently causes undue damage to the rental unit or the residential complex and the tenant is in possession of the rental unit. (emphasis added).

23. The Landlord's application claims \$200.00 for the cost to correct the "altered" wall paint colour.
24. As explained to the parties at the hearing, paint colour generally does not meet the provision set out in the Act as no damage has resulted from the Tenant's paint preference.
25. Then the Landlord provided further submissions that the walls were damaged. However, the photos submitted as evidence do not depict any level damage beyond normal everyday living and wear and tear. The minor damage to the plaster, in my view, is akin to a Tenant hanging artwork and/or shelving.
26. The use of the phrase "undue damage" indicates that some damage to a rental unit is expected with everyday use. I would agree with the Tenant that normal wear and tear is not undue and the Tenant cannot be held liable to the Landlord for it. Additionally, the

Landlord did not submit any documentary evidence to support the \$200.00 claim. This portion of the claim must be dismissed.

27. As the Landlord was partially successful with the claim, the Tenant compensate the Landlord for the cost to file the application.
28. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant terminated November 29, 2022.
2. The Tenant shall pay to the Landlord \$50.00, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs.
3. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. The total amount the Tenant owes the Landlord is \$236.00.
5. If the Tenant does not pay the Landlord the full amount owing on or before January 28, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 29, 2023 at 5.00% annually on the balance outstanding.

**January 23, 2023**

**Date Issued**

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Dana Wren

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.