



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

**File Number:** CEL-01193-21

**In the matter of:** 80 BRIGHTON ROAD  
BARRIE ON L4M6S3

**Between:** Jason Weck Landlords  
Kristie Weck

**and**

Jody Aldebert Tenant

Jason Weck and Kristie Weck (the 'Landlords') applied for an order to terminate the tenancy and evict Jody Aldebert (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 Landlords or another tenant; and because the Tenant has been persistently late in paying the Tenant's rent. The Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date but the issue of arrears of rent has already been addressed by Board Order CEL-99256-21.

This application was heard by videoconference on October 14, 2021. The Landlords and the Tenant attended the hearing. The Landlord was represented by Allison MacSporran.

**Determinations:**

1. Based on the evidence before me I find that the Tenant persistently failed to pay rent on the date it was due and substantially interfered with the lawful right, privilege or interest of the Landlord by failing to pay her Water Bill as required by her lease. In light of all of the circumstances I am granting the Tenant an opportunity to preserve this tenancy if she complies with the conditions set out below.
2. The lawful monthly rent is \$1,800.00.
3. It was undisputed that the Tenant is responsible for paying all utilities, including the water bill in accordance with s. 7b of the lease.

Persistent late payment

4. As per the Landlord's notice of termination ('N8') the Tenant paid her rent late 9 out of 15 months between April 2020 and June, 2021. On these occasions the Tenant failed to pay her rent in full and on or before the first of each corresponding month. The Landlords then

served her with the N8 notice on July 2, 2021. The Tenant did not seriously dispute or undermine this evidence but explained why some of the payments were late and pointed out that she paid on or before the 2<sup>nd</sup> of the month on many occasions. The Landlord also presented evidence that the Tenant paid her rent late on a few occasions prior to Covid-19. The Tenant has paid on time since receiving the N8 but the Landlord argues that this is only because she was ordered to do so in CEL-99256-21.

5. I find that the Tenant had persistently failed to pay rent on the day it was due when the Landlord served her with an N8 notice of termination.

### Substantial interference

6. The Landlords testified that the Tenant failed to pay her Water Bill contrary to clause 7.b of their lease agreement and submitted a copy of said lease. The Landlords submitted into evidence multiple notices they received from the City of Barrie advising the Landlords that the Water Bill was in arrears and a final notice that advised the Landlord that the water service would be shut off in the event of non-payment.
7. On May 5, 2021 the Landlords served the Tenant with a notice of termination N5 alleging that the Tenant had substantially interfered with their lawful rights, privileges, or interest and that she had 7 days to remedy the issue. The N5 notice clearly advised the Tenant that the issue was the unpaid water bill. As of May 6, 2021 the amount owing was \$1,691.93.
8. The Tenant did not dispute that this amount was owing nor did she dispute that she did not pay it back in full within the 7-day voiding period. I therefore find that the Tenant substantially interfered with the Landlords' lawful rights, privilege or interest within the meaning of s. 64 of the Residential Tenancies Act, 2006 (the 'Act') and that the Tenant did not void the notice of termination under s. 64(3) of the Act.
9. As of the date of the hearing the Water Bill was still not paid in full but the Tenant had made substantial progress in paying it off. No documentary evidence was provided by either party to confirm the exact amount outstanding as of October 14, 2021 but the parties provided a few numbers ranging from \$286 to approximately \$800 based on their conversations with the City of Barrie officials. I prefer the Tenant's more detailed and precise testimony regarding the amount owing and accept her evidence that she owed \$286.36 as of the date of the hearing and that another payment of \$255.44 would be due on or before November 14, 2021.
10. The Tenant explained that she did not pay the Water Bill on time because she was struggling financially and that she believed that water would not be shut off for non-payment during Covid-19. As she believed she had to prioritize some payments over others, she chose to temporarily not pay her Water Bill.

### Relief from eviction

11. The Landlords objected to any relief from eviction and requested that this tenancy be terminated. The Landlords' evidence was that it was stressful for them to not know

whether a payment would come on the first, to have to chase the Tenant for payment, and to receive notices for non-payment of utility bills. The Landlords also submitted that the issues started prior to Covid-19 and as such the Tenant should not be given much leniency. The Landlord's representative provided some Board decisions in support of this request but they are not binding on me and the factual basis for these decisions is sufficiently different that I do not find them persuasive or helpful in these circumstances.

12. The Tenant requested that the application be dismissed because she mostly paid on time, because she was almost caught up on the utility bill, and because there were some issues with the rental unit. Based on the Tenant's summary of these issues I do not find that these issues would warrant mandatory relief from eviction under s. 83(3) of the Act. The Tenant also advised that she spoke to duty counsel about filing a T6 and/or a T2 application to address these issues. I will therefore not address these issues any further.
13. As I find that the Landlords proved the validity of both of their notices of termination, I will not dismiss this application.
14. In the alternative the Tenant requested conditional relief from eviction allowing her to pay rent in full and on time as it comes due and allowing her to pay off the amount owing for utilities by November 14, 2021.
15. The Tenant testified that she took care of 4 children, two of them on a full-time basis. Her youngest child was 13-month old as of the date of the hearing and one of her children has special needs.
16. The Tenant testified that some of her late payments were inadvertent as she didn't realize that her paycheque would be subject to a hold at the bank.
17. 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 grant relief from eviction subject to the condition(s) set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
18. The amount owing for the Water Bill is relatively small and the late payments were often only late by a few days. She has also demonstrated good faith in trying to preserve this tenancy by paying her rent in full and on time after July 2021 and by steadily reducing the amount owing for the Water Bill. While it would appear that the Tenant's decision to not pay her Water Bill was deliberate, which is concerning, her circumstances are such that it would not be unfair to give her an opportunity to preserve this tenancy provided that she pays her rent in full and on time going forward and pays off all of the amounts owing for the water. The Tenant will have until the end of the month to comply if she hasn't already done so.

**It is ordered that:**

1. The Landlords' application to terminate the tenancy for persistent late payments and for unpaid utilities is denied, subject to the following conditions:

- a) On or before January 31, 2022, the Tenant shall ensure that any charges owing on the water account are paid and that the account is brought to good standing; and
  - b) For a 12-month period starting February 1, 2022 and ending January 1, 2023 the Tenant shall pay her rent in full and on or before the 1<sup>st</sup> of each corresponding month.
2. In the event that the Tenant fails to comply with any of the terms of paragraph 1 of this order, the Landlords shall be entitled to apply to the Board, no later than 30 days after a breach of this order, without notice to the Tenant, for an order terminating the tenancy and evicting the Tenant pursuant to Section 78 of the Act.
  3. The Tenant shall also pay to the Landlords \$186.00 for the cost of filing the application.
  4. If the Tenant does not pay the Landlords the full amount owing on or before January 28, 2022, the Tenant will start to owe interest. This will be simple interest calculated from January 29, 2022 at 2.00% annually on the balance outstanding.

**January 17, 2022**  
**Date Issued**



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Vladimir Nikitin  
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.