



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

Citation: Lu v Mullett, 2023 ONLTB 15614

Date: 2023-01-27

File Number: LTB-L-012180-22

In the matter of: 95 TULIP ST
GEORGINA ON L4P1C6

Between: Yinghua Lu Landlord

And

Gary Mullett Tenants
Jessica Mullett

2023 ONLTB 15614 (CanLII)

Yinghua Lu (the 'Landlord') applied for an order to terminate the tenancy and evict Gary Mullett and Jessica Mullett (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises.

Yinghua Lu (the 'Landlord') also applied for an order requiring Gary Mullett and Jessica Mullett (the 'Tenants') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenants' failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

This application was heard by videoconference on January 12, 2023.

Only the Landlord Yinghua Lu and the Landlord's Legal Representative Jiangning Guo attended the hearing.

As of 10:42 a.m., the Tenants were 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. Since the Tenants did not attend and the Landlord was prepared to proceed, the matter proceeded by way of an uncontested hearing pursuant to section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990.

Determinations:

1. The Tenants were in possession of the rental unit on the date the application was filed.
2. The Landlord served the Tenants a voidable N5 Notice of Termination by mail on February 25, 2022 claiming the Tenants have not paid for the water utility bill they are responsible for while living at the rental unit. The Notice clearly sets out when the costs were incurred and the amount outstanding for the time period from September 1, 2020 until November 30, 2021. The Landlord served a second N5 Notice of Termination by mail on March 7,

2022 containing the same claims as the first N5 Notice as the Tenants had not paid the outstanding water bill. The amount claimed by the Landlord on the application was \$1,485.49.

3. While the Landlord originally sought eviction in addition to an order for payment of the unpaid utilities, the Landlord's evidence was the Tenants vacated the rental unit on May 4, 2022. As a result, the application proceeded dealing only with the outstanding utility costs.
4. Section 88.2 of the Act 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; and

5. The Landlord's evidence was the Tenants were responsible for paying the water utility bill as part of the tenancy agreement. The landlord submitted a copy of the lease agreement as evidence. Section 6 of the lease clearly shows the Tenants were responsible for paying the water utility bill.
6. The Landlord submitted evidence supporting the claim for \$1,485.49 as claimed on the N5 Notices as well as the L2 application. The Landlord's evidence was the Tenants have not paid the outstanding amount. At the hearing, the Landlord sought a higher amount than that claimed on the L2 application as their evidence was the water bill continued to accumulate after the application was filed. The Landlord's evidence was the total amount outstanding at the end of tenancy was \$2,422.34.
7. Rule 15 of the Board's rules of procedure speak to the amendment of applications and state in part:
 - 15.1. A request to amend an application before the hearing must be
 - a. In writing;
 - b. Served with the amended application to all other parties; and
 - c. Filed with LTB with the amended application and a completed Certificate of Service.

8. Based on the evidence before the Board, the Landlord did not file a request to amend the L2 application prior to the hearing, nor did they serve any amended application on the Tenants prior to the hearing. As the Landlord did not comply with Rule 15.1, I denied the Landlord's request to amend the application at the hearing and as such, only proceeded to hear the Landlord's claim for \$1,485.49; the amount claimed on the N5 Notices and the L2 application. I did not find it would be fair to the Tenants to allow a substantial increase to the amount being sought without any notice to them whatsoever.

9. I am satisfied on a balance of probabilities the Tenants have not paid the water utility costs they were required to pay under the tenancy agreement.
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The tenancy is terminated effective May 31, 2022.
2. The Tenants shall pay to the Landlord \$1,671.49, which represents the outstanding water utility bill and the cost of filing the application.
3. If the Tenants do not pay the Landlord the full amount owing on or before February 7, 2023, the Tenants will start to owe interest. This will be simple interest calculated from February 8, 2023 at 5.00% annually on the balance outstanding.

January 27, 2023
Date Issued

John Cashmore
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.