



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

Citation: Whitehead v O'connor, 2024 ONLTB 2326

Date: 2024-01-15

File Number: LTB-L-072911-22

In the matter of: 5606, 898 PORTAGE PKY
VAUGHAN ON L4K0J6

Between: Cheryl Whitehead Landlord

And

Shannon-Marie O'Connor Tenant

Cheryl Whitehead (the 'Landlord') applied for an order to terminate the tenancy and evict Shannon-Marie O'Connor (the 'Tenant') because:

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

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

The Landlord also applied for an order requiring 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.

The Landlord also applied for an order requiring 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.

This application was heard by videoconference on December 11, 2023.

Only the Landlord attended the hearing.

As of 10:02 a.m., 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:

1. At the hearing, the Landlord testified that The Tenant vacated the rental unit on May 23, 2023. Therefore, the Landlord was no longer seeking an order terminating the tenancy. Rather, the Landlord was seeking an order for compensation for damage to the residential

complex and for unpaid utilities. The Landlord's application as filed on December 4, 2022. The Tenant was in possession of the rental unit on the date the application was filed.

Compensation for unpaid utilities:

2. The Landlord testified that the Tenant failed to pay electricity costs that she was required to pay under the terms of the tenancy agreement.
3. Paragraph 6 of the tenancy agreement clearly states that the Tenant is responsible for electricity costs.
4. The Landlord testified that the Tenant did not pay the electricity costs from May 15, 2022. On May 26, 2023, the electricity company issued invoices to the Landlord, indicating an outstanding balance on the utility account and demanding payment. The Landlord testified that she cleared the account balance by making a payment of \$1,808.20 to the electricity company in July 2023. At the hearing, the Landlord submitted invoices, emails from the electricity company, and her payment records as evidence.
5. The Landlord testified that she forwarded those electricity bills and invoice to the Tenant but did not receive a response.
6. The Landlord makes this application under section 88.2 of the *Residential Tenancies Act, 2006* (the 'Act'), which states:

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.

(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

7. Section 2 of the Act defines "utilities" to mean heat, electricity and water.
8. Based on the uncontested evidence before me, I find on a balance of probabilities that the Landlord has incurred reasonable out-of-pocket expenses of \$1,808.20 as a result of the Tenant's failure to pay electricity costs.

Compensation for Damages:

9. The Landlord alleges the Tenant, another occupant of the rental unit or a person whom the Tenant permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex.
10. The Landlord testified that she received an email from the property management office, notifying her that the Tenant's furniture delivery truck caused damage to the building's loading bay garage door chain on June 8, 2022. Subsequently, the Landlord received an invoice indicating that the repair costs for the damages amounted to \$1,581.55. At the hearing, the Landlord submitted a photograph depicting substantial damage to the garage door caused by the Tenant's furniture delivery truck. Additionally, the Landlord submitted invoices from the property management office as evidence during the hearing.
11. The Landlord further testified that she had contacted the Tenant and forwarded the invoice but did not receive any responses. The Landlord testified that on November 9, 2022, she paid the property management office \$1,581.55 for the repair of the damage caused by the Tenant.
12. Base upon the Landlord's uncontested evidence, I am satisfied, on a balance of probabilities, that the person permitted in the residential complex by the Tenant caused undue damage to the residential complex and that the cost to repair the damage is \$1,581.55.

It is ordered that:

1. The Tenant shall pay to the Landlord \$3,389.75, which represents the reasonable out-of-pocket expenses the Landlords have incurred as a result of the unpaid utility costs and repairing the damage property.
2. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
3. If the Tenant does not pay the Landlord the full amount owing on or before January 26, 2024, the Tenant will start to owe interest. This will be simple interest calculated from January 27, 2024, at 7.00% annually on the balance outstanding.

January 15, 2024
Date Issued

Joy Xiao
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.