



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

Citation: Honeycomb House Inc. v Pressman, 2024 ONLTB 4384

Date: 2024-01-25

File Number: LTB-L-019048-22

In the matter of: Upper Suite, 9 ORIOLE CRES TORONTO
ON M5P1L6

Between: Honeycomb House Inc. Landlord

And

Cynthia Pressman Tenant

Honeycomb House Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Cynthia Pressman (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 Landlord or another tenant.

Honeycomb House Inc. (the 'Landlord') also applied for an order requiring Cynthia Pressman (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.

This application was heard by videoconference on January 4, 2024.

Only the Landlord's Agent Matthew Tobiasz attended the hearing.

As of 9:34am, 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:

- As explained below, I find that the N5 notice of termination (N5 Notice) is invalid, Therefore, Landlord's application to terminate the tenancy is dismissed. However, the Landlord has proven the claim for compensation on a balance of probabilities. Therefore, the Tenant must pay the Landlord \$275.93.

2. The Tenant was in possession of the rental unit on the date the application was filed.

File Number: LTB-L-019048-22

N5 Notice of Termination – Substantial Interference

3. For the reasons below, I find the Landlord's N5 Notice invalid.
4. On April 1, 2022, the Landlord gave the Tenant an N5 Notice. The N5 Notice alleged the Tenant paid \$150.00 of the \$450.00 invoiced to her for City of Toronto Water and Sewerage Charges from January 15, 2021 to January 9, 2022. That invoice was due on March 31, 2022, but the Tenant failed to pay the remaining \$300.00.
5. The Landlord's agent submitted copies of the City of Toronto Water and Sewerage bills sent to the Landlord on February 17, 2022, October 21, 2021 and May 20, 2021, as well as the invoice sent to the Tenant for \$450.00 on March 6, 2023, representing \$150.00 for each of three billing cycles in 2021.
6. The Landlord's agent testified that water and sewerage charges are billed three times a year. He tendered a copy of the lease agreement between the parties which at paragraph 6 states that both the Landlord and the Tenant are responsible for water and sewerage charges. He further testified that the parties have an agreement based on the lease that the Tenant will pay \$150.00 for each tri-annual billing cycle or $\frac{1}{4}$ of the actual charges on each tri-annual bill, whichever is less.
7. The Landlord's agent also testified that the Tenant paid \$150.00 of the \$450.00 invoiced to the Tenant but refused to pay the remainder of the invoice. He further testified that the Tenant owed \$150.00 for the bill dated February 17, 2022, as $\frac{1}{4}$ of the bill was more than \$150.00, that the Tenant owed \$149.17 for the bill dated October 21, 2021, as $\frac{1}{4}$ of the bill was \$149.17 and that the Tenant owed \$126.76 for the bill dated May 20, 2021 as $\frac{1}{4}$ of the bill was \$126.76.
8. Based on the Landlord's uncontested evidence, I find the Tenant did not owe \$450.00 as alleged in the N5 Notice. The Tenant only owed \$425.92.
9. As a result of this finding of fact, I find that the N5 Notice is invalid because it did not comply with s. 43(2) of the *Residential Tenancies Act, 2006* (the 'Act'). Subsection 43(2) of the Act requires that a Landlord set out the reasons and details respecting the termination.
10. The details about how much the Tenant owed the Landlord for the water bill set out in the N5 Notice were incorrect. And because the details in the N5 Notice were not correct, the Tenant was effectively prevented from voiding the notice.
11. The Board does not have the jurisdiction to terminate a tenancy based on an invalid notice.

Compensation for unpaid utilities

12. The Tenant failed to pay water costs that she was required to pay under the terms of the tenancy agreement as outlined above.
13. As set out above, the lease agreement establishes that the Tenant is responsible for water and sewerage charges. The Landlord's agent testified that the Landlord and Tenant agreed that the Tenant is responsible for \$150.00 for each tri-annual billing cycle or $\frac{1}{4}$ of the actual charges on each tri-annual bill, whichever is less.

File Number: LTB-L-019048-22

14. The Landlord submitted copies of the water bills from on February 17, 2022, October 21, 2021 and May 20, 2021.
15. The Landlord testified that the Tenant owed \$150.00 for the bill dated February 17, 2022, as $\frac{1}{4}$ of the bill was more than \$150.00.
16. The Landlord testified that the Tenant owed \$149.17 for the bill dated October 21, 2021, as $\frac{1}{4}$ of the bill was \$149.17.
17. The Landlord testified that the Tenant owed \$126.76 for the bill dated May 20, 2021 as $\frac{1}{4}$ of the bill was \$126.76.
18. The Landlord has proven on a balance of probabilities that the Tenant was required to pay a portion of the water utility bills and that the total amount she owed between January 15, 2021 and January 9, 2022 is \$425.95. I find that the Tenant paid \$150.00 of this amount by cheque on March 29, 2022. The Landlord has incurred reasonable out-of-pocket expenses of \$275.93 because of the Tenant's failure to pay her share of the water bills.
19. 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 Tenant shall pay to the Landlord \$275.93, which represents the outstanding amount owing for the water bill on or before February 5, 2024.
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 February 5, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 6, 2024 at 7.00% annually on the balance outstanding.
4. The Landlord's application to terminate the tenancy is dismissed.

January 25, 2024 _____

Date Issued

Angela Long

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.

2024 ONL TB 4384 (CanLII)