



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

**Citation:** Dilivio v Mcconachie, 2024 ONLTB 21656

**Date:** 2024-03-25

**File Number:** LTB-L-097332-23

**In the matter of:** 9 ROULEY LANE  
ANCASTER ON L9G0G5

**Between:** Mike Dilivio Landlord  
Annette Di livio

**And**

Ashley Mcconachie Tenant

Mike Dilivio and Annette Di livio (the 'Landlord') applied for an order to terminate the tenancy and evict Ashley Mcconachie (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.

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

Mike Dilivio and Annette Di livio (the 'Landlord') also applied for an order requiring Ashley Mcconachie (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 March 18, 2024.

The Landlord's Legal Representative, J. Struthers and the Tenant attended the hearing.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy the claim for compensation in the application. Therefore,
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On November 20, 2023, the Landlord gave the Tenant an N5 notice of termination deemed served on November 25, 2023. The notice of termination contains the following allegations:

The Tenant failed to pay the utilities that she is responsible for under the lease agreement on or before the day that they are due.

4. The Landlord submitted a copy of the tenancy agreement that outlines that the Tenant is responsible for the utilities including electricity, water, sewer and gas.
5. The Tenant did not dispute that she failed to pay the utilities that she is responsible for under her tenancy agreement with the Landlord.
6. The Tenant did not correct the omission within seven days after receiving the N5 notice of termination. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$2,600.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$136.80 is owing to the Tenant for the period from August 4, 2021 to March 18, 2024.
9. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.
10. The Tenant failed to pay heat, electricity and/or water costs that they were required to pay under the terms of the tenancy agreement.
11. The Landlord has incurred reasonable out-of-pocket expenses of \$3,141.13 as a result of the Tenant's failure to pay heat, electricity and water costs.
12. The Tenant did not dispute the amount of the utilities requested by the Landlord.

#### Relief from eviction

13. The Tenant testified that she lives in the unit with her children, ages 10 and 7. She testified that she suffered a stroke and was off work due to that and also due to layoff. She testified that she was off work starting in December and is now back at work.
14. She testified that she would like to maintain her tenancy and suggested that she pay the utility arrears at the rate of \$200.00 a week until they are paid off. She agreed that she would pay the utilities on time going forward. The Tenant testified to her monthly income versus her expenses.
15. The Landlord is requesting termination of the tenancy and an order for payment of the outstanding utilities. She submits the Landlord has experienced financial hardship consisting of a default on mortgage payments in order to pay the Tenant's utilities. Although not subject to today's application, she submits that the Tenant is in arrears of rent of approximately \$18,000.00.

16. Based on the Tenant's testimony, it does not appear that she can afford to pay the utility arrears as she suggests. She testified that she only stopped paying utilities in December,

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however the N5 notice outlines that she stopped paying the utilities in April 2023. As the Tenant did not dispute the amount the Landlord claimed, I am satisfied that she stopped paying the utilities in April 2023. Without a satisfactory reason as to why she stopped paying, it is difficult to determine whether she would pay utilities on time on a go forward basis. I am not prepared to make a conditional order in these circumstances, as the plan suggested by the Tenant is not affordable and the Tenant has not made payments towards the utilities on almost a year, without a plausible explanation.

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 postpone the eviction until April 30, 2024 pursuant to subsection 83(1)(b) of the Act.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before April 30, 2024.
2. If the unit is not vacated on or before April 30, 2024, then starting May 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after May 1, 2024.
4. The Tenant shall pay to the Landlord \$3,141.13, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs.
5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. If the Tenant does not pay the Landlord the full amount owing on or before April 30, 2024, the Tenant will start to owe interest. This will be simple interest calculated from May 1, 2024 at 7.00% annually on the balance outstanding.

**March 25, 2024**

**Date Issued**

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Emily Robb

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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on November 1, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

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