



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

**Citation:** Fernandez v Dennis, 2024 ONLTB 60724

**Date:** 2024-08-12

**File Number:** LTB-L-008071-23

**In the matter of:** 1, 47 OSIJEK CRES  
BRANTFORD ON N3P1Z4

**Between:** Mary Fernandez Landlord  
Danny Fernandez

**And**

Dahlia Dennis Tenant

Mary Fernandez and Danny Fernandez (the 'Landlord') applied for an order to terminate the tenancy and evict Dahlia Dennis (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.

Mary Fernandez and Danny Fernandez (the 'Landlord') also applied for an order requiring Dahlia Dennis (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 3, 2024.

Only the Landlord's legal representative, Krystal Campbell, attended the hearing.

As of 9:36 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.

An interim order was issued on March 18, 2024 providing a deadline of April 18, 2024 for the Landlord to amend their L2 application to specify an amount of utility costs claimed, failing which the portion of the application relating to utility costs would be dismissed.

**It is determined that:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. The Landlord did not amend their application pursuant to the

interim order, therefore the application for utility costs is dismissed. Therefore, the tenancy is terminated as of August 23, 2024.

2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On January 3, 2023, the Landlord gave the Tenant an N5 notice of termination. The notice of termination contains the following allegations: The utility bills for the rental unit have been in arrears since September 2022.
4. The Tenant did not correct the omission within seven days after receiving the N5 notice of termination. The Landlord issued another notice on January 28, 2023 stating that no utilities had been paid. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).
5. The Tenant has not paid the utility amounts as required by the lease agreement.
6. This conduct substantially interferes with a lawful right, privilege or interest of the Landlord.
7. The Tenant was required to pay the Landlord \$18,716.25 in daily compensation for use and occupation of the rental unit for the period from January 24, 2023 to January 3, 2024. The Landlord says that as of the date of the hearing the Tenant owes \$1,024.22.
8. Based on the Monthly rent, the daily compensation is \$54.25. This amount is calculated as follows: \$1,650.00 x 12, divided by 365 days.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. The Landlord collected a rent deposit of \$1,650.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$76.65 is owing to the Tenant for the period from August 19, 2021 to January 3, 2024.
11. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenant is required to pay.
12. The Tenant failed to pay heat, electricity and/or water costs that they were required to pay under the terms of the tenancy agreement, however the Landlord requested an amount of \$0.00 on their L2 application and did not amend the application pursuant to the interim order. Consequently, there can be no order for utility costs.
13. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
14. The Landlord and the Tenant had a previous conditional order which was breached so the Landlord does not believe a conditional order would be successful in preserving the tenancy.

**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 August 23, 2024.

2. If the unit is not vacated on or before August 23, 2024, then starting August 24, 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 August 24, 2024.
4. The Tenant shall pay to the Landlord \$1,024.22, which represents compensation for the use of the unit from January 24, 2023 to January 3, 2024.
5. The Tenant shall also pay the Landlord compensation of \$54.25 per day for the use of the unit starting January 4, 2024 until the date the Tenant moves out of the unit.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. The Landlord owes \$1,726.65 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenant.
8. The Landlord or the Tenant shall pay the other any amount owing as a result of this order.
9. If the Tenant does not pay the Landlord the full amount owing on or before August 23, 2024, the Tenant will start to owe interest. This will be simple interest calculated from August 24, 2024 at 7.00% annually on the balance outstanding.

**August 12, 2024**  
**Date Issued**

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Dawn Carr  
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 February 24, 2025 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.