



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

Citation: TRACEY PARK PROPERTY MANAGEMENT INC. v McNally, 2023 ONLTB 78189

Date: 2023-12-06

File Number: LTB-L-035426-23

In the matter of: 7, 12 TRACEY PARK DR
BELLEVILLE ON K8P4R5

Between: TRACEY PARK PROPERTY MANAGEMENT INC. Landlord

And

Michael McNally
Tasha McNally Tenant

TRACEY PARK PROPERTY MANAGEMENT INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Michael McNally and Tasha McNally (jointly referred to as the 'Tenant' in this Order) 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.

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.

This application was heard by videoconference on November 16, 2023.

Only the Landlord's Representative, Luisa Goncalves, attended the hearing.

As of 11:06 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. The Landlord filed this L2 application pursuant to an N5 notice of termination given under section 64 of the *Residential Tenancies Act, 2006*, claiming that the Tenant has failed to pay utility bills as required by the tenancy agreement. The N5 notice was served on April 17, 2023, with a termination date of May 15, 2023.

2. The Tenant did not pay the charges in the amount of \$1,241.54 on the N5 notice within the voiding period of April 18, 2023 to April 24, 2023. Therefore, I find that the Tenant did not void the N5 notice.
3. The Landlord presented a copy of a lease agreement for the rental unit, signed by the Tenant on November 30, 2020. Page 4 of the lease indicates that the Tenant is responsible for utilities which includes electricity, water, and heat.
4. The Landlord submitted that the Tenant has paid \$600.00 towards the charges since the application was filed. However, the Tenant has accrued new water charges since the application was filed. The Landlord requested an order requiring the Tenant to pay the new charges. The total amount of charges claimed by the Landlord is \$1,470.17.
5. The Landlord provided water bills from the City of Belleville and a ledger showing the balance outstanding as the Tenant has not paid the water charges requested by the Landlord.
6. The Landlord submitted that the Tenant is aware of the balance outstanding as the bills are forwarded to the Tenant every other month when the Landlord receives the water bill. The Landlord also submitted that the Tenant receives monthly reminders of any balance outstanding with respect to arrears and utilities. As such, I find it reasonable to amend the application to include the new charges. In my view, it is unreasonable to require a landlord to file a new application each time a bill materializes.
7. Based on the uncontested evidence before me, I find that the Tenant is responsible for unpaid water charges in the amount of \$1,470.17 and that the Tenant's non-payment has substantially interfered with the Landlord's lawful right to have the utilities paid by the Tenants under the tenancy agreement. As a result of the Tenant's failure to reimburse the Landlord for water costs they are responsible for, the Landlord has to bear the financial burden of paying the water bills to ensure that the unit continues to have water.
8. The Landlord submitted that the Tenant gave a N9 Notice (Tenant's Notice to End the Tenancy) to vacate the rental unit on November 30, 2023.
9. 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 grant a conditional order. The Landlord has indicated they expect the Tenant to vacate as per the N9 Notice. In the event the Tenant do not vacate, there is no evidence before me that a conditional order requiring the Tenant to pay water charges with section 78 provisions attached would be prejudicial to the Landlord.

It is ordered that:

1. The Tenant shall pay the water charges in accordance with the terms of their tenancy agreement for a period of one year from the date of this order.
2. On or before December 17, 2023, the Tenant shall pay to the Landlord \$1,470.17, which represents the reasonable out-of pocket expenses the Landlord has incurred as a result of the unpaid water costs.

3. If the Tenant breach the provisions contained in paragraph 1 or 2 of this order, the Landlord may apply under section 78 of the Residential Tenancies Act, 2006, without notice to the Tenants, for an order terminating the tenancy and evicting the Tenant. The Landlord must make any such application no later than thirty days after any such breach of the provisions contained in paragraph 1 or 2 of this order.
4. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
5. If the Tenant do not pay the Landlord the full amount owing in paragraph 4 on or before December 17, 2023, they will start to owe interest. This will be simple interest calculated from December 18, 2023 at 7.00% annually on the balance outstanding

December 6, 2023
Date Issued

Vicky Liu
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.