



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

Citation: Wang v Russell, 2023 ONLTB 77246

Date: 2023-12-06

File Number: LTB-L-065416-22

In the matter of: 52 NIGHTINGALE ST
HAMILTON ON L8L1R8

Between: Ping Wang Landlord

And

Elizabeth Russell Tenants Crystal Stephenson

Ping Wang (the 'Landlord') applied for an order to terminate the tenancy and evict Elizabeth Russell and Crystal Stephenson (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex have substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant.

The Landlord also applied for an order requiring the Tenants to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenants' 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 15, 2023. The Landlord attended the hearing. As of 12:10 pm, the Tenants were 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. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy; however, the Landlord has proven the claim for compensation in the application.

2. The Tenants were in possession of the rental unit on the date the application was filed on November 13, 2022. The Tenants remain in possession of the unit as of the day of the hearing.

N5 Notice of Termination

3. On October 21, 2022, the Landlord served the Tenants an N5 notice of termination (N5) alleging that the Tenants substantially interfered with the Landlord's lawful rights, privileges or interests as a result of the Tenants not paying \$1,703.86 in water utility bills.

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4. The Landlord's N5 on page 1 does not indicate whether the N5 could be voided by the Tenants, pursuant to s. 64(2)(c) of the *Residential Tenancies Act, 2006* (the 'Act'). There is no box checked on the N5 that identifies to the Tenants that they are able to void the notice of termination through the payment of their water bills. This omission undermines the purpose of the N5. The Landlord's N5 does not comply with s. 64(2) of the Act, and is therefore defective. Accordingly, I am unable to consider the termination of this tenancy pursuant to s. 69(1) of the Act.
5. The Landlord's L2 application may however be considered for compensation for unpaid utilities only, pursuant to s. 88.2 of the Act. The Landlord requested that the Board proceed with his L2 application for compensation for unpaid utilities only. I was satisfied that the Landlord understood the implications of this request. I therefore granted the Landlord's request.

Compensation for Unpaid Utilities

6. The Landlord testified that the Tenants were required to pay all utility costs, including water, under the terms of the tenancy agreement signed by both parties on February 3, 2017. The Landlord stated that the tenancy started on February 15, 2017, and that the Tenants promptly paid their water utility bills through their own account with the City of Hamilton for over four years; however, the Tenants stopped paying these bills in July 2021.
7. The Landlord testified further that he became aware of the unpaid water bills in September 2021, and approached the Tenants each month regarding the issue. The Tenants stated that they would sort out the issue, but the bills were not paid since July 2021, requiring the Landlord to pay the bills. The Landlord noted that the Tenants never defaulted in paying their electricity bill.
8. The Landlord stated that the Tenants only paid \$200.00 of their \$2,149.11 in water utility bills from the City of Hamilton over the period of July 26, 2021 to November 8, 2022, resulting in unpaid water utilities of \$1,949.11 that the Landlord was required to pay. The Landlord requested \$1,949.11 in compensation for out-of-pocket expenses for utilities in

- his L2 application. The Landlord submitted copies of the water utility invoices over this period.
9. The Landlord stated further that since he filed the L2 application, the Tenants continued not paying water utility bills from the City of Hamilton over the period of November 9, 2022 to November 3, 2023, resulting in additional unpaid water utilities of \$2,069.21 that the Landlord was required to pay. The Landlord submitted copies of the additional unpaid water utility invoices over this period.
 10. The Landlord requested total compensation of \$4,018.32 for the out-of-pocket expenses he incurred for paying the unit's water utilities from July 26, 2021 to November 3, 2023.
 11. In the L2 application, the Landlord requested compensation for out-of-pocket utility expenses of \$1,949.11 for the period of July 26, 2021 to November 8, 2022. An L2 application does not include a provision for a landlord to claim future utility costs after the application has been filed. To claim additional utility costs incurred after filing, a landlord must request an amendment to the L2.

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12. The Landlord never requested before the hearing, pursuant to s. 200(1) of the Act and the Board's Rules of Procedure 15.1, an amendment to the L2 application to claim additional utility out-of-pocket expenses. I accept, on a balance of probabilities, that the Tenants were aware of the additional unpaid water utility invoices for the period of November 9, 2022 to November 3, 2023. However, the Tenants were not provided with notice, through an amended L2, that the Landlord would seek additional out-of-pocket utility compensation at the hearing, exceeding the \$1,949.11 stated in the L2. It would therefore not be fair to the Tenants to grant an amendment to the Landlord's L2 at the hearing, in accordance with the Board's Rules of Procedure 15.4. Accordingly, I will only consider the out-of-pocket utility costs requested in the L2.
13. On the basis of the Landlord's uncontested evidence, I am satisfied that over the period of July 26, 2021 to November 8, 2022, the Tenants did not pay \$1,949.11 for the water utility costs of the rental unit, as required pursuant to the tenancy agreement.
14. I therefore find that, pursuant to s. 88.2 of the Act, the Landlord has incurred reasonable out-of-pocket expenses of \$1,949.11 as a result of the Tenants' failure to pay required utility costs.
15. The Landlord also incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The Tenants shall pay to the Landlord \$1,949.11, which represents the reasonable out-of-pocket expenses the Landlord has incurred as a result of the unpaid utility costs.
2. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
3. The total amount the Tenants owe the Landlord is **\$2,135.11**.
4. If the Tenants do not pay the Landlord the full amount owing on or before December 17, 2023, the Tenants 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

Frank Ebner

Date Issued

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.