



**Order under Section 88.2 and 89
Residential Tenancies Act, 2006**

Citation: Mostafa v Gogo, 2023 ONLTB 77249

Date: 2023-12-05

File Number: LTB-L-067863-22

In the matter of: 15 SHERIDAN DR
ST CATHARINES ON L2M6N8

Between: Kareem Mostafa Landlord

And

Robert Gogo Tenant

Kareem Mostafa (the 'Landlord') applied for an order to terminate the tenancy and evict Robert Gogo (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 Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises;
- the Tenant has been persistently late in paying the Tenant's rent.

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 that the Tenant was required to pay under the terms of the tenancy agreement.

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on November 15, 2023. The Landlord's representative, Brittney Tessier, attended the hearing. As of 1:52 pm, 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's representative submitted that the Tenant vacated the unit on June 13, 2023, and therefore the Landlord no longer seeks an order to terminate the tenancy on the basis of substantial interference, damage to the unit, and persistently late rent payments. The representative submitted further that the Landlord is no longer seeking daily compensation with respect to this application given that daily compensation for this tenancy was already awarded by the Board in LTB-L-067855-22.
2. The representative stated that the Landlord now seeks, as provided in the L2 application, compensation for out-of-pocket water utility costs of \$2,294.03, and compensation of \$282.50 for damage to a patio screen door.

Compensation for Unpaid Utilities

3. The Tenant was in possession of the rental unit on November 15, 2022, the date the application was filed.
4. The Tenant vacated the rental unit on June 13, 2023.
5. The Landlord's representative submitted that the Tenant was required to pay the water utility costs under the terms of the tenancy agreement, as listed on page 4, paragraph 6, and signed by both parties on February 29, 2020. The Landlord submitted a copy of the tenancy agreement.
6. The representative stated that the Tenant failed to pay 9 water utility bills from the City of St. Catharines over the period of July 6, 2020 to September 2, 2022, resulting in unpaid water utilities of \$2,294.03, that the Landlord was required to pay. The Landlord submitted copies of the 9 water utility invoices over this period.
7. The representative stated further that since the Landlord filed the L2 application, the Tenant failed to pay a further 7 water utility bills from the City of St. Catharines over the period of November 4, 2022 to June 1, 2023, resulting in additional unpaid water utilities of \$1,132.87 that the Landlord was required to pay. The Landlord submitted copies of the 7 water utility invoices over this period.
8. In the L2 application, the Landlord requested compensation for out-of-pocket utility expenses of \$2,294.03 for the period of July 6, 2020 to September 2, 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.

9. The Landlord never requested before the hearing, pursuant to s. 200(1) of the *Residential Tenancies Act, 2006* (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 that additional unpaid water utility invoices for the period of November 4, 2022 to June 1, 2023 were disclosed to the Tenant before the hearing. However, the Tenant was not provided with notice, through an amended L2, that the Landlord would seek additional out-of-pocket utility compensation at the hearing, exceeding the \$2,294.03 stated in the L2. It would therefore not be fair to the Tenant 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.
10. On the basis of the Landlord’s uncontested evidence, I am satisfied that over the period of July 6, 2020 to September 2, 2022, the Tenant did not pay \$2,294.03 for the water utility costs of the rental unit, as required pursuant to the tenancy agreement.
11. I therefore find that, pursuant to s. 88.2 of the Act, the Landlord has incurred reasonable out-of-pocket expenses of \$2,294.03 as a result of the Tenant’s failure to pay required utility costs.
12. The Landlord also incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Compensation for Damages

13. The Landlord’s representative submitted that when the Property Manager (PM) for the residential complex inspected the unit on April 8, 2022, the PM reported that the screen had been damaged, and a contactor estimated that repairing the screen would cost \$250.00 plus tax. An earlier unit inspection by the PM on January 7, 2022 noted no damage to the unit, to include the patio screen. The representative provided a photo of the damaged screen taken by the PM on April 8, 2022. The bottom six inches of the screen mesh was no longer attached to the frame of the screen door.
14. On the basis of the Landlord’s uncontested evidence, and on a balance of probabilities, I find that the damage to the screen door was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex, and this damage will result in out-of-pocket reasonable costs for the Landlord of \$282.50 to repair the damage. I therefore grant the Landlord compensation of \$282.50 pursuant to s. 89 of the Act.

It is ordered that:

1. The Tenant shall pay to the Landlord \$2,294.03, which represents the reasonable out-of-pocket expenses the Landlord has incurred as a result of the unpaid utility costs.
2. The Tenant shall pay to the Landlord \$282.50, which represents the reasonable costs of repairing the damage to the unit.

3. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. The total amount the Tenant owes the Landlord is **\$2,762.53**.
5. If the Tenant does not pay the Landlord the full amount owing on or before December 16, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 17, 2023 at 7.00% annually on the balance outstanding.

December 5, 2023

_____ **Date Issued**

Frank Ebner

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.