



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

Citation: Woon v Macdonald, 2023 ONLTB 74590

Date: 2023-11-17

File Number: LTB-L-052230-22

In the matter of: UPPER, 1 FERNBANK RD BRAMPTON
ON L6T2G8

Between: Sherifa Woon Landlord

And

Shirlene Macdonald Tenant

Sherifa Woon (the 'Landlord') applied for an order to terminate the tenancy and evict Shirlene Macdonald (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.

Sherifa Woon (the 'Landlord') also applied for an order requiring Shirlene Macdonald (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 September 21, 2023.

The Landlord and the Tenant attended the hearing. The Landlord was represented by John Lambe.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, a

conditional order shall issue allowing the Tenant to preserve his tenancy provided that the utility bills are paid within 3 days of the due date for the duration of this tenancy.

2. The Tenant was in possession of the rental unit on the date the application was filed and continued to be in possession as of the hearing date.
3. This is a monthly tenancy in which rent is due on the first of the month in the amount of \$1,664.63.
4. The residential complex is a bungalow and the Tenant occupies the upper unit.

N5 Notice of Termination

5. On August 31, 2022, the Landlord gave the Tenant an N5 notice of termination with a termination date of Septemebr 21, 2022 pursuant to subsection 64(1) of the Act alleging that the utility bill was not paid in full for the period August 30, 2021 to September 13, 2022.
6. The Tenant did not correct the omission within seven days after receiving the N5 notice of termination by bringing the utility accounts into good standing. Therefore, I find the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006 (Act)*.
7. **At the hearing, the Landlord's evidence was, on August 10, 2023, the Tenant brought the water utility bill in good standing by making full payment but that the Enbridge gas and Electra hydro bills remains due and owing.**
8. The Landlord testified that according to the lease agreement, the Tenant is responsibility for 60% of the utilities; while the account is in the Landlord's name, the arrangement between the parties is, the Landlord will send the bill to the Tenant and make the payment, and the Tenant will reimburse the Landlord.
9. The Landlord testified that the Tenant's delinquent payments have resulted in the Landlord having to find funds to support the additional expense of the Tenant's utility bills until they receive reimbursement from the Tenant.
10. On cross-examination the Landlord confirmed these bills were emailed to the Tenant on both their Gmail, Yahoo and Hotmail accounts.
11. The Landlord seeks a conditional order requiring the Tenant to make full payment of the utility bill, to the Landlord, within 3 days of the bill due date.

Tenant's Evidence

12. The Tenant testified that she moved into the rental unit on November 1, 2017.
13. The Tenant testified that the reason she has not made payments to the utility bills is because the Landlord has sent them to the incorrect email address. Further, the Tenant submits she was unaware of whether any bills were missed and has no problem rectifying the utility arrears. The Tenant submits that the Enbridge bill can be paid immediately.

14. On cross-examination the Tenant confirmed she paid the bills outlined on the N5 notice of termination late. She also confirmed receipt of the bills articulated on the N5 notice of termination.
15. The Tenant testified that she lives in the rental unit with her five children and is undergoing a separation.
16. She seeks that the Landlord's application be dismissed as these things happen. In the alternative, she seeks that the section 78 clause be waived given her circumstances.

ANALYSIS

17. Based on the evidence before the Board, I find the Tenant's failure to pay the utility bills on time and in full each month as required under a tenancy agreement is behaviour that substantially interferes with a lawful right and interest of the Landlord because they have to make up the shortfall out of their own funds.
18. While the Tenant's evidence initially denied receiving the emails sent from the Landlord, she later acknowledged receiving the bills and making the payments late.
19. As of the hearing date, the Landlord's evidence was, the water and hydro bills have been paid in full but the Enbridge bill remains due and owing. The Tenant testified she could immediately rectify this account.
20. As such, I find it appropriate to grant a conditional order allowing this tenancy to continue on the condition that the utility accounts of hydro, water and gas remain in good standing for the remainder of this tenancy.
21. With respect to the Tenant's request that a section 78 clause not be imposed, I do not find it appropriate to do so as the Landlord has made out their case, is not seeking a termination of the tenancy and wants resolution of the delinquent utility payment issue.

Compensation for unpaid utilities

22. The Tenant failed to pay the gas utility bill that they were required to pay under the terms of the tenancy agreement. The amount owing on the gas bill is \$82.89; as the Tenant is responsible for 60% of this bill, the amount due by the Tenant is \$49.73.
23. The Tenant shall ensure this amount is paid in full on or before November 30, 2023, if it has not already been paid.

Relief from eviction

24. 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 relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

25. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. If the Tenant has not already done so, the Tenant shall pay to the Landlord \$49.73 which constitutes her share of the gas utility bill that was due Septemebr 12, 2023, on or before November 30, 2023.
3. If the Tenant has not already done so, the Tenant shall bring the current water, gas and hydro utility bills in good standing on or before November 30, 2023.
4. For the duration of this tenancy, commencing December 1, 2023, the Tenant shall pay her portion of the water, gas and hydro utility bills within three days of the bill's due date.
5. If the Tenant fails to comply with the conditions set out in paragraphs 2 to 4 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. If the Tenant does not pay the Landlord the full amount owing on or before November 28, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 29, 2023 at 7.00% annually on the balance outstanding.

2023 ONLTB 74590 (CanLII)

November 17, 2023

Date Issued

Sonia Anwar-Ali

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.