



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

Citation: NASON v BURTON, 2023 ONLTB 66011

Date: 2023-10-06

File Number: LTB-L-061559-22

In the matter of: B 38, 13 SANDY BAY
BALHERETON ON P0V1C0

Between: ASHLEY BREE NASON Landlord

And

CYLINA BURTON Former Tenant

ASHLEY BREE NASON (the 'Landlord') applied for an order requiring CYLINA BURTON (the 'Former Tenant') to pay the Landlord's reasonable out-of-pocket costs that are the result of the Former Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

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

This application was heard by videoconference on August 24, 2023.

The Landlord and the Tenant attended the hearing.

Only the Landlord, attended the hearing.

Determinations:

1. I am satisfied that the Landlord served the Former Tenant with the application and Notice of Hearing in accordance with subsection 191(1.0.1) of the *Residential Tenancies Act, 2006* (the "Act") and Rules 3.3 and 5.8 of the LTB's Rules of Procedure. These documents were served on July 22, 2023 by placing the documents under the door of the rental unit or through a mail slot in the door at the Former Tenants new residential address.

2. The Former Tenant vacated the rental unit on March 1, 2022.
3. The application was filed within one year after the Former Tenants ceased to be in possession of the rental unit.

Compensation for unpaid utility costs

1. The Landlord's position is that the Former Tenant was responsible for paying the propane for the rental unit. The Landlord submitted into evidence a copy of the text messages between the Landlord and the Former Tenant showing the Former Tenant agreed to pay for the propane.
2. The Landlord submitted into evidence copies of the invoices that the Landlord was forced to pay because the Former Tenant did not pay the propane costs for the rental unit. The total propane costs the Former Tenant was required to pay is \$1,767.29.
3. With the evidence before me I find on a balance of probabilities the Former Tenant did not pay for the cost of the propane usage while residing in the rental unit and the total amount the Former Tenant owes to the Landlord is \$1,767.29.

Compensation for Damage

4. The position of the Landlord is the Former Tenant willfully or negligently caused damage to the rental unit.
5. The Landlord is claiming the following damage costs:
 - a) Damage to pots and pans provided by the Landlord, \$50.00;
 - b) Removal of garbage left in rental unit, \$55.00;
 - c) Replacement of broken door handle, \$50.00.

Pots and Pans

6. The Landlord is claiming \$50.00 for the replacement cost of pots and pans damaged by the Former Tenant.
7. The Landlord did not submit any documentary receipts to support her claim she was required to replace the pots and pans.
8. Further, I am not persuaded by the photo evidence the Landlord submitted regarding the claimed damage pots and pans. I see no evidence of damaged caused by willful neglect that could otherwise be attributed to normal wear and tear from use of the pots over time.

9. As I am unable to determine the extent of the damage to the pots and pans from the photos, or if the condition of the pots and pans were in that state prior to the Former Tenant moving into the rental unit, and in the absence of any receipts the Landlord's claim for the replacement costs is denied.

Garbage

10. The Landlord is claiming garbage removal costs of \$55.00 for the purchase of garbage bag tags required to dispose of items left behind in the rental unit by the Former Tenant.

11. Section 89 of the Act in part states:

“...where repairing is not reasonable, the replacement of **damaged** property...”

[emphasis added]

And;

“...tenant or former tenant wilfully or negligently causes or caused undue damage to the rental unit or the residential complex...”

12. In my view, I do not consider the removal of light garbage left behind by Former Tenants to constitute damage under section 89. I consider this type of removal of garbage to be normal cost of doing business with a rental unit. Since the removal of garbage does not involve the replacement of any damaged items, and given the Landlord was able to dispose of the items in bags, I find the Landlord's claim for garbage removal costs is denied.

Broken Door Handle

13. The Landlord is claiming \$50.00 for the replacement cost of a broken door handle caused by the willful or negligent behaviour of the Former Tenant.
14. The Landlord did not submit any documentary evidence to support her claim in the form of a receipt to support her claim of the costs she incurred.
15. In the absence of any receipt, I am denying the Landlord's claim for \$50.00 for replacement costs for a broken door handle.
16. The Landlord also incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.

17. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
18. This order contains all reasons for the determinations and order made. No further reasons will be issued.

It is ordered that:

1. The total amount of unpaid utilities the Former Tenant owes to the Landlord is \$1,767.29.00.
2. The Tenant shall pay to the Landlord \$201.00. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
3. If the Tenant does not pay the Landlord the full amount owing on or before October 17, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 18, 2023 at 7.00% annually on the balance outstanding.

October 6, 2023

Date Issued

Greg Brocanier

Member, Landlord and Tenant Board

15 Grosvenor St, 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.