



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

Citation: Moore v Williams, 2023 ONLTB 65659

Date: 2023-10-03

File Number: LTB-L-045714-22

In the matter of: Main Unit, 207 ROSEDALE DR WHITBY
ON L1N1Z2

Between: Denise Moore (Price-Hoo) Landlord

And

Ainsley O'Neil Williams Tenants
Cameka Johnson

Denise Moore (Price-Hoo) (the 'Landlord') applied for an order to terminate the tenancy and evict Ainsley O'Neil Williams and Cameka Johnson (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

The Landlord 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.

The Landlord also applied for an order requiring the Tenants 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 Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex.

This application was heard by videoconference on July 27, 2023.

The Landlord and the first-named Tenant attended the hearing.

At the hearing, the application was amended to change the Landlord's last name from "PriceHoo" to "Moore" as it had changed since the application was filed. The amendment was not opposed by the Tenant at the hearing; therefore, the amendment is granted to show the name of the Landlord as "Denise Moore".

Determinations:

Preliminary Issue- Tenant v Guarantor

1. Ainsley O'Neil Williams (AOW) made a motion to the Board to have his name removed from the Landlord's application because he was not a "tenant" but signed on the lease as a "guarantor".
2. After having viewed the lease, as well as the examples of communication between AOW and the Landlord, I am satisfied that AOW is a Tenant of the rental unit. Therefore, his motion to be removed from the application is denied.
3. The lease originally had one Tenant listed, and that was AOW. According to the lease, there was no mention of him being a guarantor despite multiple opportunities to make that claim on the standardized lease agreement.
4. The Landlord testified that up until the hearing, she had thought that AOW had been living in the rental unit. Furthermore, multiple emails between the Landlord and AOW were presented at the hearing, and not one of them even hinted that AOW was not living there. I find that if AOW was, in fact, a guarantor and not a tenant, he would have stated as such during any of the email threads. However, AOW instead appears to be engaging the Landlord as if he was a tenant.
5. The Residential Tenancies Act, 2006 (the 'Act') defines a "tenant" as "a person who pays rent in return for the right to occupy a rental unit..." AOW signed the lease as a "tenant". The evidence before me shows that the Landlord had not prevented AOW from occupying the rental unit, and had, in fact thought that he had been occupying the unit.
6. Although AOW presented evidence that he was not living at that address, being a "tenant" does not require that the rental unit be the main residence for the tenant.
7. Based on the evidence before me, I am satisfied that AOW is a "tenant" under the Act, and therefore AOW's motion to be removed from the application is denied.

L1 Application

8. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
9. The Tenants were in possession of the rental unit on the date the application was filed.
10. The Tenants vacated the rental unit on November 20, 2022. Rent arrears are calculated up to the date the Tenants vacated the unit.
11. The lawful rent is \$1,620.00. It was due on the 1st day of each month.
12. The Tenants had not made any payments since the application was filed.
13. The rent arrears owing to November 20, 2022, are \$7,545.20.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

15. The Landlord collected a rent deposit of \$1,620.00 from the Tenants and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
16. Interest on the rent deposit, in the amount of \$17.26 is owing to the Tenants for the period from January 1, 2022, to November 20, 2022.

L2 Application- Unpaid Utilities

17. The Landlord alleges that they have incurred reasonable out-of-pocket expenses as a result of the Tenants' failure to pay for utilities which they were required to pay under the terms of their tenancy.
18. The lease states that the Tenants are responsible for 50% of the water bill and 60% of the gas and electricity bills.
19. The Landlord submitted utility bills for gas (Enbridge), electricity (eLexicon/Whitby Hydro), water (Durham) and lawn maintenance (Green Machine).
20. Pursuant to section 20(1) of the Act, lawn maintenance is considered part of the maintenance that the Landlord is responsible. Pursuant to section 3(1) of the Act, the Act applies to all residential leases, despite any other Act or agreement or waiver to the contrary. In other words, it is not possible for a lease agreement to enforce a term that runs contrary to the Act.
21. Therefore, any claims for lawn maintenance are denied.
22. The Landlord presented bills for the remaining utilities running up to and including the end of the tenancy. The total share the Tenants are liable for of those bills are \$1,773.08. The Tenant did not contest these calculations at the hearing.
23. I am satisfied, based on the evidence before me, that the Landlord incurred out-of-pocket expenses of \$1,773.08 as a result of the Tenants' failure to pay for utilities which they were required to pay under the terms of their tenancy. Therefore, the Tenants shall be ordered to pay the Landlord \$1,773.08 for the out-of-pocket expense.

L2 Application- Damages

24. The Landlord has claimed that she has incurred reasonable costs of \$3,060.04 to repair and/or replace a refrigerator that was negligently or willfully damaged by the Tenants.
25. The Landlord testified that the refrigerator was a stainless steel, had French doors and had the freezer located on the bottom of the appliance. It was manufactured by Whirlpool.
26. The refrigerator that was damaged was originally purchased in December 2017.
27. In March 2022, the Landlord discovered that the freezer door of the refrigerator was damaged. The damage to the door prevented the refrigerator from functioning properly.
28. A picture of the refrigerator showed that the freezer door was damaged and unable to be closed properly.

29. The Landlord testified that the repair technician that the manufacturer sent out to assess the repairs needed stated that the repairs would be as expensive as purchasing a new refrigerator. The technician was not present at the hearing to present this evidence, and since the technician was not present, the evidence is considered hearsay. However, at the hearing, the Tenant did admit to having worked for the manufacturer and agreed that replacement was likely the best option considering the damage.
30. The Landlord replaced the refrigerator with the exact same model at a total expense of \$2,777.54. The Landlord presented a copy of the online purchase from Home Depot as evidence. The Landlord also presented evidence of email correspondence with the Tenants, discussing a payment plan to repay the Landlord for the refrigerator.
31. The Tenant did not contest the Landlord's testimony.
32. Based on the evidence before me, I am satisfied that the Landlord incurred reasonable costs of \$2,777.54 for the replacement of the refrigerator.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated as of November 20, 2022, the date the Tenants moved out of the rental unit.
2. The Tenants shall pay to the Landlord \$10,644.56. This amount includes rent arrears owing up to the date the Tenants moved out of the rental unit, out-of-pocket expenses incurred for unpaid utilities, replacement costs for damaged property and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
3. If the Tenants do not pay the Landlord the full amount owing on or before October 14, 2023, the Tenants will start to owe interest. This will be simple interest calculated from October 15, 2023, at 7.00% annually on the balance outstanding.

October 3, 2023

Date Issued

Robert Brown

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.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay as the tenancy is terminated

Rent Owing To Move Out Date	\$7,545.20
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Out-of-Pocket Expense due to unpaid utilities	\$1,773.08
Costs for Replacement of Damaged Property	\$2,777.54
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,620.00
Less the amount of the interest on the last month's rent deposit	- \$17.26
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$ 10,644.56