



**Order under Section 69 / 88.1
Residential Tenancies Act, 2006**

Citation: Dhur v Kim, 2023 ONLTB 61775

Date: 2023-09-11

File Number: LTB-L-035492-22

In the matter of: 45 SANDY HAVEN DR
SCARBOROUGH ON M1W3H8

Between: Dibyendu Dhur Landlord
Sarbani Dhur

And

Duk suk Kim Tenant

Dibyendu Dhur and Sarbani Dhur (the 'Landlord') applied for an order to terminate the tenancy and evict Duk suk Kim (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.

Dibyendu Dhur and Sarbani Dhur (the 'Landlord') also applied for an order requiring Duk suk Kim (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

This application was heard by videoconference on June 28, 2023. The Landlord was represented at the hearing by Brett Lockwood. The Tenant was represented at the hearing by her son William Kim.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. However, the tenancy continues as set out below.

N5 Notice of Termination

2. On June 10, 2022, the Landlord gave the Tenant an N5 notice of termination. The notice of termination contains the following allegations:
 - The Tenant did not maintain liability insurance as per the terms of the tenancy agreement.
 - The Tenant interfered with the Landlord by not allowing an arborist to maintain a tree in the back yard of the rental unit.
 - The Tenant has failed to pay the utility bills as per the tenancy agreement.
2. At the hearing the Landlord's representative stated that the Tenant has since provided a copy of insurance to the Landlord. Thus, the Landlord will not be seeking a termination of the tenancy on that ground.
3. Similarly, the Landlord's representative advised the Landlord is not seeking termination of the tenancy regarding the interference with the arborist.
4. That leaves the issue of unpaid utility bills as the only issue left to be determined in this application.

Unpaid Utility Bills

5. The Tenancy agreement began January 1, 2012. The original tenant was Jung-il Kim. Unfortunately, he passed away. His spouse Duk Suk Kim inherited the tenancy agreement in accordance with section 3(1) of *Ontario Regulation 516/06*.
6. Schedule A of the tenancy agreement provides the Tenant will pay **all** of the cost of using utilities in the rental unit. The Landlord claims, as of the hearing date, there is an outstanding balance of the utility bills in the amount \$8,040.51.
7. The Tenant disagrees with the amount owing. The Tenant's representative claims the amount outstanding does not account for payments that were made. Further, the Tenant's representative believes that the Tenant is only responsible for a portion of utility bills as per an agreement between the original tenant JK and the Landlord.

Analysis

8. I have conducted a thorough review of the ledger of utility bills provided by the Landlord and the alleged unaccounted payments by the Tenant. After a careful review, I find the amount owing for unpaid utility bills to \$8,040.51.

- 9. With respect to the agreement for the Tenant to only a portion of the utility bills, I do not find this to be the case.
- 10. One of the principles of interpreting contracts is the parole evidence rule. The parole evidence rule provides that, where the parties have reduced their agreement to writing, they are bound by the written terms. They may not seek to prove that their actual agreement was something other than what is in the written contract. By signing the contract, they agreed to its terms as written.
- 11. The tenancy agreement was clear and unequivocal that the Tenant was responsible for the entire portion of the utility bills. The Landlord testified at the hearing and stated that he believed this to be the case. Without contrary testimony of the original party to the contract, I find that the only interpretation of the tenancy agreement is what was set out in writing by the original parties to the agreement. Therefore, I find the Tenant is responsible for the entire portion of the utility bills. This includes responsibility for the entire amount outstanding.

Relief from Eviction

- 12. The remaining issue for the Board to consider is, whether it is appropriate to grant relief from eviction pursuant to s.83 of the *Residential Tenancies Act 2006*, (the 'Act')
- 13. According to s. 83 of the Act when the Board hears an application for an order evicting a tenant, the Board must consider whether there are any circumstances that support granting relief from eviction.
- 14. The Act is remedial legislation and the courts have determined that evicting a tenant is a remedy of last resort. In the cases of *Sutherland v. Lamontagne*, [2008] O.J. No. 5763 (Div. Ct.) and *Paderewski Society v. Ficyk*, [1998], the Divisional Court stated, "to put somebody out of their home must, in my view, call for clear and compelling circumstances that it's no longer possible for the arrangement to continue." I find that the circumstances in this application do not rise to that level. Instead, I find a conditional order requiring the Tenant to pay the outstanding utility bills over a 24-month period to be appropriate.

It is ordered that:

- 1. The Tenant shall pay to the Landlord \$8,226.51 which represents outstanding utility bills and the cost of filing this application.
- 2. The Landlord's application for eviction is denied on the condition Tenant shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:

| Date Payment Due | Payment Amount |
|------------------|----------------|
|------------------|----------------|

| | |
|--|----------|
| The 15 th day of each month beginning October 15, 2023, and ending August 15, 2025. | \$342.00 |
| September 15, 2025 | \$360.51 |

3. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy.

September 12, 2023
Date Issued

Bryan Delorenzi
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.