



**Order under Section 69 / 88.2 / 89
Residential Tenancies Act, 2006**

Citation: Dziwik v Murray, 2023 ONLTB 54393

Date: 2023-08-04

File Number: LTB-L-044349-22

In the matter of: Basement Unit, 6 KAREN CRES
ORILLIA ON L3V3H1

Between: Krystyna Dziwik Landlords
Miroslaw Dziwik

And

Shelly Murray Tenants
Dereck Kunkel

Krystyna Dziwik and Miroslaw Dziwik (the 'Landlords') applied for an order to terminate the tenancy and evict Shelly Murray and Dereck Kunkel (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

Krystyna Dziwik and Miroslaw Dziwik (the 'Landlords') also applied for an order to terminate the tenancy and evict Shelly Murray and Dereck Kunkel (the 'Tenants') because the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant; and 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.

Krystyna Dziwik and Miroslaw Dziwik (the 'Landlords') also applied for an order requiring Shelly Murray and Dereck Kunkel (the 'Tenants') 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.

Krystyna Dziwik and Miroslaw Dziwik (the 'Landlords') also applied for an order requiring Shelly Murray and Dereck Kunkel (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 Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

These applications were heard by videoconference on July 26, 2023.

Only the Landlord Krystyna Dziwik and the Landlord's Legal Representative Erli Bregu attended the hearing.

As of 11:23 a.m., the Tenants were 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. Since the Tenants did not attend and the Landlords were prepared to proceed, the matter proceeded by way of an uncontested hearing pursuant to section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990.

Determinations:

L1 Application

1. At the hearing the Landlord's Legal Representative relied on oral submissions and referred to documents to support the application.
2. The Landlords served the Tenants with a valid Notice to End Tenancy Early for Non-payment 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.
3. The Tenants were in possession of the rental unit on the date the application was filed.
4. The Tenants vacated the rental unit on November 8, 2022. Rent arrears are calculated up to the date the Tenants vacated the unit.
5. The lawful rent was \$1,850.00. It was due on the 15th day of each month.
6. The Tenants have not made any payments since the application was filed.
7. The rent arrears owing to November 8, 2022 are \$10,709.68.
8. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlords collected a rent deposit of \$1,850.00 from the Tenants and this deposit is still being held by the Landlords. The rent deposit is applied to the arrears of rent because the tenancy terminated.
10. Interest on the rent deposit, in the amount of \$16.18 is owing to the Tenants for the period from February 16, 2022 to November 8, 2022.

L2 Application

11. The Landlords served the Tenants a voidable N5 Notice of Termination on July 21, 2022 claiming the Tenants have not paid for the utilities expenses they are responsible for while living at the rental unit. The Notice clearly sets out when the costs were incurred and the amounts outstanding for gas, electricity and water. According to the N5 Notice, the utilities were unpaid for the period starting March 15, 2022 until July 21, 2022, the day the N5 Notice was served on the Tenants. The total amount outstanding for unpaid utility costs at the time the N5 notice was served was \$324.36.
12. The N5 notice also claims that during an inspection of the rental unit on July 15, 2022 it was discovered the Tenants had damaged the unit. The Landlords claimed \$6882.50 for the total cost to repair the undue damage caused by the Tenants.

13. Since the Tenants had already vacated the rental unit, the application proceeded dealing only with the monetary amounts claimed for unpaid utility costs and damage to the rental unit.

14. Section 88.2 of the *Residential Tenancies Act, 2006* (the Act) reads as follows:

A landlord may apply to the Board for an order requiring a tenant or former tenant to pay costs described in subsection (4) if,

- a) while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant failed to pay utility costs that they were required to pay under the terms of the tenancy agreement;

15. The Landlord submitted a copy of the lease agreement signed by the Tenants on February 29, 2022. I note 2022 was not a leap year and I can infer the date the lease was signed constitutes a typographical error. I was satisfied the lease agreement was valid. Paragraph 6 of the lease stipulates the Tenants were responsible for 40% of the gas, electricity and water utility costs.

16. The Landlords submitted copies of the utility bills for the dates claimed in the N5 Notice. The total amount of unpaid utilities for this time period is \$324.36. The Landlords' evidence was they have not received any payments from the Tenants since serving the N5 Notice.

17. The Landlords submitted that since serving the N5 Notice and filing the L2 application, the Tenants have not paid the additional utility costs that came due up to the date they vacated the rental unit on November 8, 2022. The Landlord submitted copies of the utility bills for this time period as well, bringing the total outstanding amount to \$1,082.13. On July 19, 2023, the Landlords filed a request to amend their application to include this updated amount of outstanding utility costs.

18. I have considered the Landlords' request to amend the application seeking the additional unpaid utilities that came due after the application was filed. While the Landlords could have requested an amendment earlier than they did, I find no prejudice to the Tenants in allowing the amendment to the amount being sought. The Landlords were not seeking to add a novel issue to the application. The Tenants received the N5 Notice and were aware of the claim. They would also be aware the amount outstanding would increase with each month that passed without payment. The Tenants did not attend the hearing and pursuant to section 7 of the *Statutory Powers Procedure Act, 1990* are not entitled to any further notice. As a result, I find no prejudice to the Tenants and will allow the amendment.

19. Based on the uncontested evidence of the Landlords, I am satisfied on a balance of probabilities the Tenants have not paid the utility costs they were required to pay under the tenancy agreement. The amount of \$1,082.13 will be ordered.

20. Section 89 of the Act states:

A landlord may apply to the Board for an order requiring a tenant or former tenant to pay reasonable costs that the landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of damaged property if,

- (a) while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant or former tenant wilfully or negligently causes or caused undue damage to the rental unit or the residential complex
21. The Landlords submitted that during an inspection of rental the unit conducted on July 15, 2022, undue damage caused by the Tenants was discovered. The damage claimed at the hearing was included on the N5 notice as well as the L2 application. It consists of damage to the drywall, paint, a broken window, smoke alarms and the kitchen counter.
22. The Landlords submitted photographs of the damage being claimed as well as a repair estimate prepared by Mark Lang of Go Time Solutions. The estimate sets out the expected cost to repair each issue.
23. Based on the uncontested evidence of the Landlords, I am satisfied on a balance of probabilities the Tenants, another occupant of the rental unit or a person whom the Tenants permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex.
24. The drywall is estimated to cost \$1,150.00 to repair. The photographs submitted in evidence show the Tenants have used the walls as a canvass for their own artwork. The estimated cost to cover and paint over the artwork is \$4,100.00 as multiple coats of paint are required. The estimated cost to replace the broken window in the unit is \$300.00. The estimated cost to replace the smoke alarms is \$60.00. The estimated cost to replace the damaged kitchen counter is \$700.00. I found all these amounts to be reasonable in the circumstances. The Landlords evidence was they had already spent over \$6,000.00 to repair the damage in the rental unit caused by the Tenants.
25. I am satisfied the Landlords have or will incur reasonable costs of \$6,310.00 to repair the damage or replace property that was damaged by the Tenants and cannot be repaired. As such, this amount will be ordered.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated as of November 8, 2022, the date the Tenants moved out of the rental unit.
2. The Tenants shall pay to the Landlord \$9,029.50. This amount includes rent arrears owing up to the date the Tenants moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlords owes on the rent deposit is deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
3. The Tenants shall also pay to the Landlords \$1,082.13 for unpaid utility costs.
4. The Tenants shall also pay to the Landlords \$6,310.00 for the undue damage caused to the rental unit.

5. The total amount the Tenants owe the Landlords is \$16,421.63.
6. If the Tenants do not pay the Landlords the full amount owing on or before August 15, 2023, the Tenants will start to owe interest. This will be simple interest calculated from August 16, 2023 at 6.00% annually on the balance outstanding.

August 4, 2023
Date Issued

John Cashmore
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	\$10,709.68
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount of the last month's rent deposit	- \$1,850.00
Less the amount of the interest on the last month's rent deposit	- \$16.18
Plus the amount the Tenants owe the Landlords for unpaid utility costs	\$1,082.13
Plus the amount the Tenants owe the Landlords for the cost to repair the undue damage to the rental unit	\$6,310.00
Total amount owing to the Landlord	\$16,421.63

2023 ONL TB 54393 (CanLII)