



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

**Citation:** Blair-Denham v Rae, 2023 ONLTB 51763

**Date:** 2023-08-04

**File Number:** LTB-L-061769-22

**In the matter of:** 14 Jennet St., Fort  
Erie ON L2A4B9

**Between:** Dayna Blair-Denham  
William Denham

Landlords

**And**

Mandy Rae

Tenant

Dayna Blair-Denham and William Denham (the 'Landlords') applied for an order to terminate the tenancy and evict Mandy Rae (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 Landlords or another tenant;
- 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; and
- the Tenant has been persistently late in paying the Tenant's rent.

The Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date.

The Landlords also applied for an order requiring the Tenant to pay the Landlords' 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.

The Landlords also applied for an order requiring the Tenant to pay the Landlords' reasonable out-of-pocket costs the Landlords have 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.

This application was heard by videoconference on May 31, 2023.

Only the Landlord, Dayna Blair-Denham ('DB'), and the Landlord's legal representative, Brianna Brady ('BB'), attended the hearing.

As of 12:16 p.m., the Tenant was 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. As a result, the hearing proceeded with only the Landlords' evidence.

**Determinations:**

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy with respect to the N5 notice of termination and the claim for compensation for unpaid utility bills in the application.
2. As also explained below, the Landlords have not proven on a balance of probabilities the grounds for termination of the tenancy in the N8 notice of termination, or the claim for compensation in the application with respect to undue damage to the rental unit or residential complex. Therefore, these claims are dismissed.
3. The Tenant was in possession of the rental unit on the date the application was filed.

*N8 Notice of Termination*

4. On October 11, 2022, the Landlords gave the Tenant an N8 notice of termination with a termination date of December 15, 2022. An N8 notice of termination is given under subsection 58(1)1 of the *Residential Tenancies Act, 2006* (the 'Act'). Subsection 58(2) of the Act requires such a notice of termination to have a termination date that is the last day of the term or of a period of the tenancy.
5. The evidence before me was that the rent is due on the first day of the month, and December 15, 2022 was not the last day of the term or of a period of the tenancy. The N8 notice is therefore invalid and the application as it relates to the N8 notice must be dismissed.

*N5 Notice of Termination*

6. On October 11, 2022, the Landlords gave the Tenant an N5 notice of termination by mail, deemed served on October 16, 2022. The seven day remedy period for this N5 notice ran from October 17, 2022 to October 24, 2022.
7. DB gave evidence for the following allegations made in the N5 notice were proven by the Landlord:
  - a. the Tenant is responsible for all of the utilities (gas, water, and hydro) under the tenancy agreement.

- b. The utilities were all paid directly to Enbridge by the Tenant and a former tenant of the unit, until that former tenant moved out of the rental unit on or about October 19, 2021. After moving out, the former tenant removed his name from the utilities, and the Tenant did not add her name. As a result, Enbridge automatically put the utilities back in the name of the previous account holder, William Denham. Since that time, the Tenant has not paid for any of the utilities.
  - c. Neither the Tenant nor the former tenant advised the Landlords of this change. The address the utility bills were being sent to had been sold by the Landlords, and they did not become aware of the utility bills being sent until March 2022 when the new owner of that property advised DB of the mail being received. At the time, the utility arrears had reached \$1,190.38, to March 24, 2022.
  - d. Landlords paid and continues paying the monthly utility bill, to ensure the utilities were not shut off by Enbridge.
  - e. The Tenant acknowledged to DB that she is responsible for paying for the utilities, and despite DB's requests, the Tenant has not repaid the amounts owed to the Landlord, or taken steps to put the utilities in her own name.
8. The N5 notice also makes allegations about damage to the rental unit, but there was no evidence led about the alleged damage.
  9. Since the N5 notice was served, the Tenant did not put the utilities account in her name, nor did she repay the Landlords any amount that the Landlords paid for the utilities. As of the hearing date, the Landlords have paid a total of \$5,016.19 for utility bills that are the Tenant's responsibility under the tenancy agreement.
  10. The Tenant did not void the N5 notice.
  11. The Landlords did not seek daily compensation from the termination date.
  12. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
  13. There is no last month's rent deposit.

*Compensation for Unpaid Utilities*

14. The Tenant failed to pay gas costs that they were required to pay under the terms of the tenancy agreement.
15. As described above, the Landlords have incurred reasonable out-of-pocket expenses of \$5,016.19 as a result of the Tenant's failure to pay gas costs. These are the costs of the Enbridge gas bills for the rental unit that have been paid by the Landlords for the period from November 2021 to March 2023.

Compensation for Damage

16. The Landlords have not proven that the Tenant, another occupant of the rental unit or a person whom the Tenant permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex. No evidence was led with respect to this claim.

Relief from Eviction

17. The Landlords' evidence was that they cannot afford to pay the Tenant's utility bills. They were not aware of any circumstances that should be considered with respect to whether eviction should be delayed or denied.

18. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

**It is ordered that:**

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before August 15, 2023.
2. If the unit is not vacated on or before August 15, 2023, then starting August 16, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after August 16, 2023.
4. The Tenant shall pay to the Landlords \$5,016.19, which represents the reasonable out-of-pocket expenses the Landlords has incurred or will incur as a result of the unpaid utility costs.
5. The Tenant shall also pay to the Landlords \$186.00 for the cost of filing the application.
6. The total amount the Tenant owes the Landlords is \$5,202.19.
7. If the Tenant does not pay the Landlords the full amount owing on or before August 15, 2023, the Tenant 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**

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Mark Melchers

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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on February 9, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.