



**Order under Section 69 / 88.2 / 135  
Residential Tenancies Act, 2006**

**Citation:** Johnny v Meloche, 2023 ONLTB 46165

**Date:** 2023-07-27

**File Number:** LTB-L-036568-22

LTB-T-025679-23

**In the matter of:** 211 Higginson Street  
Hawkesbury Ontario K6A1G6

**Between:** Hemwatie Johnny Landlord

**And**

Marcel Meloche  
Nicole Desjardins

Tenants

**LTB-L-036568-22**

Hemwatie Johnny (the 'Landlord') applied for an order to terminate the tenancy and evict Marcel Meloche and Nicole Desjardins (the 'Tenants') 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 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.

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

Hemwatie Johnny (the 'Landlord') also applied for an order requiring Marcel Meloche and Nicole Desjardins (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.

Hemwatie Johnny (the 'Landlord') also applied for an order requiring Marcel Meloche and Nicole Desjardins (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.

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Marcel Meloche (the 'Tenant') applied for an order determining that Hemwatie Johnny (the 'Landlord') collected or retained money illegally.

These applications were heard by videoconference on June 15, 2023.

The Landlord's Legal Representative Daniel Moak, the Landlord and the Tenant attended the hearing.

LTB-T-025651-23 was also heard at the same time as these applications for which a separate order will be issued.

### **Determinations:**

1. The Tenant was in possession of the rental unit on the date the application was filed but vacated before hearing. There was some dispute when the Tenants vacated, and no conclusive evidence was provided by either party. Therefore, I relied on the dates provided by the Tenants in their applications that they vacated as of March 1, 2023.
2. As a result, the Landlord's application for eviction is moot. The Landlord requested to proceed on the claims for unpaid utilities and damages.

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3. As explained below, the Landlord proven on a balance of probabilities some of the claimed compensation in the application.

### **Utilities**

4. I find that the Tenant failed to pay water costs that they were required to pay under the terms of the tenancy agreement. An order to compensate the Landlord for these charges shall be made.
5. Section 88.2 of the *Residential Tenancies Act, 2006* ("Act") provides that a Landlord may seek compensation for unpaid utilities:  
88.2 (1) 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; and ...

6. The term “utility” is defined in section 2(1) of the Act as “heat, electricity and water”.
7. The Landlord claimed out-of-pocket expenses of \$709.61 as a result of the Tenants’ failure to pay water costs. The Lease agreement provides that the Tenant is responsible for the payment of water. However, the agreement is silent on the arrangements necessary for the payment of water.
8. The Landlord testified that there was an “oral agreement” in addition to the written lease that specified that the Landlord would advise the Tenant of the water charges and that the Tenant would pay the Landlord those charges.
9. It was uncontested that the reason for this oral agreement is that the municipality does not permit water charges to be invoiced to Tenants. The Landlord could not explain why there were no instructions written into the lease agreement.
10. It was uncontested that the Tenant had paid the water charges as demanded of the Landlord until end 2020. Beginning in 2021 the Tenant stopped paying the water charges.
11. The water invoices were reviewed. The Landlord confirmed that they receive the invoice on a quarterly basis from the municipality and that they deduct the non-water related charges. The Landlord testified that the “sewer charges” were charged to the Tenant, as they believed that any “water out” would be included in the water charges the Tenant would be responsible for.
12. Therefore, the sewer charges shall not be awarded.
13. The Landlord has incurred water charges totalling \$536.65 as a result of the Tenant's failure to pay water costs. The Tenants shall be directed to pay this amount.

### **Damages**

14. The Landlord has 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.
15. Section 89(1) of the Act provides that a Landlord may claim for damages:

89 (1) 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; and

16. The Landlord was seeking \$35,000.00 for damages allegedly caused by the Tenants. Specifically:
  - a. Remove and replace kitchen counters and cabinets
  - b. Remove and replace all damaged window screens
  - c. Replace smoke detectors
  - d. Remove and replace kitchen ceramic tiles
  - e. Remove and replace vinyl flooring
  - f. Remove and replace ceiling fan
  - g. Remove and replace baseboards, quarter round and doors facings
  - h. Prime and repaint entire house
  - i. Cleanup and container for disposal of debris
  - j. Materials and labour
17. The Landlord did not submit into evidence any photographs of the alleged damages. There is no reasonable explanation for the Landlord's failure to provide such evidence as the Landlord had possession of the rental unit at least by March 1, 2023, some 3 months before this hearing. The photographs admitted into evidence were black and white photos of the exterior of the rental unit taken in March 2021. None of these photos show any interior damage.
18. A back and white photo of the damage to the "door facing" does appear to show something. The Landlord's contractor testified that he "replaced" the facing. However, when pressed to explain what he actually did, the contractor explained that to replace the facing, he replaced the entire door frame and door. I was not satisfied that the damage warranted this major replacement, or that the damage was anything other than normal wear and tear.
19. A black and white photo did show a damaged window screen on the ground outside the rental unit. There were no submissions as to the cause of this damage. Since this photograph was taken in 2021, I did not give it any weight. The Landlord had the opportunity to take current photos to show damages in 2023 and none were admitted as evidence.
20. In the absence of any interior photographs to show what the actual damages were to the rental unit; I am unable to determine if the damages claimed were not normal wear and tear. The Tenants had been renting since November 1, 2018, and there was no evidence regarding the condition of the unit before the Tenants occupied the unit. It is likely that some minor repairs or complete repainting may be necessary as part of a Landlord's normal preparations on turnover to prepare the unit for the next tenants. Therefore, the

burden is with the Landlord to demonstrate that any damage is beyond normal wear and tear.

21. It is not enough to state there are damages, the Landlord must also show that these damages were the result of wilful and negligent actions of the Tenants, beyond normal wear and tear. The Landlord did not make any submissions to show that any damages were caused by wilful and negligent actions of the Tenants or a guest of the Tenants.
22. The Tenants denied causing the damages, stating that some was pre-existing when they moved in. They also stated that they had verbally reported the damage to the property manger.
23. On a balance of probabilities, for the reasons noted above, the Landlord has 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.
24. The Landlord incurred costs of \$201.00 for filing the application. The Landlord had mixed success at the hearing in that they were not successful for a substantial portion of the relief requested in the application. Therefore, in accordance with Guideline 3, Costs, and in all the circumstances I have determined it would not be fair to award costs for the Landlord's application.

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25. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must repay the Tenant the rent deposit and interest owing.
26. It was uncontested that the Landlord had collected a rent deposit on November 1, 2018 in the amount of \$1,100.00.
27. In accordance with subsection 106(10) of the Act the last month's rent deposit shall be applied to the rent for the last month of the tenancy. In this instance the last month of the tenancy would be the period ending February 28, 2023.
28. It was uncontested that ODSP pays the Landlord on behalf of the Tenants the lawful rent. Rent for February had been paid.
29. In accordance with subsection 106(6) of the Act a landlord must pay interest to the tenant annually on the amount of the rent deposit at a rate equal to the guideline determined under section 120 that is in effect at the time payment becomes due.
30. It was uncontested that the Landlord did not return the rent deposit when the Tenants vacated, did not apply the rent deposit to the February 2022 rent and did not pay any interest on the rent deposit. This is prohibited by the *Residential Tenancies Act, 2006* (the

'Act').

31. The Landlord submitted that they were entitled to retain the deposit because the Tenants did not provide 60 days notice. However, section 88 of the Act does not apply in the circumstances of this tenancy:

88 (1) If a tenant abandons or vacates a rental unit without giving notice of termination in accordance with this Act and no agreement to terminate has been made or **the landlord has not given notice to terminate the tenancy**, a determination of the amount of arrears of rent owing by the tenant shall be made in accordance with the following rules: ... (emphasis added)

32. The Landlord had served an N5 notice of termination on the Tenants with deemed service effective on January 17, 2022. The termination date in the N5 notice was February 8, 2022. It was the Landlord's N5 notice which caused this tenancy to be terminated and resulted in the Tenants vacating the rental unit. For the purposes of this application, the Tenants are considered to be overholding tenants after the termination date.
33. The Landlord collected a rent deposit of \$1,100.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$65.10 is owing to the Tenant for the period from November 1, 2018, to March 1, 2023.
34. The Tenant's incurred an application filing fee of \$48.00 for the cost of filing this application. The Tenants were completely successful and therefore they are entitled to be reimbursed for the costs of filing this application.
35. The amount owing to the Tenants shall be offset with amounts owing to the Landlord as follows:
- The Tenants owe the Landlord \$536.65 for unpaid utilities.
  - The Landlord owes the Tenant \$1,213.10. This consists of:
    - a) Rent deposit of \$1,100.00.
    - b) Interest on the rent deposit of \$65.10.
    - c) Application fee of \$40.00.
  - Therefore, Landlord shall pay to the Tenant the difference of \$676.45 (\$1,213.10 – 536.65).

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant's provided vacant possession to the Landlord as of March 1, 2023.
2. The Landlord shall pay to the Tenant \$676.45.

3. If the Landlord does not pay the Tenant the full amount owing on or before August 7, 2023, the Landlord will start to owe interest. This will be simple interest calculated from August 8, 2023, at 6.00% annually on the balance outstanding.

**July 27, 2023**

**Date Issued**

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Robert Patchett

Vice Chair, 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.