



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

**Citation:** Din v Porath, 2023 ONLTB 49441

**Date:** 2023-07-14

**File Number:** LTB-L-033699-22

**In the matter of:** 164 BONNECHERE STREET E.  
EGANVILLE ON K0J1T0

**Between:** Hla Din Landlord

**And**

Ashley Porath and Greg Schofield Tenants

Hla Din (the 'Landlord') applied for an order to terminate the tenancy and evict Ashley Porath and Greg Schofield (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

AND

Hla Din (the 'Landlord') applied for an order to terminate the tenancy and evict Ashley Porath and Greg Schofield (the 'Tenants') because:

- 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 Tenants remained in the unit after the termination date.

Hla Din (the 'Landlord') also applied for an order requiring Ashley Porath and Greg Schofield (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.

This application was heard by videoconference on May 3, 2023.

The Landlord the Tenant Ashley Porath attended the hearing.

**Determinations:**

1. The Landlord filed two applications, the application for non-payment of rent (L1) and the application for eviction or collection of money (L2), stamped as received by the Board on May 18, 2022.
2. The Tenant submitted that they vacated the rental unit on March 9, 2022. The Landlord submitted that they vacated on April 5, 2022. While I make no findings of actual date of

termination for purposes of calculating any alleged arrears of rent or claims for unpaid utilities, I rely on either of these dates to make the determination that the Landlord filed their applications on May 18, 2022, a date which is after the aforementioned dates.

3. In deciding the Tenants liability regarding the outstanding arrears, I am guided by the principles contained in subsection 134(1.1) of the Residential Tenancies Act (2006) which says:

- 1.1 No landlord shall, directly or indirectly, with respect to any rental unit, collect or require or attempt to collect or require from a former tenant of the rental unit any amount of money purporting to be rent in respect of,
- (a) any period after the tenancy has terminated and the tenant has vacated the rental unit; or
  - (b) any period after the tenant's interest in the tenancy has terminated and the tenant has vacated the rental unit.

4. I have also considered Guideline 11 of the Board's Interpretation Guidelines. I find that Guideline 11 applies to the facts before me and, although it is not binding, I see no reason to depart from it in this instance. Guideline 11 states:

- The tenant must be in possession of the rental unit on the date the landlord files the L1 Application.
- **If the tenant has moved out of the rental unit but still owes rent arrears, the landlord cannot file an L1 Application but may be able to claim rent arrears by filing an Application to Collect Rent the Former Tenant Owes (L10 Application) instead.** [Emphasis added]

### L2 Application

6. Guideline 11 also references the Landlord's other claims as contained in her L2 application for unpaid utilities where it states:

- "Utilities" are defined in section 2(1) of the RTA as heat, electricity and water. Landlords and tenants may agree at the beginning of the tenancy on different methods of dealing with utility costs for the rental unit. In most circumstances where the tenant is responsible for paying the utilities, unpaid utility costs are not considered to be "rent arrears" and therefore cannot be claimed in an N4 notice of termination or an L1 or L9 Application. However, the **landlord may be able to claim expenses they incurred because the tenant did not pay utility costs using a L2 Application, or a L10 Application if the tenant has already vacated the rental unit.**

7. The Tenants moved out on April 5, 2022 or March 9, 2022, as yet to be determined by the Board. The Tenants were not in possession when the Landlord filed their applications and

the Board does not have the jurisdiction to hear the applications. As the Board lacks the jurisdiction to hear the Landlord's applications, they must be dismissed.

8. While the Board did not have jurisdiction to hear the L1 and L2 applications, the Landlord has already filed a L10 Application to Collect Money a Former Tenant Owes, Board file LTB-L-011901-23 for which a merits hearing is to be scheduled.

**It is ordered that:**

1. The Landlord's applications are dismissed.

**July 14, 2023**

**Date Issued**

15 Grosvenor St, Ground Floor  
Toronto ON M7A 2G6

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Alicia Johnson

Member, Landlord and Tenant Board

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.