



**Order under Sections 87, 88.2 and 89
Residential Tenancies Act, 2006**

Citation: Beitinger v McLaughlin, 2023 ONLTB 36703

Date: 2023-05-29 **File**

Number: LTB-L-030021-22

In the matter of: 5 Coverdale Ave
Town of Cobourg Ontario K9A4H2

Between: Gerd Beitinger Landlord

AND

Steven McLaughlin Tenant

Gerd Beitinger (the 'Landlord') applied for an order requiring Steven McLaughlin (the 'Former Tenant') to pay the rent and daily compensation that the Former Tenant owes.

The Landlord also applied for an order requiring the Former Tenant to pay the Landlord's reasonable out-of-pocket costs that are the result of the Former Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

The Landlord also applied for an order requiring the Former Tenant to pay the Landlord's reasonable out-of-pocket costs that the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Former Tenant, another occupant of the rental unit or someone the Former Tenant permitted in the residential complex.

This application was heard by videoconference on March 2, 2023.

The Landlord's representative B DiLisi attended the hearing. The Landlord was accompanied by L Beitinger and A Jansen as support persons. The Landlord's property manager K Jansen attended. The Former Tenant's representative C Francey and the Former Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the allegations contained in the application. Therefore, the Former Tenant must pay the Landlord \$1,636.71 by June 11, 2023.

2. I am satisfied that the Landlord served the Former Tenant with the application and Notice of Hearing in accordance with subsection 191(1.0.1) of the *Residential Tenancies Act, 2006* (the "Act") and Rules 3.3 and 5.8 of the LTB's Rules of Procedure. These documents were served by handing the notice to the Former Tenant at 128 County Rd 22, Baltimore, Ontario.
3. The Former Tenant vacated the rental unit on November 30, 2021.
4. The application was filed within one year after the Former Tenant ceased to be in possession of the rental unit.

Rent and daily compensation owing

5. The lawful rent was \$868.70. It was due on the 15th day of each month.
6. Based on the monthly rent, the daily rent/compensation is \$28.56. This amount is calculated as follows: \$868.70 x 12 months, divided by 365 days.
7. The Former Tenant has not made any payments since the application was filed.
8. The tenancy ended on November 30, 2021 as a result of the Former Tenant moving out in accordance with an LTB order (TEL-16482-21) to terminate the tenancy. Therefore, the Former Tenant's obligation to pay rent ended on that date.
9. On the application, the Landlord claimed that the rent arrears and daily compensation owing to November 30, 2021 are \$563.06.
10. The Former Tenant objected to the amount of rent arrears. He testified that he believed that the last 15 days of November would form part of the compensation that he was entitled to receive under the consent order, TEL-16482-21.
11. On August 11, 2021, the following was ordered on consent in TEL-16482-21:

"5. The Landlord shall pay the Tenant \$1,631.30...on or before the Tenant providing the Landlord with vacant possession of the unit."

"6. If the Tenant fails to pay the rent in full and on time from now until November 30, 2021, the parties agree that the Landlord may deduct the rent outstanding from the \$1,631.30 described in paragraph 5."

12. The Landlord's evidence shows that the Former Tenant did not pay rent for the periods September 15th to October 14th; October 15th to November 14th; and November 15th to November 30th, 2021; representing arrears of \$2,194.36 (2 months of rent \$868.70/month, plus 16 days of rent \$28.56/day). As required by

the consent order, the Landlord must deduct \$1,631.30 from the arrears, thus leaving a balance owing by the Former Tenant of \$563.06.

13. I find that the Former Tenant did not pay the arrears that he owed, and the Landlord is entitled to reimbursement for rent arrears of \$563.06.
14. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.

Compensation for unpaid utility costs

15. I find that although the Former Tenant failed to pay heating oil costs that they were required to pay under the terms of the tenancy agreement, the Landlord did not actually incur any out-of-pocket expenses. Therefore, for the reasons that follow, the Landlord's request for repayment of this cost will be denied.
16. The Landlord testified that it was agreed that the tenancy would commence with a full tank of heating oil approximately 900 litres, and when the tenancy ended the parties agreed that the tank could be filled at the Former Tenant's expense or the Former Tenant would compensate the Landlord for the amount of heating oil used.
17. On November 1, 2021, the oil furnace was replaced with a natural gas furnace and the heating oil tank was removed from the rental unit. The Landlord submitted evidence that there was 198 litres of heating oil in the tank when it was removed and that the Landlord's contractor disposed of the remaining oil.
18. Although the Landlord is claiming costs for the amount of heating oil that was used by the Former Tenant during his tenancy, this claim is made pursuant to section 88.2 (4), which states:

The costs...are reasonable out-of-pocket expenses that the landlord has incurred or will incur as a result of a tenant's or former tenant's failure to pay utility costs that they were required to pay under the terms of the tenancy agreement.

19. I do not find that the Landlord actually incurred any out-of-pocket expenses due to the Former Tenant's failure to refill the heating oil tank before it was disposed of by the Landlord. Therefore, the Landlord's claim for unpaid utility costs will be denied.

Compensation for damage

20. I find that the Former Tenant, another occupant of the rental unit or a person whom the Former Tenant permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex.
21. The Landlord testified that after the Former Tenant vacated the unit, it was discovered that the Former Tenant had removed light fixtures, removed most of the light bulbs, left electrical wires exposed and removed a medicine cabinet from the wall.

22. The Former Tenant agreed that he had removed many light fixtures and that he didn't have time to replace them as it was already late at night on November 30, 2021.
23. The Landlord provided a paid invoice from a contractor that detailed the repairs and replacements made in December 2021 and a receipt from Home Depot with related purchases of the replacement fixtures.
24. The Landlord has incurred reasonable costs of \$872.65 to repair the damage and replace property that was damaged and cannot reasonably be repaired.

Rent Deposit

25. There is no last month's rent deposit.

It is ordered that:

1. The Former Tenant shall pay to the Landlord \$764.06 which represents rent and compensation owing up to November 30, 2021 and the cost of filing the application.
2. The Former Tenant shall also pay to the Landlord \$872.65 which represents the reasonable costs the Landlord incurred as a result of the damage.
3. If the Tenant does not pay the Landlord the full amount owing on or before June 11, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 12, 2023 at 6.00% annually on the balance outstanding.

May 29, 2023

Date Issued

Heather Kenny

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 1-888-3323234.