



**Order under Sections 69 & 88.2
Residential Tenancies Act, 2006**

Citation: Cheng v Wood, 2023 ONLTB 35630

Date: 2023-05-10

File Number: LTB-L-001375-22

In the matter of: Main Floor Apt, 153 Mavety Street Toronto
Ontario M6P2L8

Between: Tara Cheng Landlord

And

Tara Wood Tenant

Tara Cheng (the 'Landlord') applied for an order to terminate the tenancy and evict Tara Wood (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 Landlord or another tenant. Also, 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 daily compensation for each day the Tenant remains in the rental unit after the date in the notice of termination.

This application was heard by videoconference on January 10, 2023.

Only the Landlord and the Landlord's legal representative, Barrington Lue Sang, attended the hearing.

As of 9:47am, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy and therefore the claim for termination of the tenancy is denied.
2. The Landlord's claim for unpaid utility costs is granted.
3. On September 14, 2021 the Landlord served the Tenant with a First N5 Notice of Termination. The termination date in the notice is October 8, 2021.

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4. The notice claims that the Tenant has substantially interfered with the Landlord or another tenant in the residential complex by smoking in the unit, harassing the Landlords repair man and by not paying for utilities.
5. The notice further alleges that the Tenant has caused damage to the rental unit by flushing a sponge down the toilet, causing a leak and by damaging the washing machine.
6. The Landlord confirmed at the hearing that the Tenant had voided the N5 notice by correcting their behaviour within the 7-day remedy period other than the issue of smoking and unpaid utilities.
7. For the purpose of completeness, the 7-day remedy period for the N5 Notice is from September 15, 2021 to September 22, 2021.
8. The Landlord testified at the hearing that she received a message from Contractor Leo as follows:

September 10th & September 15th: "Leo was in the basement for separate maintenance issues. Leo confirmed strong marijuana smells in the basement coming from the ceiling vents and main floor stairs while working in the basement suite each day. He was there for 3-5 hours each time and therefore he strongly recalls the incidents."
9. I did not find this evidence particularly compelling since it appeared to be a message from someone reporting something they heard from Contractor Leo. Therefore, making this evidence double hearsay. Additionally, the double hearsay evidence did not indicate that they witnessed the Tenant smoking in the rental unit.
10. Additionally, there were only 2 incidents noted in the N5 Notice which were on November 24, 2020 and December 4, 2020. There were no recent incidents after December 4, 2020 even though the Landlord did not serve the Tenant the N5 Notice until September 14, 2021. I am therefore not satisfied that the Tenants smoking rises to the level of "substantial" interference required for termination of the tenancy.
11. With respect to the issue about unpaid utilities, the Landlord did not provide information specific in the N5 Notice regarding the alleged dates that the Tenant failed to pay the utilities. Only that they were somewhere between June 1, 2020 and July 1, 2021 and the charges per month for each year. There are no specific utilities listed or the amounts of the

bills. I do not find that this portion of the notice provides sufficient details as required under subsection 43(2) of the *Residential Tenancies Act, 2006* (the 'Act') and does not meet the notice requirements under *Ball v. Metro Capital Property, [2002] O.J. No. 5931*.

12. In *Ball*, the Court considered the meaning of what is now subsection 43(2) of the Act, which requires that a notice of termination given by a landlord "set out the reasons and details respecting the termination". The Court concluded the notice in that case lacked sufficient details because the purpose of the notice is to ensure the tenant knows the case to be met and is thus in a position to decide whether or not to dispute the allegations at a hearing. The Court also concluded that the kinds of particulars that should be contained in a notice regarding a tenant's behaviour should include "dates and times of the alleged offensive conduct together with a detailed description of the alleged conduct engaged in by the tenant". The Landlords' first N5 in this case fails to meet that standard.

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13. Since the Landlord's did not provide sufficient details regarding dates and times in the first N5 notice, I find that it is invalid for failing to comply with *Ball* and s.43(2) of the Act.
14. The Landlords claim for termination of the Tenancy for substantial interference and unpaid utilities is therefore denied.
15. As part of the Landlord's application the Landlord claimed monetary compensation for their out-of-pocket expenses incurred for unpaid utilities. The Landlord testified that utilities would be balanced out a year end and split between the units. That the Tenant is responsible for 29.5% of the Enbridge and Hydro and 16.7% of the water based on the number of people in their household.
16. I am satisfied that the lease agreement requires the Tenant to pay utilities and that the Tenant has not paid the Landlord their portion of the following utilities:
 - a) Enbridge Gas - \$210.97 from June of 2020 to September of 2021.
 - b) Hydro - \$319.11 from June of 2020 to September of 2021
 - c) Water/Wastewater - \$286.33 from June 2020 to September of 2021.
17. The Tenant has not paid any of the utilities to the Landlord. The Tenant owes the Landlord \$816.41 for unpaid utilities.
18. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The Landlord's application for termination of the tenancy is denied.
2. The Tenant shall pay to the Landlord \$816.41 for unpaid utilities up to September of 2021.
3. The Tenant shall also pay to the Landlord \$201.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlord the full amount outstanding by May 31, 2023, then the Tenant will start to owe interest. This will be simple calculated from June 1, 2023 at 6.00% annually on the balance outstanding.

May 10, 2023

Date Issued

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

Terri van Huisstede
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.