



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

Citation: GESTION RICHARD-JOLY INC. v O'Mahony, 2023 ONLTB 35502

Date: 2023-05-05

File Number: LTB-L-011009-22

In the matter of: 58 SADDLESMITH CIR KANATA
ON K2M2Y9

Between: GESTION RICHARD-JOLY INC. Landlord

And

Aonghus O'Mahony Tenant

GESTION RICHARD-JOLY INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Aonghus O'Mahony (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.

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

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

The Landlord, Martin Joly, the Landlord's legal representative, Grace George, the Tenant, and the Tenants spouse, Barbara Sandell, attended the hearing.

Determinations:

1. The Tenant is still in possession of the rental unit as of the hearing date.

2. At the hearing, the Landlord requested to amend their application to not seek termination of the tenancy based on an N5 Notice that was served on the Tenant. I see no reason to deny the Landlords request.
3. The Tenant consented to amend the application so that the issue about the unpaid utilities could finally be resolved by the Board.

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4. The utility bills in dispute revolve around a Hot Water Heater rental from Reliance and the bills date back for the period of February 8, 2016 to January 26, 2020. The amount outstanding for these bills is agreed as \$1,783.97.
5. The parties were before the Board on June 9, 2021 regarding the same issue. An order was issued on June 22, 2022 under file EAL-92264-20 by Member Rossignol which dismissed the application on the basis that that the parties had entered into an agreement that the Tenant paid an agent of the Landlord \$583.44 and that the amount satisfied the unpaid utilities up to the end of 2019.
6. This decision was overturned on review by Member Cho in their order dated October 19, 2021 under order EAL-92264-20-RV which dismissed the Landlords application for eviction, but ruled that there was an error on Member Rossignol's order in the determination that the amount of \$583.44 resolved the unpaid utility account up to 2019.
7. Now the parties are back before the Board to get a final determination of whether or not the Tenant should be responsible for the amount claimed by the Landlord for the Hot Water Heater rental which the parties clarified is for unpaid charges up to January 26, 2020.
8. The Tenants position still remains that they satisfied the outstanding utility arrears when they paid the Landlord's agent, Alex Clark (AC) on April 28, 2020 the amount of \$583.44 in full satisfaction of the outstanding utility arrears at that time. This amount also included the cost of an application filing fee at the time of \$175.00.
9. It is the Landlords position that the Tenants did not satisfy the arrears because there remained a balance of \$1,783.97 still owing as of the date of the Tenants payment and that AC did not have the authority to waive the outstanding utility arrears and that they were acting without authorization from the Landlord to waive the outstanding amount.
10. The parties do not dispute that the Tenant is responsible for the charges for the Hot Water Rental. This is a requirement under the terms of the tenancy agreement that the Tenant is obligated to pay.
11. In the Landlords agents email dated March 4, 2020 to the Tenant, AC indicates that the LTB will not address arrears for the outstanding bills that are over a year old. However, the email fails to address the authority for not claiming the old utility arrears.

12. Section 3 of the *Residential Tenancies Act, 2006* (the 'Act') states that this Act applies with respect to rental units in residential complexes, despite any other Act and despite any agreement or waiver to the contrary.
13. Section 88.2 of the Act states that a Landlord may apply to the Board for an order requiring a tenant or former tenant to pay 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.
14. The only limitation period under this new section that came into force on September 1, 2021, is the one year limitation for the Landlord to make an application to the Board within one year of the Former Tenant vacating the rental unit. There is no limit on how far back in time the Landlord can claim for unpaid utilities.

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15. While I understand the Tenant's position that they felt as though the account was settled up to March 4, 2020 upon AC telling them to pay the outstanding amount and that this would resolve the issue, I am unable to determine that there was no longer a valid debt to be paid by the Tenant. This agreement was not based on the full amount of utility arrears that were outstanding at that time.
16. Therefore, I find that the Tenant is required to pay the Landlord the balance of the unpaid Hot Water Heater rental charges for the period dating back to February 8, 2016 in the amount of \$1,783.97.
17. Although the Landlord is successful on their L2 application, based on the Tenants honesty and consenting to the amendment of the application to include the unpaid utility charges, I do not find that the Landlord is entitled to the \$186.00 application filing fee cost on this application.

It is ordered that:

1. The Tenant shall pay to the Landlord \$1,783.97 for unpaid utilities for the Hot Water Heater Rental for the period ending January 26, 2020.
2. If the Tenant does not pay the Landlord the full amount owing on or before May 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 1, 2023 at 6.00% annually on the balance outstanding.

May 5, 2023
Date Issued

Terri van Huisstede
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.