



**Order under Section 69 / 88.1 / 88.2  
Residential Tenancies Act, 2006**

**Citation:** Qamar v Samad, 2023 ONLTB 29886

**Date:** 2023-04-06

**File Number:** LTB-L-037947-22

**In the matter of:** BASEMENT, 80 DARLINGSIDE DR SCARBOROUGH  
ON M1E3P3

**Between:** Sayeda Tasnim Qamar Landlord

**And**

Abdul Aziz Samad Tenant

Sayeda Tasnim Qamar (the 'Landlord') applied for an order to terminate the tenancy and evict Abdul Aziz Samad (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 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.

The Landlord also applied for an order requiring the Tenant 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.

The Landlord also applied for an order requiring the Tenant 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.

This application was heard by videoconference on January 4, 2023. The Landlord, the Landlord's legal representative S. McAllister, the Tenant, and the Tenant's legal representative, N. Ahmed attended the hearing.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities some of the grounds and some of the claims for compensation in the application. Therefore, the application is granted. However, the tenancy will continue- subject to the conditions set out in this order below.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The rental unit is a basement apartment
4. On May 20, 2022, the Landlord gave the Tenant an N5 notice of termination by mail with a termination date of June 15, 2022. Accounting for the 5 days service requirement, the notice was deemed served May 25, 2022.
5. The notice of termination contains in part, the following allegations:
  - The Tenant failed to pay utility costs in accordance with the tenancy agreement
  - On a series of dates and times between the period of October 13, 2021, and April 9, 2022 the Landlord noticed that the Tenant was smoking inside the rental unit, which was affecting the Landlord's well-being and ability to breathe.
  - On December 5, 2021, the Landlord noticed that the basement was flooded, and the carpet absorbed all the water. The Landlord reasonably believes that this was caused by the Tenant's negligence as the Tenant is the only resident of the rental unit.
  - The Landlord requests that the Tenant compensate them \$5,500.00 which is how much they estimate it will cost to repair/replace the damaged property caused by the Tenant.
  - On December 17, 2021, the Landlord noted that the door had a crack preventing it from closing. The Landlord believes that the Tenant caused this crack, as they are the only resident of the rental unit.
6. The Tenant did not stop the following conduct or activity and did not correct the omission within seven days after receiving the N5 notice of termination:
  - The Tenant did not pay the outstanding utility costs,

- The Tenant did not stop smoking in the rental unit.
  - The Tenant did not repair the damages or pay \$5,500.00 for the damages the Landlord alleges they caused.
7. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).
  8. The Landlord requested daily compensation for the use and occupation of the rental period after the termination date in the notice of termination. However, since the tenancy is not being terminated, the Landlord is not entitled to such award.
  9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
  10. There is no last month's rent deposit.

Unpaid Utilities:

11. The Tenant failed to pay water, electricity, and gas costs that they were required to pay under the terms of the tenancy agreement.
12. The Landlord relied on the tenancy agreement outlining that the Tenant is responsible for 40% of the water, electricity, and gas costs due on the 1<sup>st</sup> of each month. The tenancy agreement also outlines that the Landlord will provide the amount payable for utilities to the Tenant.
13. The Tenant does not deny that they are responsible for utilities, however they say that they stopped paying the utilities because they were not provided the bills by the Landlord and claimed they were having other issues with the Landlord.
14. The Landlord stated that they mostly communicate with the Tenant via text message and inform the Tenant the total amount outstanding as well as the Tenant's 40% responsibility. Text messages were presented at the hearing showing that the Landlord and Tenant do discuss the utilities. There were also messages showing that the Tenant requests a copy of the full bill occasionally if there is a discrepancy. However, despite being given the full bill by the Landlord- the Tenant failed to remit payment to the Landlord.
15. The Landlord, in their application seeks to be compensated \$794.18 for the outstanding utilities. However, did not supply a copy of the bills as evidence. Instead, they chose to rely on a self-made spreadsheet. The Landlord has led insufficient evidence to establish the quantum of unpaid utilities owed by the Tenant. If the Landlord wished to be compensated for the outstanding bills, it would only be reasonable to expect that they come to the

hearing ready to provide such documents. Therefore, I decline to order a monetary amount to be paid by the Tenant.

16. I find the Tenant's failure to pay promptly, once the Landlord has supplied them a copy of the bill does substantially interfere with a lawful right, privilege or interest of the Landlord.
17. The Tenant is responsible for some of the utilities. There is also no dispute that the Tenant has been delinquent in remitting payment to the Landlord. As such, I find that an order requiring the Tenant to be at a 0 balance and maintain the utilities in good standing with the Landlord going forward to be reasonable in the circumstances.

### Smoking in the Rental Unit

18. The Landlord alleges that the Tenant is substantially interfering with their reasonable enjoyment of the rental unit because the Tenant continues to smoke inside. The residential complex is a bungalow separated into two units, the Tenant resides in the basement and the Landlord lives on the main floor.
19. The residential complex is equipped with a single forced air heating and cooling system, and the Landlord says that as a result- the smell of smoke and/or second-hand smoke is transferred from the Tenant's unit to theirs. The Landlord says that they have asthma and sensitive lungs and this smell and/or second-hand smoke exacerbates their medical condition.
20. At the hearing, the Landlord relied on photographs from past inspections which clearly show remanence of items that is commonly indicative of someone who smokes cigarettes (ashes, ashtray with cigarettes in them, etc). The Landlord has not ever seen the Tenant smoke in the rental unit, but assumes they do because of what was found upon inspection and that they smell cigarette smoke at all times of the day.
21. The Tenant does not dispute that they smoke, however stated that they always go outside when smoking. When questioned about the photos that were relied on, the Tenant submitted that he believed the coke bottle showing left over cigarettes and ashes inside was planted, and that he did not know about the photo prior to the hearing.
22. I accept the Landlord's evidence that they have a medical condition that makes them particularly sensitive to second hand and/or the smell of cigarette smoke. I also accept the Landlord's evidence that the photos are quite compelling to determine that the Tenant may smoke inside the rental unit. However, the Landlord is acting only on an assumption, the Landlord has never actually witnessed the Tenant smoking inside, and I have the Tenant before me submitting that he does not.
23. I find that the Landlord has led sufficient evidence to establish that it is more likely than not that on occasion, the Tenant may smoke in the rental unit- but I do not find that the

Landlord is entitled to an eviction order. I say this because the Landlord's interests can adequately be addressed by a conditional order. I also note that even if it was proven that the Tenant was in fact smoking in the rental, I would still arrive at the same conclusion.

Damages to the Rental Unit

24. It is undisputed between the parties that sometime between December 3, 2021 and December 5, 2021, there was a flood in the rental unit. The source of the flood was the hot water heater in the rental unit, the cause is unknown by the parties.
25. After hearing the submissions of the Landlord, the core issue with respect to the damages was not the fact that there was a flood, rather that the Tenant did not notify them of the issue promptly. The Landlord alleges that this caused additional damage to the rental unit that would otherwise not been caused, had the Tenant acted promptly. Therefore, the Tenant should be responsible for the damages caused by the flood.
26. The Tenant testified that they notified the Landlord prior to December 3, 2021 and that the request went ignored by the Landlord.
27. At the hearing, the Tenant submitted a 64-page document of text messages between them and the Landlord. On page 22, there is a reference to a text message sent on November 23, 2021, by the Tenant's son, with pictures and videos of a leak and water in the rental unit. The Tenant follows up with the Landlord on December 5, 2021 informing him of the leak and that it was urgent.
28. At page 41, there is text message sent on December 13, 2021, by the Tenant to the Landlord stating that the carpet was still wet and had not been cleaned and that if it was not remedied by December 15 (no year), then the Tenant would hire professional guys to get it clean and dry.
29. To be successful on a claim such as this, the Landlord must establish that the Tenant knew or ought to have known about the leak and knowingly withheld that information. In consideration of the evidence, what I see is that the Tenant notified the Landlord on November 23, 2021, and also followed up with the Landlord on December 5, 2021, when the leak got worse and that the problem persisted until at least December 15, most likely in 2021. It is equally as plausible that the Landlord contributed to the damages by failing to act prudently in addressing the issue.
30. This is the Landlord's application; they bear the burden of establishing that it is more likely than not that their version of events is true. I find that the Landlord has led insufficient evidence to establish that the Tenant acted negligently in notifying them about the leak. This portion of their application is dismissed.

31. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. The Landlord shall serve on the Tenant, a copy of all outstanding utility bills that they are responsible for under the tenancy agreement, no later than April 14, 2023.
3. The Tenant shall pay to the Landlord the total balance of the outstanding utilities by April 30, 2023.
4. The Tenant shall also pay new utilities costs as they become due and owing in full and on time as outlined in the tenancy agreement. Provided that the Landlord serves them a copy of the requisite bill.
5. The Tenant shall ensure that they continue to smoke outside the rental unit and maintain a safe distance from egresses and open windows.
6. If the Tenant fails to comply with the conditions set out in paragraph 3, 4, and 5 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
7. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
8. If the Tenant does not pay the Landlord the full amount owing on or before April 17, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 18, 2023 at 6.00% annually on the balance outstanding.

**April 6, 2023**

**Date Issued**

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Curtis Begg

Member, Landlord and Tenant Board

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

