



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

**Citation:** Noel v Mckenzie, 2023 ONLTB 26273

**Date:** 2023-03-22

**File Number:** LTB-L-022676-22

**In the matter of:** A, 39 WHEELER AVE  
GUELPH ON N1E5M8

**Between:** Ivan Noel Landlord

**And**

Kloe Mckenzie      Tenants Lianne Mckenzie

Ivan Noel (the 'Landlord') applied for an order to terminate the tenancy and evict Kloe Mckenzie and Lianne Mckenzie (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another Tenants;
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises; and
- The Tenants failed to pay rent that became due.

The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

Ivan Noel (the 'Landlord') also applied for an order requiring Kloe Mckenzie and Lianne Mckenzie (the 'Tenants') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenants's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

Ivan Noel (the 'Landlord') also applied for an order requiring Kloe Mckenzie and Lianne Mckenzie (the 'Tenants') 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 Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex.

This application was heard by videoconference on March 9, 2023.

Only the Landlord and the Landlord's Representative, Fiona Douglas attended the hearing. The Tenants were not present or represented at the hearing although properly served with notice of this hearing by the LTB. The Landlord's Representative also presented an email dated March 2, 2023 at 4:36 pm sent to each of the Tenants that contained the Notice of Hearing and the Landlord's disclosure package. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

**Preliminary Issue:**

The Landlord's request to amend the application submitted on March 3, 2023 to include additional utilities costs that arose after the application as filed was denied. I find it would be procedurally unfair to proceed without the Tenants submissions on the matter. The Landlord did not make the request as soon as the need for it was known and waited to amend the application eleven months after the first application was filed on April 21, 2022 and over five after the Tenants vacated. There's significant prejudice to the Tenants as a result of the amendment given the amount for utility costs requested is significantly great.

**Determinations:**

**N4 Notice:**

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Tenant vacated the rental unit on October 10, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit.
4. The lawful rent is \$1950.00. It was due on the 1st day of each month.
5. The Tenant has paid \$6,600.00 to the Landlord since the application was filed.
6. The rent arrears owing to October 10, 2022 are \$10,941.09.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

8. The Landlord collected a rent deposit of \$1,950.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
9. Interest on the rent deposit, in the amount of \$26.16 is owing to the Tenant for the period from August 29, 2020 to October 10, 2022.

**N5 Notice:**

10. The application for eviction is withdrawn since the tenancy terminated. This portion of the application is dismissed.

**Compensation for unpaid utilities:**

11. The Tenants failed to pay electricity and water costs that they were required to pay under the terms of the tenancy agreement. The Tenants are responsible for 100% of the electricity costs and 75% of the water costs. The hydro and water bills covering the period from August 6, 2021 to March 11, 2022 was supported by invoices from the service provider which were reviewed with great detail at the hearing.
12. The Landlord has incurred reasonable out-of-pocket expenses of \$1,022.22 as a result of the Tenants' failure to pay electricity and/or water costs corroborated by invoices dated September 23, 2021 (\$150.02), October 22, 2021 (135.12), November 22, 2021 (142.24), December 22, 2021 (\$150.62), January 24, 2021 (\$156.82), February 23, 2022 (\$138.70), and March 23, 2022 (\$139.70).

**Compensation for damages**

13. The Tenants, another occupant of the rental unit or a person whom the Tenants permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex by flushing tampons and baby wipes down the toilet which caused a back up which required emergency repair. The notes on the plumber's invoice suggest the cause of the back up was due to a lot of tampons and baby wipes. The Landlord testified the Tenant admitted that they did not know these items could not be flushed down the toilet.
14. The Landlord has incurred reasonable costs of \$1,141.30 to repair the damage property which was supported by Tiger Plumbing invoice dated June 13, 2021.
15. The Landlord stated the Tenants damaged the lawnmower beyond reasonable repair and is seeking costs of \$449.74. This cost is not contemplated under section 89 of the Act since its not damage to the rental unit or residential complex.
16. The total amount the Tenants owe is \$11,314.45 (\$9,150.93+1,022.22+\$1,141.30).

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated as of October 10, 2022, the date the Tenants moved out of the rental unit
2. The Tenants shall pay to the Landlord \$9,150.93. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
3. The Tenants shall pay to the Landlord \$1,022.22, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs.
4. The Tenants shall pay to the Landlord \$1,141.30, which represents the reasonable costs of repairing the damaged property.
5. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. If the Tenants do not pay the Landlord the full amount owing on or before April 2, 2023, the Tenants will start to owe interest. This will be simple interest calculated from April 3, 2023 at 5.00% annually on the balance outstanding.

**March 22, 2023** \_\_\_\_\_ **Date Issued**

Sandra Macchione

Member, Landlord and Tenants 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.

**Schedule 1  
SUMMARY OF CALCULATIONS**

**A. Amount the Tenant must pay as the tenancy is terminated**

Rent Owing To Move Out Date	\$17,541.09
Less the amount the Tenants paid after the application was filed	-\$6,600.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00

<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,950.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$26.16
<b>Plus utility costs</b>	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$9,150.93</b>