



Tribunals Ontario
Landlord and Tenant Board

Tribunaux décisionnels Ontario
Commission de la location immobilière

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

Citation: Gao v Phillips, 2023 ONLTB 25673

2023 ONLTB 25673 (CanLII)

In the matter of: 219 TOWNSEND DR
BRESLAU ON N0B1M0

Between: Jingfeng Hu Landlords
Lingyun Gao

And

Kenneth Phillips Tenants
Timothy Phillips

Jingfeng Hu, and Lingyun Gao (the 'Landlords') applied for an order to terminate the tenancy and evict Kenneth Phillips and Timothy Phillips (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe (L1 application).

The Landlords applied for an order to terminate the tenancy and evict the Tenants because the Tenants have been persistently late in paying the Tenants' rent (L2 application).

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

This application was heard by videoconference on January 12, 2023.

Only the Landlord, Lingyun Gao, and the Landlords' legal representative, Ling Xi attended the hearing.

As of 11:01 a.m. the Tenants were not present or represented at the hearing.

Determinations:

L1 application based on N4 Notice of Termination – Arrears of Rent

1. As I stated at the hearing, the Landlords' ledger indicates the Tenants had a credit balance as of April 28, 2022 in the amount of \$2,850.00. What this means is that the Tenants were no longer in arrears of rent and the credit would have also covered the application filing fee.
2. The Landlords' application for an order terminating the tenancy and evicting the Tenants based upon arrears of rent is discontinued to April 30, 2022.

File Number: LTB-L-008078-22

L2 application based on N8 Notice of Termination – Persistent Late Payment of Rent

3. The Tenants are in possession of the rental unit.
4. This is a month to month tenancy and the rent is due on the 1st day of each month.
5. The N8 Notice of Termination indicated a termination date of May 1, 2022.
6. Pursuant to subsection 58(1) of the *Residential Tenancies Act*, the ('Act'), a landlord may give a tenant notice of termination of their tenancy if the tenant has persistently failed to pay the rent on the date it becomes due and payable.
7. Pursuant to subsection 58(2) of the Act, the date for determination specified in the notice shall be at least the number of days after the date the notice is given that is set out in section 44 and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term.
8. As I stated at the hearing, the N8 Notice is defective as the termination date was not the last day of the rental period. To be clear, the termination date should have been May 31, 2022, and not May 1, 2022.
9. At the hearing, the Landlord requested the consent of the Board to withdraw their application.
10. In accordance with subsection 200(4) of the *Residential Tenancies Act, 2006* (the 'Act'), I consent to the withdrawal of the application.

Compensation for Unpaid Utilities

11. On the application the Landlords indicated that the Tenants did not pay utilities for the period November 10, 2019 to December 21, 2021. The Landlord claimed the amount of \$7,314.00.
12. The Landlords submitted as evidence a lease agreement that indicates the Tenants were responsible for the utilities (heat, electricity and water).

13. The Landlords indicated that the Tenants did not pay the water charges, and as a result the outstanding amount was transferred to the Landlords' property tax. The Landlords submitted statements to show that the Landlords made payments to the Township of Woolwich that total \$7,314.00.
14. The Landlords also submitted as evidence, a letter dated November 19, 2021 to the Tenants from the Township of Woolwich, wherein the Tenants were notified that their outstanding water account was transferred to the Landlords property tax account; and was paid by the Landlords.
15. Based on the uncontested evidence of the Landlords, I find on a balance of probabilities that the Tenants were responsible to pay the utilities. When the Tenants failed to pay the water charges, the Landlords incurred out of pocket expenses to pay the water charges and penalties that totalled \$7,314.00.

File Number: LTB-L-008078-22

16. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The Landlords' L2 application based on the N8 Notice of Termination is dismissed, as withdrawn.
2. The Tenants shall pay to the Landlords \$7,314.00, which represents the reasonable out-of-pocket expenses the Landlords incurred as a result of the unpaid utility costs.
3. The Tenants shall also pay to the Landlords \$186.00 for the cost of filing the application.
4. If the Tenants do not pay the Landlords the full amount owing on or before March 27, 2023, the Tenants will start to owe interest. This will be simple interest calculated from March 28, 2023 at 5.00% annually on the balance outstanding.

**March 16, 2023 Date
Issued**

Debbie Mosaheb
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.

