



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

**Citation:** Fan v Angel, 2023 ONLTB 22587

**Date:** 2023-03-01

**File Number:** LTB-L-001295-22

**In the matter of:** 225 HOLDEN ST  
KINGSTON ON K7P 0L1

**Between:** Meilan Fan Landlord

**And**

Terry Brett Angel Tenant

Meilan Fan (the 'Landlord') applied for an order to terminate the tenancy and evict Terry Brett Angel (the 'Tenant') because:

- the Tenant has been persistently late in paying the Tenant's rent.

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

Meilan Fan (the 'Landlord') also applied for an order requiring Terry Brett Angel (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.

This application was heard by videoconference on January 23, 2023.

The Landlord and the Tenant attended the hearing.

**Preliminary issue:**

1. At the time of the hearing the Tenant raised a preliminary issue in respect of out-of-pocket expenses the Landlord incurred for gas utility bills that the Landlord is seeking in the application. He alleged that based on the Standard Form of Lease as executed between the parties he was not responsible for the payment of gas because under section 6. Services and Utilities it was checked off that gas as a utility was included in the lawful rent. However, he also acknowledged that in the lower portion of the same lease form there was the written in portion which noted “the Tenants are responsible for set up accounts for utilities, hydro and gas and pay full cost, they are also responsible for the hot water rental cost.”
2. The Landlord submitted that it was always her understanding that the Tenants, there were two at the time the lease was executed, were responsible for the following utilities; hydro, gas and hot water rental and is seeking a repayment for out of pocket expenses that she

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has incurred as a result of the Tenants failure to pay these utility costs under the terms of the rental agreement.

3. The parties were directed to make post hearing submissions in support of their claims, the Tenant by February 6, 2023 and Landlord by February 10, 2023.

**Determinations:**

4. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the Tenancy is terminated effective March 31, 2023.
5. The Tenant was in possession of the rental unit on the date the application was filed.
6. On November 13, 2022, the Landlord gave the Tenant an N8 notice of termination deemed served on November 13 2022. The notice of termination contains the following allegations:
  - The rent due date is the first day of each month according to signed Ontario Standard Lease Agreement.
  - However, in the past 18 months (up to Nov 13<sup>th</sup>, 2022), the rent payment has never been made on time.
    - The half month rent for May 2021 was finally paid on May 3rd, 2022
    - Rent for June 2021 - paid on June 4th, 2021
    - Rent for July 2021 - paid on July 2nd, 2021
    - Rent for Aug 2021 - paid on Aug 6th, 2021 (with 2 payments)
    - Rent for Sept 2021 - paid on Sept 2nd, 2021
    - Rent for Oct 2021 - paid on Oct 2nd, 2021
    - Rent for Nov 2021 - paid on Nov 16th, 2021 (with 4 payments)
    - Rent for Dec 2021 - paid on Dec 15th, 2021 (with 2 payments)
    - Rent for Jan 2022 - paid on Jan 14th, 2022 (with 3 payments)
    - Rent for Feb 2022 - paid on Feb 11th, 2022
    - Rent for Mar 2022 - paid on Mar 4th, 2022 (with 2 payments)
    - Rent for April 2022 was not paid, used the last month deposit
    - Rent for May 2022 - paid on May 27th, 2022 (with 2 payments)
    - Rent for June 2022 - paid on June 2, 2022
    - Rent for July 2022 - paid on July 21, 2022 (with 2 payments)
    - Rent for Aug 2022 - paid on Aug 19, 2022 (with 2 payments)
    - Rent for Sept 2022 - paid on Sept 14, 2022 (with 2 payments)
    - Rent for Oct 2022 - paid on Oct 16, 2022 (with 2 payments)
    - Rent for Nov 2022 - paid \$1000 on Nov 14, 2022
7. The Landlord submitted that she has also served the Tenants a number of N4 notices throughout their tenancy. As of the date of the hearing there was \$4,982.80 outstanding. While the original lease was signed with the Tenant and his then partner Kate, she moved out in May of 2022. Since moving into the rental unit on May 1, 2021 the Tenants have paid the rent persistently late each month, even though addressed with them ongoing.

8. The Tenant does not deny the arrears of rent and the late payments as submitted by the Landlord. He is a pool installer working seasonally and the while he is expecting to receive \$36,000.00 that is owing to him under contract he has not been paid which has resulted in his own financial issues.
9. The Tenant was apologetic and submitted that he would be able to pay the Landlord back.
10. In the post hearing submissions of the Landlord, it was noted that as of February 8, 2023 the arrears have now risen to \$7,310.60, and that while the Tenant submitted at the time of the hearing that he would pay the arears soon, there has been no payment made as of that time.
11. The Tenant did not make any post hearing submissions even though directed to do so by February 6, 2023.
12. I am satisfied that the Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the first day of each month. The rent has been paid late 19 times in the past 19 months' that were reflected at the time of the application filing on November 15, 2022.
13. Based on the Monthly rent, the daily compensation is \$76.52. This amount is calculated as follows: \$2,327.60 x 12, divided by 365 days.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. There is no last month's rent deposit.

#### Compensation for unpaid utilities

16. The Tenant failed to pay the gas and water heater rental costs that they were required to pay under the terms of the tenancy agreement.
17. The Landlord has incurred \$1,260.53, as amended at the hearing for reasonable out-of-pocket expenses as a result of the Tenant's failure to pay gas and water heater rental costs.
18. Based on the post hearing submissions of the Landlord, she is seeking a total of \$1,041.02 for the water heater rental only, reflecting the unpaid utility to Enercare for the billing periods from May 23, 2021 to February 8, 2023.
19. Ledger outlining the record of non payments was submitted into the Board's record, the Landlord alleged that the water heater rental was paid by the Tenants only one time for the period ending May 23, 2021 since moving into the rental unit.
20. The Tenant did not dispute that the cost of the water heater rental was his responsibility as agreed to under the terms of the tenancy agreement.

Relief from Eviction

21. 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 postpone the eviction until March 31, 2023 pursuant to subsection 83(1)(b) of the Act. While the Landlord submitted that she is seeking a standard eviction order, I am mindful of the Tenant's request for consideration on the impact of his family. He submitted that he has 50% shared custody of his three children aged 10, 12 and 13 and having to move may impact access to their current school district.
22. In arriving at the delay I have also considered the Tenant's submission of the difficulty in finding new housing and the Landlord's submissions of the impact the late and now growing rental arrears are having on her and her ability to finance the rental unit.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before March 31, 2023.
2. If the unit is not vacated on or before March 31, 2023, then starting April 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after April 1, 2023.
4. The Tenant shall pay to the Landlord \$76.52 per day for compensation for the use of the unit starting January 24, 2023 to the date the Tenant moves out of the unit.
5. The Tenant shall pay to the Landlord \$1,041.02, which represents the reasonable out-of-pocket expenses the Landlord has incurred as a result of the unpaid utility costs.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. If the Tenant does not pay the Landlord the full amount owing on or before March 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 1, 2023 at 5.00% annually on the balance outstanding.

**March 1, 2023**  
**Date Issued**

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 Alicia Johnson  
 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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on September 13, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.