



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

Citation: BOWEN v PALMER, 2023 ONLTB 15782

Date: 2023-02-28

File Number: LTB-L-011454-22

In the matter of: LOWER, 139 BROCK
HARRISTON ONTARIO N0G1Z0

Between: Belinda Bowen Landlord

And

Rebecca Palmer Tenant

Belinda Bowen (the 'Landlord') applied for an order to terminate the tenancy and evict Rebecca Palmer (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 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 Rebecca Palmer (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 she was required to pay under the terms of the tenancy agreement and out-of-pocket expenses incurred as a result of a cancelled mould inspection.

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

Only the Landlord and the Landlord's Legal Representative Fiona Douglas attended the hearing.

As of approximately 11:00 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. The Landlord requested to amend the application to update totals since the application was filed:
 - new monthly rent owing (\$986.70 monthly)
 - new amount sought under Reason 3 for unpaid utilities (and updated Schedule A) (\$2,243.83)
 - new total in accordance with above changes (\$2,257.83)

2. I am satisfied that the Landlord satisfied the requirements of Rule 15 of the Board's Rules of Procedure with respect to amendments and granted the request to amend.
3. 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. I find, however, that it would not be unfair to grant relief from eviction if the Tenant meets the conditions set out below in the order.
4. The Tenant was in possession of the rental unit on the date the application was filed.
5. The rental unit is the lower level of a duplex. Utility costs are split between the Tenant and the tenant of the other unit.
6. The Tenant failed to pay water/sewer and natural gas costs that she was required to pay under the terms of the tenancy agreement, and currently owes the Landlord \$\$2,243.83 for utilities.
7. The Landlord testified that there has been a long history of non-payment of utilities leading to both Small Claims Court and previous Board applications. The Landlord testified that the relationship between her and the Tenant is "broken."
8. The Landlord submitted a copy of the tenancy agreement, which states that the Landlord will pay gas and water and sewage bills, to be reimbursed by the Tenant.

Substantial Interference with Reasonable Enjoyment

9. The N5 Notice to End the Tenancy claims that the Tenant failed to pay for utilities as required under the terms of the lease. The Landlord was required to expend considerable time and energy to follow up with the Tenant regarding utility payments over an extended period of time, which was extremely inconvenient. She was then required to make the payments herself to avoid penalties or service disruptions which caused hardship as the Landlord is a senior on a fixed income.
10. The Landlord was entitled to rely on the provisions of the rental agreement. I find that the Tenant's failure to pay the utilities in accordance with the provisions of the lease substantially interfered with the Landlord's enjoyment of the rental complex and/or her lawful rights, privileges, or interests.
11. The N5 also claims that the Tenant requested a mould inspection of her unit but did not provide access to the unit after confirming the date, which caused the Landlord to incur an expense for the unsuccessful inspection. The Landlord responded in a timely manner to the Tenant's concern, the Tenant confirmed the date, and then did not provide access.
12. I find that the Tenant's failure to provide access for the inspection that she herself requested led to inconvenience and expense which interfered with the Landlord's reasonable enjoyment of the rental complex and/or her lawful rights, privileges, or interests.

Compensation for Unpaid Utilities

13. The Landlord has incurred reasonable out-of-pocket expenses of \$2,243.83 as a result of the Tenant's failure to pay water/sewer and natural gas costs and is entitled to an order for

this amount. The Landlord submitted bills from the Corporation of the Town of Minto (water and sewer) for charges between October 2020 and August 31, 2022. The portion of the bills owing by the Tenant totals \$1,840.24. Enbridge Gas bills submitted show charges between May 29, 2021 and August 4, 2022 attributed to the Tenant totalling \$403.59.

14. The Landlord has also submitted multiple email conversations with the Tenant sent with utility bills, reminding the Tenant of outstanding balances and requesting payment.

Compensation for interference with reasonable enjoyment

15. The Landlord also incurred an out-of-pocket expense of \$113.00 due to a cancelled visit for a mould inspection for the Tenant's unit. The Landlord testified that the Tenant had requested that the unit be inspected for mould and provided a series of emails on October 8 and 9, 2021 arranging the inspection and confirmation of the date by the Tenant. The Tenant did not answer the door at the time of the inspection and the inspector was unable to gain access to perform the air quality test. The Landlord provided evidence of an e-transfer to "goodbyemould" in the amount of \$113.00 in payment for the requested travel time of the inspector.
16. The Landlord also incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.

Relief from eviction

17. 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.
18. The Landlord is a senior and on a fixed income. The Tenant ordinarily resides in the unit with a teenaged son. The Tenant is not currently residing in the unit but is staying with her mother, as there was a fire in the rental complex in August 2022 which is being remediated. The Landlord testified that the Tenant still has possessions in the unit.
19. While I am mindful of the inconvenience to the Landlord of the Tenant's conduct in failure to pay utilities and that this has been an ongoing issue, termination of a tenancy is a remedy of last resort; where the landlord's interests can be protected and a tenancy preserved then the Board will customarily grant conditional relief from eviction if in all the circumstances it would not be unfair to do so.
20. In this case, a conditional order provides the opportunity to the Tenant to maintain her housing if she adheres to the requirements of the lease agreement.
21. The Landlord's right to be free from interference with her reasonable enjoyment of the rental complex and/or her lawful rights, privileges, or interests is protected by the section 78 clause in the order should the Tenant fail to comply with the conditions.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. On or before March 11, 2023, the Tenant shall pay to the Landlord \$2,243.83, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs to the date of the hearing.
3. For a one-year period following the date that this order is issued the Tenant shall pay the Landlord the Tenant's full share of the gas and water and sewage bills within 7 days of being provided with the bill by the Landlord.
4. On or before March 11, 2023, the Tenant shall also pay to the Landlord \$113.00, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the cancelled mould inspection.
5. On or before March 11, 2023, the Tenant shall also pay to the Landlord \$201.00 for the cost of filing the application.
6. If the Tenant does not pay the Landlord the full amount owing on or before March 11, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 12, 2023 at 5.00% annually on the balance outstanding.
7. If the Tenant fails to comply with the conditions set out in paragraphs 2 or 3 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.

February 28, 2023**Date Issued**

Margo den Haan

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.

