



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

**Citation:** Walsh v Caycik, 2023 ONLTB 19783

**Date:** 2023-02-07

**File Number:** LTB-L-015184-22

**In the matter of:** Basement Unit 2, 32 TREFUSIS ST  
Port Hope ON L1A3P2

**Between:** Cory Michael James Robarts and Vanessa Danielle Walsh Landlords

**And**

Jonathan K Caycik Tenant

Cory Michael James Robarts and Vanessa Danielle Walsh (the 'Landlords') applied for an order to terminate the tenancy and evict Jonathan K Caycik (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes. (L1 application)
- 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. (L2 application)

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

This application was heard by videoconference on December 8, 2022.

Only Vanessa Danielle Walsh for the Landlords attended the hearing.

As of 1:25 p.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:

#### L1 Application

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. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,500.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$49.32. This amount is calculated as follows: \$1,500.00 x 12, divided by 365 days.
5. The Tenant has paid \$3,100.00 to the Landlord since the application was filed.
6. The rent arrears owing to December 31, 2022, are \$16,957.48.
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 \$1,500.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
9. Interest on the rent deposit, in the amount of \$28.85 is owing to the Tenant for the period from May 3, 2021 to December 8, 2022.

#### L2 Application

10. This application, is based on a notice of termination ('Notice') under section 64 of the *Residential Tenancies Act, 2006* (the 'Act') states:

(1) A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

(3) The notice of termination under subsection (1) is void if the tenant, within seven days after receiving the notice, stops the conduct or activity or corrects the omission.

11. Section 68 of the Act states that if an N5 becomes void pursuant to section 64(3), the landlord may serve a 2<sup>nd</sup> N5 if, within six months after the 1<sup>st</sup> N5 was given, conduct occurs or a situation arises that constitutes a substantial interference in section 64.
12. Here, on February 15, 2022, the Landlord gave the Tenant a first, voidable N5 notice of termination with respect to non-payment of utilities; this notice had a termination date of March 8, 2022. However, the 2<sup>nd</sup> N5 is an exact duplicate of the first N5, therefore it is fatally flawed and must be dismissed.

13. However, the Landlord also indicated the utilities on the L2 application, therefore, the issue can proceed on a monetary basis; an order for the cost of the utilities to be reimbursed to the Landlords.
14. The Landlord Vanessa Danielle Walsh (VDW) testified in detail and went through the supporting evidence with respect to the unpaid utilities since August 2021 through December 2022. The amount indicated in the application and the accrued amounts since the application was filed equal \$1,275.65. All amounts reflect only the Tenant's portion of the utilities and are for Enbridge Gas and the Municipality of Port Hope Water and Sewer and are supported in the evidence package that was served to the Tenant by the Landlord VDW on November 24, 2022, as per the Certificate of Service filed with the Board.
15. Based on the uncontested testimony and evidence before me, I find the Tenant failed to pay heat and water costs that they were required to pay under the terms of the tenancy agreement; the lease entered into evidence indicates the Tenant is responsible for electricity, heat and water. I further find the Landlord has incurred reasonable out-of-pocket expenses of \$1,275.65 as a result of the Tenant's failure to pay heat, electricity and/or water costs.
16. Although the application only included amounts owing at that time it was filed, \$273.24, I am permitting the Landlord to amend the application to include the amounts since it was filed. The Tenant was served the evidence package, which clearly set out that the Landlord was seeking utility costs since the application was filed also, therefore there is no undue prejudice to the Tenant. As such, an order shall issue for \$1,275.65.

#### 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'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenant did not attend the hearing to offer any other considerations, and now owes over 3-times when the L1 application was filed.
18. This order contains all the reasons for the decision within it. No further reasons shall be issued.

#### It is ordered that:

##### L1 Application

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**

- \$20,143.48 if the payment is made on or before February 18, 2023. See Schedule 1 for the calculation of the amount owing.
    - Any payments since the hearing date shall be deducted from this amount.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after February 18, 2023, but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
  4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before February 18, 2023**
  5. The Tenant shall pay to the Landlord \$14,482.87, which represents the amount of rent owing and compensation up to December 8, 2022, less the rent deposit and interest the Landlord owes on the rent deposit. See Schedule 1 for the calculation of the amount owing.
  6. The Tenant shall also pay to the Landlord \$49.32 per day for compensation for the use of the unit starting December 9, 2022, until the date the Tenant moves out of the unit.
  7. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
  8. If the unit is not vacated on or before February 18, 2023, then starting February 19, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
  9. 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 February 19, 2023.

#### L2 Application

10. The Tenant shall pay to the Landlords \$1,275.65, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur resulting from the unpaid utility costs.
11. If the Tenant does not pay the Landlords the full amount owing on or before February 18, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 19, 2023, at 5.00% annually on the balance outstanding. Any monies owing the L1 application are also encompassed under this clause.

**February 7, 2023**

**Date Issued**

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Diane Wade

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 expires on August 19, 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.

**Schedule 1  
SUMMARY OF CALCULATIONS**

**A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 18, 2023**

Rent Owing To December 31, 2022	\$23,057.48
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	- \$3,100.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$20,143.48</b>

**B. Amount the Tenant must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$18,923.12
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	- \$3,100.00
<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	- \$1,500.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$28.85
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$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>\$14,482.87</b>
Plus daily compensation owing for each day of occupation starting December 9, 2022	\$49.32 (per day)

