



Order under Section 69 / 88.2
Residential Tenancies Act, 2006

Citation: Kazarian v Chu, 2023 ONLTB 17882

Date: 2023-02-03

File Number: LTB-L-015450-22

In the matter of: 10532 VICTORIA SQUARE BLVD
MARKHAM ON L6C0A3

Between: Ani Kazarian

Landlord

And

Pang Fei Chu Tenant

Ani Kazarian (the 'Landlord') applied for an order requiring Pang Fei Chu (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 25, 2023.

Only the Landlord's Legal Representative, Elaine Page and the Landlord attended the hearing.

As of 10:30 am, 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.

Amending the L2 Application

1. The Landlord's Legal Representative requested an amendment to the L2 application to add a final unpaid water bill in the amount of \$1,296.31. The Landlord provided a final water bill from Alectra Utilities dated January 3, 2023, addressed to the Tenant, Pang Chu. The letter notes a final water charge bill of \$1,296.31 that was due on December 23, 2022 and had not been paid by the Tenant. She requested a total unpaid utility amount of \$4,008.37. This amount represents \$2,712.06 from the L2 application filed on March 17, 2022 and the amended amount requested of \$1,296.31.
2. LTB Rule of Procedure 15 states that an applicant seeking to amend their application shall request this amendment in writing by serving the amended application to all other parties and filing the amended application and a Certificate of Service with the Board. The request to amend the application is then decided at the hearing. However, Rule 15.4 allows the Board to exercise its

discretion to grant a request to amend made at the hearing if satisfied the amendment is appropriate, would not prejudice any party, and is consistent with a fair and expeditious proceeding.

3. While I find that the Landlord could have filed an amendment application with the Board after receiving a copy of the final water bill on January 3, 2023. I find that the Landlord's request to amend the application is not a new claim, but rather an amendment to an existing claim.
4. I also accept that the Landlord may experience prejudice if her request to amend her application is not granted.
5. I find that it would not be procedurally unfair to the Tenant to grant the Landlord's request to amend her application. Therefore, the request to amend the L2 application for total unpaid utilities in the amount of \$4,008.37 is granted.

Determinations:

6. As explained below, the Landlord has proven on a balance of probabilities the claim for compensation in the application.
7. The Tenant was in possession of the rental unit on the date the application was filed.
8. The Tenant is no longer in possession of the rental unit having vacated on November 7, 2022.

Landlord's Uncontested Evidence

9. The Landlord testified the tenancy began January 1, 2013. She testified the Tenant was responsible to pay for gas, hydro, cable and water.
10. She testified the Tenant has been responsible to pay the water bill since the tenancy began and the water bills are in the name of the Tenant.
11. The Landlord provided a copy of a letter from the City of Markham dated May 4, 2021, addressed to the Landlord. This letter indicates the Tenant, Pang Chu as the Alectra Account Holder and states there is unpaid water usage for the period of March 27, 2020 to September 23, 2020, in the amount of \$1,024.66 plus a \$52.00 administration fee (total \$1,076.66). The letter states the transfer of the unpaid water charges from Alectra will be added to the Landlord's property tax account in accordance with section 398 (2)(1) of the Municipal Act, R.S.O, 2001. The letter further states if the amount is not paid by August 2, 2021, then late charges will be levied to the property tax account.
12. The Landlord provided a copy of another letter from the City of Markham dated January 31, 2022, addressed to the Landlord. This letter indicates the Tenant, Pang Chu as the Alectra Account Holder and states there is unpaid water usage for the period of November 20, 2020 to July 27, 2021, in the amount of \$1,581.40 plus a \$54.00 administration fee (total \$1,635.40). The letter states the transfer of the unpaid water charges from Alectra will be added to the Landlord's property tax account in accordance with section 398 (2)(1) of the Municipal Act,

R.S.O, 2001. The letter further states if the amount is not paid by May 1, 2022, then late charges will be levied to the property tax account.

13. The Landlord provided a final water bill from Alectra Utilities dated January 3, 2023, addressed to the Tenant, Pang Chu. The letter notes a final water charge bill of \$1,296.31 that was due on December 23, 2022 and had not been paid by the Tenant.
14. The Landlord testified that because this amount has not been paid by the Tenant that it will also get added to her municipal taxes.
15. She testified that at no time did the Tenant contact her to have a conversation regarding the outstanding water bills with Alectra Utilities.

Analysis

16. The Board gained the jurisdiction to order a tenant to pay unpaid utilities effective September 1, 2021, when section 88.2 of the Act came into force:

88.2 (1) A landlord may apply to the Board for an order requiring a tenant or former tenant to pay costs described in subsection (4) if,

- a) while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant failed to pay utility costs that they were required to pay under the terms of the tenancy agreement; and
- b) in the case of a tenant or former tenant no longer in possession of the rental unit, the tenant or former tenant ceased to be in possession on or after the day section 20 of Schedule 4 to the Protecting Tenants and Strengthening Community Housing Act, 2020 comes into force. 2020, c. 16, Sched. 4, s. 20.

Application under subs. (1)

- (2) An application under subsection (1) may be made,

- a) while the tenant is in possession of the rental unit; or
- b) no later than one year after the tenant or former tenant ceased to be in possession of the rental unit. 2020, c. 16, Sched. 4, s. 20.

Same

- (3) If the Board makes an order requiring payment under subsection (1) and for the termination of the tenancy, the Board shall set off against the amount required to be paid by the tenant the amount of any rent deposit or interest on a rent deposit that would be owing to the tenant on termination. 2020, c. 16, Sched. 4, s. 20.

Compensation for failure to pay utility costs

(4) The costs referred to in subsection (1) are reasonable out-of-pocket expenses that the landlord has incurred or will incur as a result of a tenant's or former tenant's failure to pay utility costs that they were required to pay under the terms of the tenancy agreement. 2020, c. 16, Sched. 4, s. 20.

Compensation for unpaid utilities

17. The Tenant failed to pay water costs that they were required to pay under the terms of the tenancy agreement.
18. The Landlord has incurred reasonable out-of-pocket expenses of \$2,712.06 because of the Tenant's failure to pay the water cost that were added to the Landlord's municipal tax account. The Landlord will incur reasonable out-of-pocket expenses of \$1,296.31 because of the Tenant's failure to pay the water costs to Alectra Utilities which as a result will be added to the Landlord's municipal tax account.

It is ordered that:

1. The Tenant shall pay to the Landlord \$4,008.37, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur because of the unpaid utility costs.
2. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
3. The total amount the Tenant owes the Landlord is \$4,194.37.
4. If the Tenant does not pay the Landlord the full amount owing on or before February 24, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 25, 2023 at 5.00% annually on the balance outstanding.

February 3, 2023

Date Issued

Trish Carson

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.