



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

**Citation:** RAKHRA v PERKINS, 2022 ONLTB 10127

**Date:** 2022-12-01

**File Number:** LTB-L-016404-22

**In the matter of:** 10 PORTSDOWN ROAD  
BRAMPTON ONTARIO L7A0P8

**Between:** Harlivleen Kaur RAKHRA Landlord

**And**

CARLENE PERKINS Tenant

Harlivleen Kaur RAKHRA (the 'Landlord') applied for an order to terminate the tenancy and evict CARLENE PERKINS (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

AND

The Landlord applied for an order to terminate the tenancy and evict 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.

This application was heard by videoconference on August 22, 2022. The Landlord, the Landlord's husband, Manmohan Rakhra and the Tenant attended the hearing.

**Preliminary issue:**

1. The Tenant raised a preliminary issue regarding service of the N4 and N5 notices of termination. The Tenant testified that she did not receive the required notices under the *Residential Tenancies Act, 2006* the "Act" until July 12, 2022 when served with the notice of hearing.

2. The Landlord submitted that they had mailed the N4 and N5 notices on October 30, 2021 by way of regular mail service, as such these were deemed delivered on November 4, 2021.
3. On review of the Board record, the certificate of service (COS) as filed confirms that the N4 and N5 notices of termination were sent to the Tenant as per the Landlord's submissions. The Landlord testified that the (COS) reflects attestation of delivery and I accepted the submission. It is the Boards practice to accept the certificate of service as proof of delivery of documents and that the Tenant was aware of the rental arrears and unpaid utilities.
4. Based on the evidence before me, I am satisfied on a balance of probabilities that the Landlord mailed the notices of termination to the Tenant on October 30, 2021, as claimed. Therefore, the notices were deemed served five days later on November 4, 2021 pursuant to section 191(3) of the Act. This provided the Tenant sufficient notices for both the N4 and the N5 as required by the Act, the matter proceeded to hearing.

### **Determinations:**

#### N4 Notice (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 \$2,400.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$78.90. This amount is calculated as follows: \$2,400.00 x 12, divided by 365 days.
5. The Tenant has paid \$2,400.00 to the Landlord since the application was filed.
6. After the application was filed, the Tenant received a credit of \$822.64. The washing machine in the rental unit was replaced by the Tenant, the Landlords agreed to reimburse the Tenant for this amount by applying a credit to the Tenant's rent account.
7. The rent arrears owing to August 31, 2022 are \$6,377.36 (this amount reflects the deduction of the credit provided to the Tenant)
8. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$2,400.00 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.

10. Interest on the rent deposit, in the amount of \$22.81 is owing to the Tenant for the period from December 1, 2020 to August 22, 2022.
11. The Tenant after a long review of the arrears at the time of hearing, agreed that she owes the Landlord the equivalent of three months of rent totalling \$7,200.00 less credit for the wash machine.
12. The Landlords submitted that they are of retirement age and that based on their experience with the rental unit, stress of not receiving rental payments as per the agreed rental agreement that they are considering selling the unit.
13. On review of the Tenant's income, she is in agreement that based on her current monthly income of \$3,284.94 after payment of rent (\$2,400.00) and monthly expenses of approximately \$513.00 there is not a significant amount left over to cover food and personal expenses. The Tenant resides in the rental unit with her adult sons, she submitted that she has been looking for alternative three bedroom rentals but that they are more costly than her current rent.

#### *Section 83 considerations*

14. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
15. Given the time that I issue this decision, I have taken into consideration the Tenant's request for a couple of months of delay from eviction and balance that with the Landlord's request for a standard eviction order. The Tenant at that time submitted that she had already began looking for alternative living arrangements. I also take into consideration the Tenants' own submission that the monthly rent and other regular bills have proven to be difficult for the Tenant to afford, this is further evidenced in the Tenants' inability to keep up with the water bill. Providing any further delay would be prejudicial to both parties, the Tenant and Landlord as additional arrears may arise.

#### L2 Application

16. The Landlord served an N5 notice alleging the Tenant has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord by not paying her utility bill, specifically the water bill to the Region of Peel which has resulted in the bills being defaulted to the Landlord for payment.
17. The Tenant had 7 days to void the notice commencing from November 4, 2021, that is to pay the outstanding utility bill, the Tenant did not void the notice and continued not to pay the water bills in the subsequent months.

18. It was undisputed that at the time of the hearing the Tenant was responsible for the payment of the water bill as per the tenancy agreement and owed the Landlord a total of \$822.64 for that utility. On further examination a bill was submitted for April 26, 2021 in the amount of \$76.58, a billing period which was incurred before the N5 notice was served and an amount that was not included in the notice as provided to the Tenant, therefore can not be considered.
19. While the Landlord's L2 application indicated that utilities were outstanding in the reasons area, the Landlord did not check off the selection to indicate the claim in the upper portion of the form. As the Tenant submitted that she did not dispute the outstanding utility bills, on my own motion I have amended the application to make this claim clear, that is to allow for the monetary claim for the outstanding utility bills. In doing so, I am mindful that this was a clerical omission and that it does not create prejudice to the Tenant as she has confirmed the outstanding utility bills and has confirmed that she is liable for the water utility bill as per her tenancy agreement.
20. The N5 notice included \$227.66 for the October 25, 2021 billing cycle, subsequently the Tenant has not paid \$146.74 for January 21, 2022, \$185.75 for April 26, 2022 and \$179.38 for July 26, 2022. In total the Tenant owes the Landlord \$739.53 for unpaid water bills for the period of October 2021 to July 2022. The Tenant will be ordered to pay the Landlord the cost of the utility bills as outlined.
21. I find that under the tenancy agreement the Tenant is responsible for paying the cost of all utilities for the rental unit, and there was no evidence before me that the parties intended to exclude municipal utility bills from the tenancy agreement. Accordingly, I am satisfied that the Tenants' non-payment of the city's utility bills has substantially interfered with the Landlord's reasonable enjoyment of the residential complex and with their lawful right to have the utility bills paid by the Tenant under the tenancy agreement.
22. Subsection 64(3) of the Residential Tenancies Act, 2006 (the "Act") states that a tenant can void an N5 Notice by stopping the activities or correcting the described behaviour within seven days of being served with notice.
23. It is undisputed that the Tenant did not void the N5 Notice regarding the unpaid utilities.

### Relief from Eviction

24. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of 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.
25. If the Tenant voids the order by paying the arrears and application filing fee by December 12, 2022, the tenancy will continue as long as the Tenant also pays the amount owing for

the water bills by January 15, 2023. If the Tenant fails to comply with the conditions set out in this paragraph, 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 this application within 30 days of a breach this condition.

26. This order contains all of 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:**
  - \$6,578.36 if the payment is made on or before December 12, 2022. See Schedule 1 for the calculation of the amount owing.

**OR**

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 December 12, 2022 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 December 12, 2022.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$3,297.65. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$78.90 per day for the use of the unit starting August 23, 2022 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before December 12, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 13, 2022 at 4.00% annually on the balance outstanding.

- 8. If the unit is not vacated on or before December 12, 2022, then starting December 13, 2022, 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 December 13, 2022.

L2 Application

- 10. If the Tenant voids the order in accordance with paragraph two above, the tenancy shall continue on the following conditions.
- 11. The Tenant shall pay the Landlord \$739.53 for outstanding water bills representing the period of October 25, 2022 to July 26, 2021 on or before January 15, 2023.
- 12. On or before January 31, 2023, the Tenant shall ensure that any charges owing on the utility account arising after July 26, 2021 are paid and that the account is brought to good standing.
- 13. If the Tenant fails to make the payment in paragraphs 11 or 12, the Landlord may apply under section 78 of the Act, within 30 days of the breach and without notice to the Tenant, for an order terminating the tenancy and evicting the Tenant.

**December 1, 2022**

**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 expires on June 1, 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 December 12, 2022**

Rent Owing To August 31, 2022	\$9,600.00
Application Filing Fee	\$201.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$2,400.00
<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	- \$822.64
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$6,578.36</b>

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

Rent Owing To Hearing Date	\$8,732.10
Application Filing Fee	\$201.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$2,400.00
<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	- \$2,400.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$22.81
<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	- \$822.64

<b>Total amount owing to the Landlord</b>	<b>\$3,297.65</b>
Plus daily compensation owing for each day of occupation starting August 23, 2022	\$78.90 (per day)