



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Truevine Investments Ltd. v Draxl, 2022 ONLTB 11663

**Date:** 2022-11-22

**File Number:** LTB-L-031994-22

**In the matter of:** 302, 701 Danforth Avenue  
Toronto Ontario M4J1L2

<b>Between:</b>	Truevine Investments Ltd.	Landlord
	<b>and</b>	
	Jennifer Draxl	Tenant

Truevine Investments Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Jennifer Draxl (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

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

The Landlord's Legal Representative, Oleksandr Pichugin, the Landlord's Agent, Greg Karnegelidis, and the Tenant attended the hearing. The Tenant declined the opportunity to speak with Duty Counsel prior to the start of proceedings.

### Determinations:

#### *Determination of rent*

1. The Landlord advanced two applications for termination and eviction: an L1 Application to evict a tenant for non-payment of rent and to collect the rent the tenant owes (the "L1 Application") and an L2 Application to End a Tenancy and Evict a Tenant or Collect Money (the "L2 Application").
2. The Landlord's Agent testified the Tenant is to pay the Landlord \$968.18 each month. As of February 1, 2022, the parties agreed this represented a base component of \$943.18 and \$25.00 a month for gas/utilities.
3. Section 2(1) of the *Residential Tenancies Act, 2006* (the 'Act'), provides:

"rent" includes the amount of any consideration paid or given or required to be paid or given by or on behalf of a tenant to a landlord or the landlord's agent for the right to occupy a rental unit and for any services and facilities and any privilege, accommodation or thing that the landlord provides for the tenant in respect of the occupancy of the rental unit, whether or not a separate charge is made for services and facilities or for the privilege, accommodation or thing, but "rent" does not include,

- (a) an amount paid by a tenant to a landlord to reimburse the landlord for property taxes paid by the landlord with respect to a mobile home or a land lease home owned by a tenant, or
- (b) an amount that a landlord charges a tenant of a rental unit in a care home for care services or meals; (“loyer”);

...

“services and facilities” includes,

...

- (m) utilities and related services,

...

4. Separate, fixed, and regular charges payable by a tenant to a landlord are encompassed in the definition of rent. This includes a flat rate paid by a tenant to a landlord for utilities.
5. The Landlord’s Agent testified the lease requires the Tenant to pay the full amount of utilities. Paragraph 6 of the lease provides:

Additional Rent

6. The Tenant is responsible for paying the costs of the utilities listed below (the “Utilities”) that are separately metered and are used directly by the Tenant or that benefit the Premises (“Additional Rent”). In addition to the Rent, the Tenant shall pay \$100 per month on account of Additional Rent. Should the actual cost of the Utilities exceed \$100 per month, the Tenant shall be responsible for the excess amount up to the actual cost of the Utilities. Conversely, if the actual cost of the Utilities is less than \$100 per month, the Landlord shall refund the difference to the Tenant. The Utilities for which the Tenant is responsible are as follows:

- Electricity
- Gas
- Heat
- Hot Water Heater

6. However, both parties testified the above term was modified when the Tenant was to place the utilities directly into her name. The Tenant placed the electricity into her name. The Tenant was unable to place the gas into her own name due to an issue with the rental unit address. The Landlord testified that after this point the Tenant unilaterally refused to pay more than \$25.00 per month for gas.
7. The Tenant testified since 2019 the Landlord has accepted \$25.00 is what is to be paid for gas with no objection.
8. The Landlord’s Agent testified that rather than make an issue of the amount of the Tenant’s gas payment, they accepted \$25.00 but submitted this did not change their original agreement and characterized this as an outstanding breach on which they have not yet taken action.

9. Notably, when the Landlord did take action with respect to the utilities owed in the within L2 Application it indicated: "The Tenant pays Enbridge bill to the Landlord at the amount of \$25.00 per month. The Tenant did not pay her Enbridge bills since January of 2020, being in total: \$25 x 23 months = \$575.00." Additionally, no copies of utility bills were filed in support of the L2 Application.
10. I do not accept the Landlord Agent's submission that the amount sought for gas was the amount to which the Tenant would agree but that more was owed. An application is not a negotiation. Landlords are expected to claim what they assert is owed on their applications.
11. In the above circumstances, I find there was an amendment to the lease where the parties agreed the Tenant would pay a fixed amount of \$25.00 a month towards gas. I further find the Tenant's regular payment of \$25.00 for gas to the Landlord is included in the definition of rent under the Act.
12. As a result, I find the lawful monthly rent is \$968.18. It is due on the first day of each month.
13. The N4 Notice on which the L1 Application was based did not include the monthly \$25.00 charge. As a result, I find the N4 Notice did not properly set out the amount of rent due as required under s. 59(2) of the Act and is invalid.
14. The Landlord elected to proceed with arrears only.

#### *Arrears owed*

15. The parties agreed the arrears outstanding to August 31, 2022, was \$6,560.08. This was based on a monthly rent that did not include the fixed monthly charge for gas.
16. Having found the lawful monthly rent is \$968.18, I find it is appropriate to amend the Landlord's L1 Application to reflect the correct monthly rent. I find there is no prejudice to the Tenant in so doing as the Tenant was aware the Landlord would be seeking payment of \$25.00 a month for the regular payment towards gas at this hearing and doing so is consistent with a fair and expeditious proceeding.
17. As a result, I find the arrears outstanding to August 31, 2022 are \$7,360.08. I also note this amount accords with the total outstanding on the Landlord's ledger dated August 2, 2022.
18. The Tenant presented case law in support of her submissions that my exercise of discretion under s. 83 of the Act should be guided by the remedial nature of the Act and submitted her disability should be taken into account under the *Human Rights Code*. Because the Landlord's L1 Application proceeded for arrears only, I have not considered section 83 of the Act. I also note that I do not find the *Human Rights Code* applicable to the calculation of the arrears owed in this application.
19. Any amounts the Tenant has paid to the Landlord since the hearing are to be deducted from the amount ordered payable as set out below.

## Section 82

20. The Tenant described a pattern of the Landlord and its paralegal sending non-stop emails asking about her non-payment of rent and gas; requests to inspect that were vague and to show the rental unit when she was not vacating; and concerns that communications continued after she had told the Landlord to proceed through the formal Board process.
21. In accordance with her list of section 82 issues, I have considered the Tenant's claims under sections 22 and 23 of the Act. The Tenant testified she had commenced but would not be pursuing her T2 Application for the same issues she raised under section 82 of the Act.

22. Section 22 of the Act provides:

A landlord shall not at any time during a tenant's occupancy of a rental unit and before the day on which an order evicting the tenant is executed substantially interfere with the reasonable enjoyment of the rental unit or the residential complex in which it is located for all usual purposes by a tenant or members of his or her household.

23. Section 23 of the Act provides:

A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.

Harassment is generally a course of conduct the reasonable landlord knows or ought to know would be most unwelcome to the reasonable tenant.

24. The Tenant testified she felt intimidated by the Landlord as they wanted her out so badly she was afraid they were going to come over and change the locks and she required her brother to come over and sit with her at times she was so concerned. However, the Landlord's Agent denied he ever threatened to change the locks and the Tenant admitted the Landlord never advised they intended to change the locks.
25. The Tenant submitted and I reviewed copies of the communications she found objectionable. For the reasons set out below, I find the Tenant's interpretations of communications and events strained and do not find the communications from the Landlord, its paralegal or the Landlord's agents rise to the level of harassment or are threatening and do not constitute substantial interference with the Tenant's reasonable enjoyment of the rental unit or residential complex.

### History of proceedings between the parties

26. It is important to understand the context of other proceedings ongoing between the parties at the time of the objected to communications.
27. The Landlord's Agent testified there was no communication with the Tenant after March 2020 until September 2021 as the Tenant was making attempts to pay her rent and they understood there was COVID. On September 14, 2021, the Landlord contacted the Tenant

as the arrears were increasing. In response to this, the Landlord's Agent testified the Tenant offered to vacate on or before October 30, 2021.

28. The Tenant then sent an email dated October 3, 2021, advising the Landlord if they wished to evict her they would need to file an application with the Board and, if granted, only the Sherriff could physically evict her.
29. The Landlord filed an application under section 77 of the Act, i.e. that the Tenant agreed to move out of the rental unit, for eviction on October 7, 2021 (the "L3 Application").
30. The Landlord also served an N4 Notice on October 18, 2021.
31. Order TSL-24706-21 terminating the tenancy and evicting the Tenant based on the Landlord's L3 Application issued November 8, 2021 (the "Eviction Order").
32. On November 9, 2021, the Tenant filed a motion to set aside the Eviction Order and this order was stayed. The Tenant's motion to set aside was denied by Order TSL-24706-21-SA issued January 12, 2022 and the stay of the Eviction Order was lifted effective February 28, 2022.
33. The Tenant filed a request to review the denial of her set aside motion on January 17, 2022. By interim Order TSL-24706-21-SA-RV-IN issued February 25, 2022, the Eviction Order and TSL-24706-21-SA were stayed.
34. The Tenant's request to review was denied by Order TSL-24706-21-RV issued June 8, 2022. The Tenant filed an appeal of Order TSL-24706-21-RV to Divisional Court on June 9, 2022 and the Eviction Order was again stayed.
35. As the question of the agreement to terminate is before the Divisional Court I have made no factual determinations relevant to this. However, I have considered the effect and timing of the above proceedings with respect to the Tenant's allegations of harassment and substantial interference as a result of communications from or on behalf of the Landlord.

#### Communications objected to by the Tenant

36. The Tenant testified she did not wish to communicate with the Landlord outside of formal proceedings and had so advised. The Landlord's Agent admitted he was aware the Tenant did not wish to be contacted.
37. Even where landlords and tenants are in disputes, there are still obligations on them and some form of communication may be reasonable or necessary. In other words, it is not necessarily harassment, threatening, or substantial interference for one party to communicate with another even where the other party has unilaterally asked for no contact. The specifics of the communications and circumstances must be examined.
38. In the circumstances, I find it was reasonable for the Landlord's agents - including legal representatives - to set out their understanding of the status of events, rent and arrears, to request payment of rent, to attempt to understand what the issues are to assist with

resolution, and/or to propose a payment plan, particularly where, as here, the Tenant admits she was not paying rent.

39. The Tenant objected to the Landlord's requests to inspect the rental unit at the end of November. She submitted three emails that appeared to form part of a chain dated November 27, and 28, 2021 between herself and the Landlord's President.
40. I do not accept the Landlord's Agent submission the request to inspect was reasonable as it was in response to the Tenant posting a notice on her door she would vacate. The best evidence before me was that the notice was posted at the start of November and by November 9, 2021, the Eviction Order had been stayed. I also note that in the Set Aside order TSL-24706-21-SA the Landlord's President testified the notice was noted on or about October 18 or 20. Nonetheless, there was an active dispute between the parties as to the continuation of the tenancy and the Landlord's Agent testified they wanted to see the state of the rental unit. This is not in itself unreasonable and, in any event, as described below, the Landlord did not inspect the rental unit.
41. A Landlord has a right to inspect a rental unit upon providing proper notice. The Tenant denied entry on the basis that proper notice had not been provided and the Landlord did not attend.
42. The Tenant testified because the Landlord did not confirm the inspection would not take place this was one of the occasions her brother sat with her because she was afraid; but, as set out above there was no basis in any actions of the Landlord for the Tenant to believe the Landlord would change the locks.
43. As a result, I do not find the request to inspect the rental unit that was denied and on which the Landlord did not act upon amounts to harassment, a threat, or substantial interference with the Tenant's reasonable enjoyment of the rental unit. Further, while not responding may be seen as inconsiderate, I also do not find this is a threat, amounts to harassment or constitutes substantial interference with the Tenant's reasonable enjoyment of the rental unit.
44. The Tenant also objected to the Landlord requesting access to the rental unit for the purpose of inspection and to show the unit to a prospective tenant in January 2022. Although she testified to a few occasions, there were insufficient details provided regarding these other alleged occasions and so I have not considered these. However, I have examined the allegation for which the Tenant submitted supporting documentation.
45. By email dated January 21, 2022, the Landlord's Agent emailed the Tenant requesting access to the rental unit on January 23, 2022 between 2:45 and 4:45 p.m. for the purpose of inspection and to show the unit to a prospective tenant.
46. At the time this email was sent the stay on the set aside order had issued ordering that the Eviction Order was to be lifted February 28, 2022. While the Tenant had applied for a request to review the set aside order, no order preliminarily granting this request had yet issued. As a result, I find it was reasonable for the Landlord to be taking steps to prepare the rental unit for re-renting during this time period and do not find that communications to

this end amount to harassment or substantial interference with the Tenant's reasonable enjoyment of the rental unit.

47. By email dated February 15, 2022, the Landlord's Representative reminded the Tenant the termination of her tenancy was effective February 28, 2022, offered the Tenant assistance with her move, and indicated the steps being taken in the event the Tenant did not vacate by this date, in particular that the request for eviction was being filed with the Sherriff's office.
48. The Tenant objected to this communication submitting it was not the Landlord's paralegal's job to tell her to vacate - it was only the Sherriff' office who should tell her to move.
49. This communication was again during the period where it was reasonable for the Landlord to think that the Tenant would vacate the rental unit on or before February 28, 2022. Further, the paralegal's email advised it would be the Sherriff who enforces eviction. I do not find this email amounts to intimidation, harassment or substantial interference with the Tenant's reasonable enjoyment of the rental unit.
50. A Tenant will likely always find emails demanding payment upsetting and here the Tenant disputed the amount of arrears leading her to conclude the Landlord was harassing her. In support of this claim, the Tenant testified the Landlord sent an email alleging she owed over \$11,000.00 but did not have a copy of this email.
51. The Tenant's evidence was that every time the Landlord's sent an email for payment it was a different amount and she submitted a copy of an exchange between the parties regarding the arrears outstanding in advance of a hearing before Divisional Court. However, at the within hearing, the Tenant admitted the Landlord's calculation of arrears was correct. In these circumstances, I do not find the communications from the Landlord setting out their understanding of the amount of arrears amount to harassment or substantial interference with the Tenant's reasonable enjoyment of the rental unit.
52. The Tenant also submitted the Landlord did not wish to mediate as, had they wished to do so, they would have served her with an N4 Notice; however, this proceeding is based on an N4 Notice and there is no limitation that negotiations must take place before a Board mediator or at a hearing. That said, the Landlord's Agent admitted he has not tried to negotiate with the Tenant as the relations between the parties have been strained, involved name calling, and he understood the Tenant told them they would have to evict her.
53. In support of this allegation, the Tenant submitted two emails from the period after the Eviction Order was stayed: one from the Landlord's paralegal on March 2, 2022 and one from the Landlord's Agent on June 2, 2022.
54. While the tone of the March 2, 2022 email may be seen as directive, it includes an additional proposed minimal monthly payment from the Tenant and can be seen an invitation to negotiate a payment plan with minimal requirements in accordance with the Landlord's obligations to negotiate a payment plan under s. 83(6) of the Act.

55. Similarly, while the Landlord's email of June 2, 2022, could be interpreted as questioning the Tenant's sense of responsibility and decency, I find it is more expressive of an attempt to understand the Tenant's actions, and remind her of her obligations.
56. I do not find the tone or content of either of these communications constitute intimidation, nor do they rise to the level of harassment or substantial interference with the Tenant's reasonable enjoyment of the rental unit.
57. Finally, the Tenant submitted the Landlord falsified a payment agreement disclosed in advance of this hearing as her name had been typed in where there was a space for her to initial. The Tenant testified she had never seen this document before and that this was intimidating as the Landlord may file and rely on this to obtain an eviction order.
58. The payment agreement was unsigned by the Tenant, was not submitted to me as evidence an agreement had been reached between the parties, and the Tenant admitted she had no evidence the Landlord intended to or had filed this document.
59. As the payment agreement is not signed by the Tenant it is incomplete. I do not find the inclusion of the Tenant's name where there is a spot to initial amounts to falsification of a document or harassment or intimidation of the Tenant, or substantial interference with the Tenant's reasonable enjoyment of the rental unit.
60. I do not doubt the Tenant has been affected by the conflict with her Landlord and that it is stressful being in a position where eviction may be ordered; however, as I have found the Landlord's actions do not amount to harassment, threats, or intimidation, or substantial interference with the Tenant's reasonable enjoyment of the rental unit, the Tenant is not entitled to a remedy.
61. The Tenant's claims under section 82 of the Act are dismissed.

### *L2 Application*

62. The Landlord's L2 Application was for unpaid utility costs of \$25.00 a month since January 2020 and substantial interference for failure to pay these utility costs.
63. As I have found the monthly utility cost of \$25.00 is rent, I find there is no basis for the Landlord's L2 Application and it must be dismissed.

### **It is ordered that:**

1. The Tenant shall pay to the Landlord \$7,360.08 on or before December 3, 2022 which represented the arrears owing to August 1, 2022.
2. The Tenant shall also pay to the Landlord \$201.00 for the cost of filing the application.
3. Unless otherwise indicated by the Tenant, rent payments made by the Tenant to the Landlord since the hearing of this application are to be set off against the amounts payable under paragraph 1 above.



4. If the Tenant does not pay the Landlord the full amount owing on or before December 3, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 4, 2022 at 4.0% annually on the balance outstanding.
5. The Tenant's claims of harassment, threats, and intimidation and substantial interference with the Tenant's reasonable enjoyment of the rental unit advanced under section 82 of the Act are dismissed.
6. The Landlord's L2 Application is dismissed.

**November 22, 2022**  
**Date Issued**

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Rebecca Case  
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.