



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

**Citation:** Isoufi v Haigh, 2022 ONLTB 9578

**Date:** 2022-11-01

**File Number:** LTB-L-003223-22

**In the matter of:** 2377 5TH LINE  
CHURCHILL ON L0L1K0

**Between:** Ghulam Hasan Yosofi, Mike Isoufi Landlords

**And**

Janis Hernandez, John Haigh Tenants

Ghulam Hasan Yosofi and Mike Isoufi (the 'Landlords') applied for an order requiring Janis Hernandez and John Haigh (the 'Tenants') 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 also applied for an order requiring Janis Hernandez and John Haigh (the 'Tenants') to pay the Landlord's reasonable out-of-pocket costs the Landlords have incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex.

This application was heard by videoconference on October 18, 2022.

The Landlord's Representative, Soudabeh Isoufi (Daughter of Ghulam Hasan Yosofi and Sister of Mike Isoufi) attended the hearing.

The Tenants also attended the hearing and spoke to Tenant Duty Counsel prior to the hearing.

**Determinations:**

1. As explained below, the Landlords have not proven that the Tenants, another occupant of the rental unit or a person whom the Tenants permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex by damaging the wall oven and the snowblower.
2. Prior to the hearing the parties met with Dispute Resolution Officer Franklyn and resolved the Landlord's claim for unpaid utilities. The parties agreed the Tenants will pay the Landlords the amount of \$2,347.76 in unpaid utilities up to December 2021.
3. This amount will be paid no later than October 19, 2022, by e transfer from the Tenants to the Landlords, failing which interest will start to apply on October 20, 2022.

**Preliminary Issue- Amending Application:**

4. The application is amended on consent of the parties to remove the claim for damages to the dishwasher from the application.

**Landlords Evidence- Wall Oven**

5. The Landlord alleges the Tenants damaged the wall oven and the snowblower as retaliation for the Landlords requesting the Tenants to pay their unpaid utilities. The Landlords requested costs in the amount of \$4000.00 to repair or replace the wall oven and the snowblower to cover a portion of the costs that Landlords alleges they have and will incur.
6. On November 28, 2021, the Tenants contacted the Landlords to advise that the wall oven was not working properly.
7. The Landlord's Representative attended the rental unit a few days later and turned on the oven and it appeared to be working. The Tenants showed her that the element in the oven was broken in half. She states this could have only broken in half with excessive force.
8. She ordered a new element and went to install it two weeks later only to find out the element that she received was not the correct element for the oven.
9. She then ordered another element which did not arrive until sometime mid January 2022. At that time the Tenants were in the process of vacating, so she did not replace the element.
10. After the Tenants vacated, she attempted to install the element and this element also did not work in the oven.
11. She stated she did not have an appliance repair person attend the property to determine if the element could be replaced.
12. She ordered a new wall oven in March 2021, as she indicated the wall oven was quite old. The cost to replace the wall oven was \$2139.00. She provided a copy of an invoice from The Brick for a replacement wall oven in this amount.

**Tenants Evidence- Wall Oven**

13. The Tenants testified that on November 17, 2021, they were using the wall oven and there was a small fire inside the oven, which they were able to extinguish by closing the oven door. They thought it may have been caused due to food at the bottom of the oven.
14. They state they believe the element may have broken in half when the fire occurred in the oven, and it was not their fault that a fire broke out in the oven.

15. The following day, November 18, 2021, when they used the oven again the food was raw when it came out of the oven after being cooked. At this time, they emailed the Landlords to let them know the wall oven was not working and did not hear back from the Landlords.
16. On November 18, 2021, they emailed the Landlords again regarding the wall oven not working so the Landlords could come and look at the oven.
17. They stated the element had not been fixed when they vacated the rental unit.

#### **Landlords Evidence- Snowblower**

18. On November 28, 2022, the Landlords received communication from the Tenants that the snowblower, which had been provided by the Landlord, was not working properly as only one blade was spinning.
19. The Landlord's Representative states she did not attend the rental unit to look at the snowblower as she was waiting until the Tenants vacated as she was uncomfortable in their presence.
20. There was a break-in at the rental unit on January 24, 2022 and the snowblower was stolen. The Tenants called the Police on this date and the Landlords to advise of the break-in.
21. She states that she cannot repair the snowblower as it has been stolen and will need to be replaced.
22. She does not recall the make, model or year of the snowblower.
23. She states the snowblower has not yet been replaced as the current tenants that moved into the rental unit on May 1, 2022 have their own snowblower.
24. She estimates the cost to replace the snowblower to be approximately \$3000.00.

#### **Tenants Evidence Snowblower**

25. The Tenants testified at the end of December 2021 they noticed the snowblower was not working properly. The snowblower would only clear half of the width of the snowblower as only one of the blades was turning.
26. They contacted the Landlords on December 27, 2021 to advise of the issue with the snowblower.
27. They state it was very difficult to clear the snow from the residential complex as the parking area is quite large and took twice as long as only one blade was spinning.
28. They state they did not cause damage to the snowblower.

## Analysis

29. Under section 89 (1) of the Act, a Landlord may apply to the Board for an order requiring a tenant to pay the reasonable costs that the Landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of the damaged property, if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex wilfully or negligently causes undue damage to the rental unit or residential complex and the tenant is in possession of the rental unit. An application under subsection (1) can be made while the tenant is in possession of the rental unit or no later than one year after the tenant or former tenant ceases to be in possession of the rental unit.
30. I am not persuaded by the Landlord's Representative's testimony that the Tenants wilful or negligently caused damage to the wall oven and the snowblower.
31. Regarding the wall oven, I accept the Tenant's testimony that there was a small fire inside the oven on November 17, 2021, which likely damaged the stove element. I do not find that the Tenants caused this damage wilfully or negligently. The Landlord's Representative stated she ultimately ended up replacing the wall oven as it was quite old. I find it quite possible that the issue with the element was due to age and could have been what started the small fire inside the oven on November 17, 2021.
32. Regarding the snowblower, I appreciate the Landlords were not able to submit any evidence regarding the damage to the snowblower as it appears to have been stolen due to a break-in on January 24, 2022. However, the Landlords could have made an effort to examine the snowblower after they received notice by the Tenants at the end of December 2021. In the absence of any supporting evidence from the Landlords and the Tenants denial of responsibility, I cannot issue an order for compensation for damages.
33. There is also no evidence to suggest that the Tenants were responsible for the break-in which resulted in the theft of the snowblower.
34. This order contains all reasons for this decision. No other reasons will be issued.

### It is ordered that:

1. On or before October 19, 2022, the Tenants shall pay to the Landlord's \$2,347.76 in unpaid utilities up to December 2021.
2. If the Tenants do not pay the Landlords the full amount owing on or before October 19, 2022, the Tenants will start to owe interest. This will be simple interest calculated from October 20, 2022 at 4.00% annually on the balance outstanding.
3. The Landlord's portion of the application which relates to reasonable costs of repairing or replacing the damage in the amount of \$4000.00 is dismissed.

**November 1, 2022**

**Date Issued**

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**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.