



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

**Citation:** Russell v Gilbert, 2022 ONLTB 9387

**Date:** 2022-10-26

**File Number:** LTB-L-003986-22

**In the matter of:** A, 74 RIDOUT  
WALKERTON ON N0G2V0

**Between:** John Russell Landlord

**And**

Jenna Gilbert Tenant

John Russell (the 'Landlord') applied for an order to pay compensation for undue damage and unpaid utility costs.

This application was heard by videoconference on September 20, 2022.

Only the Landlord attended the hearing.

As of 12:29 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:**

1. As explained below, the Landlord has proven on a balance of probabilities the claim for compensation for utility costs contained in the application filed March 24, 2022. Therefore, I will order the Tenant to pay the amount of \$379.72 to the Landlord. I am denying the Landlord's request to amend the application to add a new claim for compensation for damage and an increase in the amount claimed for utilities.

**Unpaid utilities claimed in the application filed on March 24, 2022**

2. The Landlord filed an application with the Board on March 24, 2022, claiming \$379.72 in compensation for utility costs which the Tenant did not pay as she was required to under the terms of the tenancy agreement.
3. The Tenant was in possession of the rental unit when this application was filed.
4. At the hearing the Landlord advised the Tenant vacated the rental unit on or around April 5, 2022.
5. The parties signed a lease agreement on December 30, 2020, which provided that the Tenant was responsible for electricity heat and water and that water and sewer charges

were not part of the lawful rent. The Landlord claimed that the tenancy agreement was with the Tenant and filed invoices for water and sewer charges from the Municipality of Brockton. The invoices support the claimed amount of \$379.72:

- Utility charge from September 6, 2021, to November 2, 2022, the Landlord paid \$180.23
- Utility Charge from November 2, 2021, to January 3, 2022, the Landlord paid \$174.49
- An invoice for disconnection fee in the amount of 25.00\$ dated March 4, 2022.

**Total: \$379.72**

6. This application is brought pursuant to section 88.2 of the *Residential Tenancies Act, 2006* ('the Act') which reads:

(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.

7. Based on the evidence adduced at the hearing, I am satisfied on balance of probabilities that the Landlord incurred reasonable out of pocket expenses because of the Tenant's failure to pay utility costs as she was required under the tenancy agreement. Accordingly, I will order the Tenant to pay this amount to the Landlord.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

### **Amendment Request**

9. On September 13, 2022, the Landlord filed a request to amend the application with the Board, adding an entirely new claim for compensation in the amount of \$3,656.88 for undue damage caused wilfully or negligently to the rental unit or residential complex by the Tenant, another occupant, or a person permitted in the residential complex by the tenant. The Landlord also amended his application to reflect a change in the total amount claimed for incurred utility costs to \$609.22. The Landlord served the amended application to the Tenant by email on September 13, 2022
10. While at the hearing I stated I would grant the Landlord's additional claims made in the amendment filed with the Board, upon further review the amendment cannot be granted.
11. The Board's *Rules of Procedure* ('Rules') do not allow service of documents on other parties by email unless the parties have previously agreed to it: see Rule 3.1(h). A copy of the tenancy agreement which was filed with the Board indicates that the parties do not consent to service of documents between the parties by email. Further, the Landlord did not seek the Board's permission to serve the amended application upon the Tenant by email.

12. Therefore, I find that this amended application has not been properly served to the Tenant in accordance with the *Rules* and the amended application will not be considered by the Board. The Landlord may file another application for his claim for compensation.

**It is ordered that:**

1. The Tenant shall pay to the Landlord is \$379.72 which represents the reasonable out of pocket expenses incurred by the Landlord because of the Tenant's failure to pay utility costs as the Tenant was required under the tenancy agreement.
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 \$565.72.
4. The Tenant shall pay the total amount owing to the Landlord in paragraph 3, on or before, November 6, 2022.
5. If the Tenant does not pay the Landlord the full amount owing on or before November 6, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 7, 2022, at 4.00% annually on the balance outstanding.

**October 26, 2022**

**Date Issued**

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Inderdeep Padda

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.