



**Order under Section 69 / 88.2
Residential Tenancies Act, 2006**

Citation: Amin v Johnson, 2022 ONLTB 8403

Date: 2022-10-25

File Number: LTB-L-003463-22

In the matter of: MAIN LEVEL, 1602 PHARMACY AVE
TORONTO ON M1R2K7

Between: Tahir Amin Landlord

And

Daniel Johnson Tenants
Danielle Pritchard

Tahir Amin (the 'Landlord') applied for an order to terminate the tenancy and evict Daniel Johnson, Danielle Pritchard (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenants.

Tahir Amin (the 'Landlord') applied for an order requiring Daniel Johnson and Danielle Pritchard (the 'Tenants') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenants' failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

This application was heard by videoconference on October 3, 2022.

Only the Landlord Tahir Amin attended the hearing.

As of 9:33 a.m., the Tenants were 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. Since the Tenants did not attend and the Landlord was prepared to proceed, the matter proceeded by way of an uncontested hearing pursuant to section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990.

Determinations:

1. The Tenants were in possession of the rental unit when the application was filed.
2. The Landlord served the Tenants a voidable N5 Notice of Termination on January 22, 2022 claiming the Tenants have not paid for the utilities expenses they are responsible for while living at the rental unit. The Notice clearly sets out when the costs were incurred and

the amounts outstanding for gas, electricity and water. According to the N5 Notice, the utilities were unpaid for the period starting September 1, 2021 until January 22, 2022, the day the N5 Notice was served on the Tenants.

3. Section 88.2 of the Act reads as follows:

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

4. While the Landlord originally sought eviction in addition to an order for payment of the unpaid utilities, the Landlord's evidence was the Tenants vacated the rental unit on July 31, 2022. As a result, the application proceeded dealing only with the outstanding utility costs.
5. The Landlord submitted a copy of the lease agreement signed by the Tenants on August 27, 2016. Paragraph 11 of the lease agreement requires the Tenants to pay 60% of the gas, electricity and water costs.
6. The Landlord submitted copies of the utility bills for the dates claimed in the N5 Notice. The total amount of unpaid utilities for this time period is \$1,076.48. The Landlord's evidence was he has not received any payments from the Tenants since serving the N5 Notice.
7. The Landlord testified that since serving the N5 Notice and filing the L2 application, the Tenants have not paid the additional utility costs that came due up to the date they vacated the rental unit on July 31, 2022. The Landlord submitted copies of the utility bills for this time period as well, bringing the total outstanding amount to \$2,754.99.
8. I asked the Landlord if he filed with the Board and served the Tenants a request to amend his application seeking the additional amounts due and owing up to the date the Tenants vacated and he confirmed he had not.
9. I have considered the Landlord's request to amend his application seeking the additional unpaid utilities that came due after the application was filed. While the Landlord could have requested an amendment in advance of the hearing, I find no prejudice to the Tenants in allowing the amendment to the amount being sought. The Landlord was not seeking to add a novel issue to the application. The Tenants received the N5 Notice and were aware of the claim. They would also be aware the amount outstanding would increase with each month that passed without payment. The Tenants did not attend the hearing and pursuant to section 7 of the *Statutory Powers Procedure Act, 1990* are not entitled to any further notice. As a result, I find no prejudice to the Tenants and will allow the amendment.
10. I am satisfied on a balance of probabilities the Tenants have not paid the utility costs they were required to pay under the tenancy agreement.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The tenancy is terminated effective July 31, 2022.
2. The Tenants shall pay to the Landlord \$2,754.99, which represents the outstanding utility costs owing until the termination date.
3. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. The total amount the Tenants owe the Landlord is \$2,940.99.
5. If the Tenants do not pay the Landlord the full amount owing on or before November 5, 2022, the Tenants will start to owe interest. This will be simple interest calculated from November 6, 2022 at 4.00% annually on the balance outstanding.

October 25, 2022
Date Issued

John Cashmore
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.