



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

File Number: LTB-L-010529-24

In the matter of: 2 EAST HAMPTON RD
ST CATHARINES ON L2T3E1

Between: Ornela Carcani
Ali Ramadan

Landlords

And

Michelle Dolbeck
Joshua Tontegode
Diane Dolbeck

Tenants

I hereby certify this is a
true copy of an Order dated
NOV 8, 2024
BM
Landlord and Tenant Board

Ornela Carcani and Ali Ramadan (the 'Landlord') applied for an order to terminate the tenancy and evict Michelle Dolbeck, Joshua Tontegode and Diane Dolbeck (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 Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises;
- the Tenant has been persistently late in paying the Tenant's rent.

This application was heard by videoconference on August 7, 2024.

The Landlords, the Landlord's Representative Masoud Tchavoshi and the Tenants attended the hearing.

When the capitalized word "Landlord" is used in this order, it refers to all persons or companies identified as a Landlord at the top of the order. When the capitalized word "Tenant" is used in this order, it refers to all persons identified as a Tenant at the top of the order.

It is determined that:

1. As explained below, the Landlord has proven, in part, on a balance of probabilities the grounds for termination of the tenancy in the application. Therefore, I find that it would not be unfair to grant relief from eviction and the tenancy continues subject to the conditions set out below.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N5 Notice of Termination

- On January 28, 2024, the Landlord gave the Tenant an N5 notice of termination. The notice of termination contains the following allegations:

Details About the Reasons for this Notice	
I have listed below the events that have led me to give you this notice, including the dates, times and specific details.	
Date/Time	Details of the Events
January 19, 2024 4:46 P.M	Email was sent to tenants stating that " As per the Rental agreement, the tenants were responsible to pay their own utilities gas, electricity and water" . The landlords have been paying the water bill since the tenants moved in on January 1, 2021. Attached to the email were copies of the water bills. Please see attached Schedule A- Reason 1: Failure to pay utilities/Water bills for further email correspondence
January 24, 2024	Tenants have been keeping 3 goats in the backyard of the property since June 4, 2023 and have built a makeshift shed, 2 haywheels and goat feed. Goats are not allowed according to the city of St. Catharines by-law 95-212 Schedule B. As a result goats have created a lot of damage to the backyard. Please see attached Schedule A- Reason 2: Keeping goats on the property
October 17, 2023 9:44 A.M	On October 16, 2023 we received a text message from Josh that there was another blockage in the drain. This time the plumber was able to remove the overnight pads that caused the blockage in the drain. Please see attached Schedule A- Reason 2: Damage incurred in plumbing bills as a result of tenant's negligence.

A 5-page schedule 'A' was attached with further details of each allegation.

Utility Bills and Plumbing Issues

Water Bills

- At the hearing, the Landlord presented evidence for the total amount owing for the water bills as of the date of the hearing. The Tenant did not object and confirmed that they had received the Landlord's evidence. As the Tenant was aware of the amount being sought, I find there is no prejudice in amending the Landlord's application to the amount sought by the Landlord.
- The Landlord, Ornela Carcani (OC), testified that it was the Tenant's responsibility to pay the water bill, as part of their lease agreement and that the Tenants had acknowledged this by signing a water contract with the city of St. Catherines, which allows a copy of the water bill to be sent directly to the Tenant. Copies of the water contract, water bills and text messages were submitted as evidence.
- OC further testified that the Tenant had only made 1 payment towards the water bills and a balance of \$4,778.01 was owing as of August 1, 2024.
- The Landlord submitted copies of the utility bills and it was not disputed that it was the Tenant's responsibility to pay the water bills or that the amount owing as of the hearing date was \$4,778.01.

8. OC testified to the emails that were sent to the Tenant along with copies of the unpaid water bills, with reminders that it was the Tenant's responsibility to pay the water bills, and that the Tenant did not respond to the emails.
9. OC testified that payment plans were offered to the Tenant, but the Tenant did not respond to the offers or pay the overdue bills, or the new bills being received every two months.
10. The Tenant, Michelle Dolbeck (MD), testified that since the beginning of the tenancy there has been issues with the plumbing in the house which caused a significant increase in the water bills.
11. MD admitted that they have not been paying the water bills, in part, because the Landlord has refused to take responsibility for the amount of the increased water bills caused by the plumbing issues.
12. OC testified that the Landlords became aware of the plumbing issue on January 5, 2023, when they were contacted by the Niagara Region water and waste company due to extremely high water meter readings, not by the Tenant.
13. OC testified that the Tenant was contacted to arrange a plumber to attend the unit but the Tenant stated that they had a friend address the issue, a toilet that was running constantly.
14. OC further testified that on March 17, 2023, the Landlord attended the unit with a plumber but was denied access. The Landlord was only first able to obtain access on April 1, 2023, by attending the unit with a police escort.
15. OC testified that plumbers attended the unit on 7 different occasions to address the plumbing issues, due to the Tenant's negligence, at a significant cost to the Landlord.
16. MD testified that they had been having plumbing issues since the beginning of the tenancy and the Landlord had failed to deal with the issues properly.
17. MD testified that there was a total of 13 times that plumbers attended, one of which was due to one of the Tenants accidentally flushing a sanitary napkin, and they paid the invoice for the plumber for that incident.
18. MD testified that Landlord eventually had a plumber attend with a backhoe and deal with the plumbing issues properly. It was her position that if the Landlord had properly dealt with the plumbing issues at the beginning, that it would have saved the Landlord the expense of all the plumbers attending the unit to unclog the basement toilet over and over again.
19. Based on the evidence in this portion of the Landlord's application, I find that the Tenant acknowledged that they are responsible for the water bills. The issue is whether or not the Tenant owes the entire amount sought by the Landlord or a reduced amount due to the increased water bills as a result of the plumbing issues.
20. I find that the water bills for the billing period of January 2023 in the amount of \$1,341.34 and March 2023 in the amount of \$670.33, are excessively high compared to the average bill of approximately \$170.00 per 2-month billing cycle.
21. I find that the necessity of having plumbers attend the unit 7 to 13 times within a 4-year period is evidence of plumbing issues which caused the increase in the water consumption. I further find that the Tenant contributed to the increased water bills by not

informing the Landlord immediately of some of the plumbing issues and preventing the Landlord from attending the property on 2 separate occasions to assess the issues in a timely manner.

22. I find that the Landlord and the Tenant shall be equally responsible for half of the water bills for January and March 2023. Therefore, I find that the Tenant owes the Landlord \$3,772.17 for the water bills to July 31, 2024.

Goats

23. OC testified that she became aware on June 4, 2023, that the Tenant was keeping 3 goats in the backyard of the rental unit.
24. OC testified that the keeping of goats is a violation of the St. Catherine's bylaw 95-212. A copy of the bylaw was submitted into evidence.
25. OC testified that the goats had caused damage to the backyard and submitted into evidence several pictures of the goats, wire fencing, wood pallets, garbage bags, a pool, a trampoline, a doghouse and clutter.
26. OC submitted two quotes into evidence. The first quote was to remove debris, grade and install new sod in the backyard at a cost of \$6,667.00. The second quote was for removal of the pool, all sod in the backyard, garbage or debris left in the yard at the time of installation and the supply and install of new topsoil and sod at a cost of \$15,700.00.
27. MD testified that she had the goats for one year and rehomed them at the order of the bylaw officer.
28. MD further testified that there was no damage to the backyard as a result of the goats and questioned why the quotes the Landlord submitted included costs for removing her belongings while she is still a tenant in the rental unit.
29. MD submitted photos of the backyard from when she first moved in, with bare patches and mud and current pictures which show grass throughout the yard.
30. I find that it is uncontested that the Tenant did have goats on the property and the goats were removed as order by the bylaw officer.
31. I do not find that the Landlord has proven that the goats caused any damage. The photo the Landlord submitted to show the condition of the yard prior to the Tenant moving in, was not accurate. The photo was missing the deck and the driveway, both which were installed prior to the Tenant moving in.
32. The yard, although cluttered, does not depict the extent of damage the Landlord is alleging would require grading, top soil and new sod. Furthermore, I agree with the Tenant that the quotes include the removal of her property, suggesting she has abandoned it, while she is still a Tenant.
33. Therefore, this portion of the Landlord's application is dismissed.

Plumbing Bills

34. OC testified to the following plumbing issues and submitted the invoices for each issue.

- June 1, 2023 – fix blockage and install new toilet and sink.
- June 5, 2023 – blocked toilet \$350.30
- June 16, 2023 – camera in drain to check for damage/blockage \$367.25
- September 7, 2023 – blocked toilet \$254.00
- October 17, 2023 – blocked toilet – Tenant paid invoice
- November 13, 2023 – new access to the outside drain installed, a tie in the new sewer with two cleanouts outside weepers and redirected inside to a sump pump \$5,938.15
- March 19, 2024 – blocked toilet \$339.00
- May 16, 2024 – blocked toilet \$197.75
- June 16, 2024 – blocked toilet \$113.00

35. OC testified that the issues with the plumbing were caused by the Tenant and included grease in the drains and a large mass of hair.

36. The Landlord, Ali Ramadan (AR), testified that the plumbing issues were not issues with the pipes but due to the Tenant flushing items, as the problems have continued after the repairs have been made.

37. MD testified that there has been plumbing issues since they moved into the rental unit.

38. MD testified that the Landlord had been recommended earlier by a plumber to use the camera and a backhoe, and the delay in the Landlord doing these things was the cause of plumbers having to attend over and over again.

39. MD testified that there is no evidence, other than the one incident where a sanitary napkin was dropped in the toilet by accident, for which they paid the plumber's invoice, that the Tenants are the cause of any of the plumbing issues.

40. In reviewing the invoices, I note the following comments from the plumbers:

- June 16, 2023 – sewer has a shift at the front of the house, toilet paper ok but other things can't go down
- July 9, 2023 – found tampons
- March 19, 2024 – used camera – grease in the pipe, will bring knocker and clean walls of the clay pipe so the paper does not slow down and create dam
- June 16, 2024 – snake main line, found a lot of hair, used chain knocker to clean the main sewer
- June 17, 2024 – snake the main line, a lot of hair was stuck to the snake. I don't know where it came from

41. I find, on a balance of probabilities, that the plumbing issues existed prior to the Tenants moving in and that there is no evidence to link the Tenants to the cause of the issues, other than the sanitary napkin which the Tenants paid the plumbing invoice. Therefore, this portion of the Landlord's application is dismissed.

N8 – Persistently late payments of rent

42. On January 28, 2024, the Landlord gave the Tenant an N8 notice of termination. The notice of termination contains, in part, the following allegations:

On January 4, 2024, email was sent to the tenants for January 2024, telling them we received only \$1,965.00 total in 2 payments, rent balance must be paid immediately.

43. An attached “Schedule A” addresses late payments in 2022 and 2023, prior to an order from the Board for arrears and a rent ledger which includes the rent payments prior to the order from the Board and 3 late rent payments from the time of the order from the Board and the filing of the application.
44. The Landlord’s Representative testified that the Tenant has continued to pay the rent late since the filing of the application and has paid the rent late 14 times in the past 20 months.
45. The Landlord’s Representative further testified that the Landlord is seeking a termination of the tenancy based on the persistently late payments of rent because the Landlord is a small landlord, relying on the rent to pay the mortgage.
46. The Tenant, Michelle Dolbeck (MD), testified that they have been trying to pay the rent on time and when late it is only a day or two, which sometimes is caused by the banking days.
47. MD testified that the Tenants are seeking to preserve their tenancy and are offering post-dated cheques to ensure the rent is on-time going forward.
48. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Residential Tenancies Act, 2006 (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. I find that a pay-on-time order, as requested by the Tenant, is appropriate in these circumstances. As termination is a remedy of last resort, I find the Tenants should be given another opportunity with a pay-on-time order.
49. Balancing the interests and prejudices to each of the parties, I find that a conditional order is appropriate. This will allow the Tenants’ housing to be preserved and the prejudice to the Landlord alleviated by allowing the Landlord to apply to the Board for termination of the tenancy without further notice to the Tenant in the event the Tenant fails to comply with the conditions in this Order.
50. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
51. Although this order does not specifically address each piece of evidence individually or reference all of the testimony, I have considered all of the evidence and oral testimony when making my determinations.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.

N5 Notice

2. The Tenant shall pay the Landlord \$3,772.17 which represents the water bills to July 31, 2024, as follows:

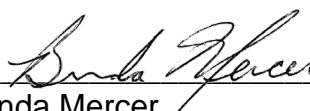
The Tenant shall pay to the Landlord \$350.00 per month on or before the 20th day of each month starting November 20, 2024, and continuing until August 20, 2025, inclusive, and a final payment on September 20, 2025, in the amount of \$272.17.

3. The Tenant shall pay all outstanding water bills from August to October 2024 on or before November 30, 2024.
4. Beginning December 1, 2024, the Tenant shall pay all new water bills in full and on time.

N8 Persistently late payments of rent

5. The Tenant shall pay to the Landlord the full rent owing on or before the first day of each month commencing December 1, 2024, and for 12 months thereafter, up to and including November 1, 2025.
6. If the Tenant fails to comply with the conditions set out in paragraphs 2, 3, 4 and 5 of this order, 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 the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
7. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
8. The total amount the Tenant owes the Landlord is \$3,958.17.
9. If the Tenant does not pay the Landlord the full amount owing on or before November 1, 2025, the Tenant will start to owe interest. This will be simple interest calculated from November 2, 2025 at 6.00% annually on the balance outstanding.

November 8, 2024
Date Issued



Brenda Mercer
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.