



**Order under Subsection 87(1) / 88.2 / 89
Residential Tenancies Act, 2006**

Citation: Tran v Grandmond, 2025 ONLTB 634

Date: 2025-01-03

File Number: LTB-L-003758-23

In the matter of: Upper Unit, 15 PEARL ST
BELLEVILLE ON K8N4X1

Between: Van Tran

And

Morris Jonathan Grandmond
Kaylee Mclaughlin

I hereby certify this is a
true copy of an Order dated
JAN 03, 2025
Landlord and Tenant Board

Landlord

Tenants

Van Tran (the 'Landlord') applied for an order requiring Morris Jonathan Grandmond and Kaylee Mclaughlin (the 'Tenants') to pay the rent that the Tenants owes. (L1 Application)

The Landlord also applied for an order to terminate the tenancy and evict 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 tenant and the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has willfully or negligently caused damage to the premises (L2 application).

The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date (L2 application).

The Landlord also applied for an order requiring 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 (L2 application).

The Landlord also applied for an order requiring the Tenants to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex (L2 application).

This application was heard by videoconference on November 4, 2024 at 9:30 a.m.

Only the Landlord Van Tran and the Landlord's representative Dara Saunders, licensed paralegal attended the hearing. Loan Ly also attended the hearing as a witness for the Landlord.

As of 9:30 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. As a result, the hearing proceeded with only the Landlord's evidence.

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.

Preliminary Issue:

Breach of interim order

1. The application was originally heard by videoconference on March 5, 2024, where the matter was adjourned in order to hear it together with LTB-T-061571-22. The Board issued an interim order LTB-L-003758-23; LTB-T-061571-22 dated March 14, 2024, directing the Tenants to provide disclosure on or before May 31, 2024 and the Landlord to provide disclosure on or before June 20, 2024.
2. The Landlord’s representative raised a preliminary issue of the Tenant’s failure to comply with the interim order. The Landlord submitted that the Tenant did not provide disclosure by May 31, 2024.
3. I find the Tenant did not comply with the interim order.

Request to Amend L2 Application

4. The Landlord’s representative requested to amend the L2 application to seek compensation from the Tenant for unpaid utilities over the period of July 2022 to March 2023. The representative submitted that although the Tenant has already vacated the rental unit, the Tenant was in possession of the rental unit on the date of the Landlord’s L2 application to the Board. The Tenant vacated the rental unit on March 31, 2023, and the Landlord submitted this application for substantial interference on January 12, 2023.
5. The representative also submitted an email from the Landlord to the Tenant, dated February 24, 2024, advising the Tenant of the unpaid utilities that the Tenant was required to pay to the Landlord, as detailed in utility ledger, and utility statements attached to the letter.
6. Section 201(1)(f) of the *Residential Tenancies Act, 2006* (the 'Act') states:

The Board may, before, during or after a hearing, on its own motion and on notice to the parties, amend an application if the Board considers it appropriate to do so and if amending the application would not be unfair to any party.

7. LTB Rule of Procedure 15 states that an applicant seeking to amend their application shall request this amendment in writing by serving the amended application to all other parties and filing the amended application and a Certificate of Service with the Board. The request to amend the application is then decided at the hearing. However, Rule 15.4 allows the Board to exercise its discretion to grant a request to amend made at the hearing if satisfied the amendment is appropriate, would not prejudice any party, and is consistent with a fair and expeditious proceeding.

8. Given that the Landlord's N5 listed the Tenant's ongoing failure to pay for utilities as one of the reasons for the notice and given that the Landlord submitted a letter with a utility ledger and statements to the Tenant regarding the specific utility arrears, in advance of the hearing, I find that the Landlord's amendment is not a new claim, but rather an amendment to an existing claim. On the basis of the uncontested evidence of the Landlord, I am satisfied that the Tenant was aware of the Landlord's claim for utility charges in February 2024, well in advance of the hearing date. I find that it would not be procedurally unfair to the Tenant to grant the Landlord's request to amend their application. Therefore, pursuant to s. 201(1)(f) of *the Act*, the Landlord's request to amend her application at the hearing is granted.
9. I also accept that the Landlord may experience prejudice if their request to amend the application is not granted.
10. As the Tenants vacated the unit, the Landlord further requested to amend their application to only seek compensation for out-of-pocket costs the Landlord has incurred to repair or replace undue damage to property and compensation for the Tenant's failure to pay utility costs they were required to pay. As the matter was uncontested and the Tenant would experience no prejudice, the amendment was granted.

Determinations:

L9 Application

1. The Tenant vacated the rental unit on March 31, 2023. The Tenant was in possession of the rental unit on the date the application was filed.
2. The Landlord amended their application to an L9 application solely for arrears of rent and the filing fee. The Landlord was seeking the arrears outstanding to March 31, 2023.
3. The Tenant did not pay the total rent they were required to pay for the period from September 1, 2022 to March 31, 2023.
4. The lawful rent is \$2,350.00. It is due on the 1st day of each month.
5. The Tenant has not made any payments since the application was filed.
6. The tenancy ended on March 31, 2023 as a result of the Tenant moving out in accordance with a notice of termination, LTB order or agreement to terminate the tenancy. Therefore, the Tenant's obligation to pay rent also ended on that date.
7. The rent arrears owing to March 31, 2023 are \$14,100.00.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$1,650.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated. The rent deposit was collected July 11, 2022 and the Landlord's representative submitted that no interest has been paid to the Tenant on the rent deposit. The interest owing to the Tenant on the rent deposit is \$22.00.

L2 Application

10. As explained below, the Landlord has proven on a balance of probabilities the grounds for the claim for compensation in the application. Therefore, the Tenant shall pay to the Landlord \$5,068.00 for out-of-pocket costs related to damages and \$3,381.59 for out-of-pocket costs related to unpaid utilities by January 14, 2025.

N5 Notice of termination

11. On December 4, 2022, the Landlord gave the Tenant an N5 notice of termination. The notice of termination alleged the Tenant damaged the ceiling, based on an inspection conduct September 11, 2022 and the Tenant owed unpaid utilities.

Damages

12. The Landlord claims the Tenant wilfully or negligently caused damage to the rental unit and the Landlord incurred reasonable costs of \$5,068.00 to repair the damage and replace property.
13. The Landlord's witness, Ms. Joan Ly, the property manager, testified she received a complaint from the downstairs Tenant about a water leak on September 8, 2023 and entered the subject unit on September 11, 2023 after providing the Tenant with a legal notice of entry. Ms. Ly further testified upon entry she saw considerable damage to the bathtub area and after a discussion with the Tenant learned it was as a result of the bathtub overflowing from the Tenant bathing the Tenant's children.
14. Entered into evidence were photographs to support the Landlord's claim that the damage was negligently caused by the Tenant. The photographs, taken in September 2023, showed damage to the downstairs ceiling and bathtub area.
15. Ms. Ly testified the Landlord incurred the cost to repair and replace the damaged items listed in the Landlord's application. Also entered into evidence, was an invoice from Cruikshank Home Renovations, dated November 16, 2022, for the costs of replacing the bathtub and repair the downstairs ceiling for \$5,086.05.

Analysis

16. Section 89 of *the Act* states:

89 (1) A landlord may apply to the Board for an order requiring a tenant or former tenant to pay reasonable costs that the landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of damaged property if,

(a) while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant or former tenant wilfully or negligently causes or caused undue damage to the rental unit or the residential complex;

17. Based on the uncontested evidence before me I find the Tenant did not repair the damage, pay the Landlord the reasonable costs to repair the damage, or make arrangements satisfactory to the Landlord within seven days after receiving the N5 notice of termination. Therefore, the Tenant did not void the N5 notice of termination in accordance with section 62(3) of *the Act*.
18. Also, with the uncontested evidence before me and on a balance of probabilities I find the Landlord has met the burden of proof to support their claim the Tenant has wilfully or negligently damaged the rental unit or items in the rental unit.
19. I am satisfied with the Landlord's photographic evidence and the documentation submitted by the Landlord, that the Landlord incurred costs to repair or replace the damaged items.
20. Given the aforementioned findings, the Tenant owes the Landlord \$5,086.05.

Unpaid Utilities

21. The Landlord also claims the Tenant did not pay for utilities that the Tenant was responsible to pay from July 10, 2022 to March 31, 2023.

Ineligible utility costs

22. The Landlord submitted as part of their application a claim for the Tenant to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay for internet and phone utility costs.
23. "Utilities" are defined in section 2(1) of the *Residential Tenancies Act, 2006* (Act) as heat, electricity and water.
24. Since internet and phone services are not considered utilities under *the Act*, it is beyond the Board's jurisdiction to award a remedy for the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay these costs. Therefore, this portion of the Landlord's application is dismissed.

Heat, Hydro and Water

25. The Landlord's representative submitted into evidence a copy of the lease agreement. On page 4 of the agreement, it states that the Tenant is responsible for paying 65% of heat, hydro and water utility bills.
26. Ms. Ly testified she sent the Tenant copies of the utility invoices monthly or as they became due; Ms. Ly further testified the Landlord incurred out-of-pocket expenses by paying the outstanding utility bills himself.
27. The representative entered into evidence a utility ledger with itemized heat (Enbridge), hydro (Elexicon) and water (City of Belleville) bills over the period of July 2022 to March 2023 including copies of the bills.

28. Ms. Ly reviewed the unpaid utility bills and testified the Tenant owed the following:

Hydro

<u>Period</u>	<u>Total Bill Owing</u>	<u>Tenant's 65%</u>
July 4, 2022 – August 3, 2022	\$270.97	\$128.37*
August 4, 2022 – September 3, 2022	\$339.83	\$220.88
September 4, 2022 – October 3, 2022	\$259.88	\$168.92
November 4, 2022 – December 3, 2022	\$328.20	\$213.33
December 4, 2022 – January 3, 2023	\$437.39	\$285.21
January 4, 2023 – February 3, 2023	\$528.13	\$343.28
February 4, 2023 – March 3, 2023	\$434.12	\$282.17
March 4, 2023 – April 3, 2023	\$421.55	\$237.45**

Heat

<u>Period</u>	<u>Total Bill Owing</u>	<u>Tenant's 65%</u>
June 24, 2022 – July 21, 2022	\$68.83	\$18.16*
July 22, 2022 – August 25, 2022	\$68.89	\$44.77
September 23, 2022 – October 25, 2022	\$106.04	\$68.92
November 22, 2022 – December 22, 2022	\$178.40	\$115.96
December 23, 2022 – January 24, 2023	\$216.85	\$142.30
January 25, 2023 – February 23, 2023	\$191.02	\$124.16
February 24, 2023 – March 22, 2023	\$192.43	\$125.07
March 23, 2023 – April 25, 2023	\$136.22	\$35.12**

Water

<u>Period</u>	<u>Total Bill Owing</u>	<u>Tenant's 65%</u>
July 4, 2022 – September 3, 2022	\$495.55	\$290.42*
November 4, 2022 - January 3, 2023	\$350.09	\$227.55
January 4, 2023 – March 3, 2023	\$362.34	\$235.52
March 4, 2023 – May 3, 2023	\$244.08	\$74.03**

*= prorated from July 10, 2022, the date the Tenant moved into the unit.

**=prorated to March 31, 2023, the date the Tenant moved out of the unit.

29. Based on the aforementioned, the Landlord's representative calculated the total owing for unpaid hydro utilities is \$1,879.61, the total amount owing for unpaid heat utilities is \$674.46 and the total amount owing for unpaid water utilities is \$827.52.
30. The Landlord's representative also submitted into evidence an email from the Landlord to the Tenant, dated February 24, 2024, advising the Tenant of the unpaid utilities that the Tenant was required to pay to the Landlord, as detailed in utility ledger, and utility statements attached to the letter.

Analysis

31. Section 88.2 of *the Act* states, in part:

(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,

- i. 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

...

(4) The costs referred to in subsection (1) are reasonable out-of-pocket expenses that the landlord has incurred or will incur as a result of a tenant's or former tenant's failure to pay utility costs that they were required to pay under the terms of the tenancy agreement.

32. Based on all of the evidence before me, I am satisfied on the balance of probabilities that the Tenant failed to pay the hydro, heat and water utility costs the Tenant was required to pay, and the Landlord has incurred reasonable out-of-pocket expenses of \$3,381.59 as a result of the Tenant's failure to pay hydro, heat and water utility costs, and this portion of the Landlord's application should be granted.

It is ordered that:

1. The Tenant shall pay to the Landlord \$12,614.00 for rent arrears owing up to March 31, 2023, including the application filing fee, less the rent deposit and the interest owing on the rent deposit.
2. The Tenant shall also pay to the Landlord:
 - \$5,068.05 for out-of-pocket expenses the Landlord incurred for repairing damages; and
 - \$3,381.59 for out-of-pocket expenses the Landlord incurred for unpaid utilities
3. The total amount the Tenant owes to the Landlord is \$21,063.64.
4. If the Tenant does not pay the Landlord the full amount owing in paragraph 3 on or before January 14, 2025, the Tenant will start to owe interest. This will be simple interest calculated from January 15, 2025 at 6.00% annually on the balance outstanding.

January 3, 2025
Date Issued

Greg Witt
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.