



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

Citation: Ahmed v Morales Moreno, 2024 ONLTB 82474

Date: 2024-11-06

File Number: LTB-L-024226-24

In the matter of: MAIN AND UPSTAIRS, 15 FALVO ST
MAPLE ON L6A4A6

Between: Usman Ahmed Landlord

And

Jacqueline esmeralda Morales moreno Tenants
Vanessa Alejandra mulato
Jefri A bermudez

Usman Ahmed (the 'Landlord') applied for an order to terminate the tenancy and evict Jacqueline esmeralda Morales moreno, Vanessa Alejandra mulato and Jefri A bermudez (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe. **(L1 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 Tenants' failure to pay utility costs they were required to pay under the terms of the tenancy agreement. The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date. **(L2 Application)**

This application was heard by videoconference on October 10, 2024.

The Landlord, the Landlord's legal representative Naseer Ahmed and the Tenants attended the hearing.

Preliminary issue:

1. At the hearing, the Tenants requested an adjournment so they can obtain legal advice. The Tenants advised that they have obtained some legal advice but require further information. The Landlord objected to the adjournment as the amount of arrears on the L1 application are significant. Further no payments have been made to the Landlord on the L2 application with respect to the utility costs and an adjournment would be prejudicial to the Landlord. Considering the factors outlined in the Board's Interpretation Guideline No. 1 pertaining to adjournments, and the submissions of the parties, I declined the adjournment as it would be prejudicial to the Landlord to grant the Tenants' request.

Determinations:

L2 Application

1. Both parties agreed to amend the L2 application to reflect that the Landlord is not seeking compensation for each day the Tenants remained in the unit after the termination date as there is no notice of termination governing the L2 application. In accordance with subsection 201(1) of the *Residential Tenancies Act, 2006* (the "Act"), the application is amended to reflect the same.
2. Subsection 88.2 of the Act is the provision which governs applications related to a tenant's failure to pay utility costs. As per subsection 88.2(4) these costs are the 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.
3. The definition of utilities under the Act means "heat, electricity, and water". The Landlord seeks compensation costs for unpaid utilities in the amount of \$531.05 which also includes costs for a hot water heater rental.
4. Since the plain reading of the definition of utilities under the Act does not include a water heater rental, I will not award the Landlord costs related to the hot water heater rental.
5. I will award the Landlord utility costs related to electricity and heat(gas) as I am satisfied on a balance of probabilities that the Tenants failed to pay these costs that they were required to pay under the terms of the tenancy agreement.
6. The Landlord filed a copy of the lease agreement between the parties signed September 6, 2022. This agreement confirms that the Tenants are responsible for 70% of the utility costs related to water, electricity, and heat(gas). The lease agreement also references that the Tenants must pay these costs to the Landlord.
7. The Landlord filed copies of the utility bills with the Board. The bill amounts are as follows:

Date of Bill	Amount due
January 22, 2024 - Enbridge	\$155.00 (70% of this bill which the Tenants are responsible to pay equates to = \$108.50)
January 15, 2024 – Alectra (Electricity)	\$569.49(70% of this bill which the Tenants are responsible to pay equates to = \$398.64)
TOTAL	\$507.14

8. The Tenants did not seriously challenge the evidence provided by the Landlord with respect to utility costs and the Tenant, Jefri Bermudez ("J.B") claimed that when the utilities became more expensive to afford, the Tenants fell behind.
9. Based on the evidence adduced at the hearing, I am satisfied on a balance of probabilities that the Landlord has incurred or will incur reasonable out-of-pocket expenses in the amount of \$507.14 related to utility cost that the Tenants were required to pay under the terms of the tenancy agreement.

L1 Application

10. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
11. As of the hearing date, the Tenants are still in possession of the rental unit.
12. The lawful rent is \$3,350.00. It is due on the 1st day of each month.
13. Based on the Monthly rent, the daily rent/compensation is \$110.14. This amount is calculated as follows: $\$3,350.00 \times 12$, divided by 365 days.
14. The Tenants paid \$2,000.00 to the Landlord since the application was filed.
15. The rent arrears owing to October 31, 2024, are \$24,300.00.
16. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
17. The Landlord collected a rent deposit of \$3,350.00 from the Tenants 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.
18. Interest on the rent deposit, in the amount of \$175.53 is owing to the Tenants for the period from September 6, 2022, to October 10, 2024.

Section 83

19. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would not be unfair to postpone the eviction until November 30, 2024, pursuant to subsection 83(1)(b) of the Act. J.B claimed that the Tenants all lost their jobs and that they have been in financial hardship. The Tenants are struggling to find employment. J.B also claimed that he earns approximately \$3,400 per month and that his wife earns approximately \$400 to \$600 per week. The Tenants monthly expenses equate to approximately \$1,850.00 per month. J.B. further testified that he works at his self-employed construction renovation company, and that his wife is a babysitter. There are four children who reside with the Tenants, and the Tenants request that the eviction be delayed by 8 months to not impact the children's schooling.
20. The Tenant, Jacqueline esmeralda Morales Moreno ('J.M') claimed that there were maintenance issues pertaining to the garage door in the rental unit being left halfway open during the winter season but did not provide sufficient evidence as to how this constitutes a serious breach of the Landlord's responsibilities under the Act or any material covenant in the tenancy agreement. Thus, I place little weight on this evidence.
21. The Landlord testified that he currently suffers from depression and is on medication. He is struggling financially as he has two mortgages between two properties.
22. Considering all the circumstances, I find that it would not be unfair to postpone the eviction to November 30, 2024. J.B did not provide sufficient documentary evidence to corroborate the Tenants' earnings. The amount of the arrears is substantial. The Tenants have made

nominal payments since the application was filed. Ultimately, I am not satisfied that the tenancy is viable. The eviction is postponed to November 30, 2024. This short extension will allow additional time for the Tenants to find either alternative accommodation or voiding this Order.

It is ordered that:

L1 Application

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$27,836.00 if the payment is made on or before November 30, 2024. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after November 30, 2024, but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before November 30, 2024.**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$18,711.87. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$110.14 per day for the use of the unit starting October 11, 2024, until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before November 30, 2024, the Tenants will start to owe interest. This will be simple interest calculated from December 1, 2024, at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 30, 2024, then starting December 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after December 1, 2024.

L2 Application

10. The Tenants shall pay to the Landlord \$507.14, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs.

11. If the Tenants do not pay the Landlord the full amount owing on or before November 30, 2024, the Tenants will start to owe interest. This will be simple interest calculated from December 1, 2024, at 6.00% annually on the balance outstanding.

November 6, 2024
Date Issued



Inderdeep Padma
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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on June 1, 2025 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before November 30, 2024

Rent Owing to November 30, 2024	\$29,650.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$2,000.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$27,836.00

B. Amount the Tenants must pay if the tenancy is terminated.

Rent Owing to Hearing Date	\$24,051.40
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$2,000.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$3,350.00
Less the amount of the interest on the last month's rent deposit	- \$175.53
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total amount owing to the Landlord	\$18,711.87
Plus, daily compensation owing for each day of occupation starting October 11, 2024	\$110.14 (per day)