



Order under Section 69 / 88.2 / 89 Residential Tenancies Act, 2006

Citation: Raji v McLean, 2026 ONLTB 2477

Date: 2026-01-08

File Number: LTB-L-042377-25

In the matter of: 1, 236 WOOD ST E
HAMILTON ON L8L3Z1

Between: Abdul Raji Landlord

And

Joshua McLean Tenant

Abdul Raji (the 'Landlord') applied for an order to terminate the tenancy and evict Joshua McLean (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 Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

The Landlord also applied for an order requiring the Tenant 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.

The Landlord also applied for an order requiring the Tenant 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.

This application was heard by videoconference on September 16, 2025.

The Landlord and the Tenant attended the hearing.

Determinations:

The Parties Agreed to the Facts in the May 2, 2025, N5 Notice on Consent

1. The parties agree to the following facts relating to the Landlord's application to terminate the tenancy and his claim for costs relating to damage to the rental unit under section 89 of the *Residential Tenancies Act, 2006* (the 'Act').
2. On May 2, 2025, the Landlord gave the Tenant a first, voidable N5 notice of termination (the 'N5 Notice'). The N5 Notice alleges that on April 29, 2025, the Landlord conducted an inspection of the Tenant's rental unit with the Tenant in attendance and damage to the rental unit was discovered. The N5 Notice lists the cost of repairing the damage as \$820.00.
3. The Tenant did not void the notice by repairing the damage or paying this cost to the Landlord within 7 days after receiving the N5 Notice.
4. The Landlord prepared an inspection report that was served to the Tenant along with the notice. The inspection report shows minor damage throughout the rental unit.

The Parties Agreed to Resolve the Application to Terminate and the Section 89 Claim on Consent

5. The Landlord and the Tenant reached an agreement to resolve the Landlord's application to terminate the Tenant's tenancy and the Landlord's claim under section 89 of the Act on consent.
6. At the hearing, the parties agreed that the Tenant shall repair the damage to the rental unit within seven days of the hearing (i.e. by September 23, 2025). The parties agreed that if the Tenant did not do so, the Landlord would be able to apply to terminate the tenancy without further notice to the Tenant pursuant to section 78 of the Act.
7. I am satisfied that the parties have given informed consent with respect to the proposed agreement to resolve these portions of the Landlord's application. Given the consent of the parties, an order reflecting this agreement is issued on consent below.
8. The parties did not, however, reach an agreement resolving the Landlord's application under section 88.2 of the Act for utilities costs. For the reasons discussed below, this portion of the Landlord's application is dismissed.

The Landlord's Utilities Claim Under Section 88.2 is Dismissed

9. A copy of the lease between the Landlord and the Tenant was provided at the hearing. The lease was signed on March 20, 2020, and the tenancy began on May 1, 2020, for a one-year fixed term. The tenancy then converted to a month-to-month tenancy pursuant to section 38 of the Act. Clause 6 of the lease addresses the responsibility for utility costs between the parties.
10. The rental unit is part of a residential complex that contains two rental units. The Tenant's rental unit ("Unit 1") is the rental unit on the lower level of the residential complex. Per the

lease agreement, there are two individuals residing in Unit 1. The other unit ("Unit 2") is the rental unit on the upper floors of the residential complex and is occupied by five people.

11. Clause 6(a) states that electricity, gas, and water/sewage bills will be paid by the Landlord.
12. Clause 6(b) appears to qualify clause 6(a). It limits the Landlord's liability for the monthly utility costs for the rental unit to \$100.00 per month and specifies that the remaining balance will be "paid promptly by the Tenant". It also stipulates that the Landlord would calculate the average monthly utilities cost "at the end of the lease" (i.e. at the end of the initial twelve-month period). The clause also contains a provision that speaks to a theoretical increase in the number of occupants in the rental unit, but this provision is not relevant to the current dispute.
13. No utilities cost was passed onto the Tenant during the period of the tenancy prior to November 22, 2023. Per the testimony of the Landlord, according to his calculations, the annual utilities cost for the rental unit never exceeded \$1,200.00 per month during this time. The Tenant testified that he never received any information about utilities costs during this period.
14. The method for calculating the utilities costs for the rental unit is unnecessarily arcane. He has devised a formula (not disclosed in the lease) based on the number of occupants in Unit 1 and Unit 2, respectively, and has essentially annualized the Tenant's utilities costs, if any remain after the \$1,200.00 that the Landlord has agreed to pay.
15. The Landlord also appears to have unilaterally altered the period of annualization at some point between the beginning of the tenancy and the date of his application. The initial term of the tenancy was May 1, 2020, to April 30, 2021. It is unclear, then, why the Landlord is now annualizing the utilities costs for "2024" from November 22, 2023, to December 5, 2024.
16. While the method of allocating the utilities costs between the parties is, in my view, much more complex than it needs to be, parties are permitted to enter into complex cost calculation arrangements for utilities as long as they are not contrary to the Act. However, the risk of doing so is that it may be difficult to prove what amounts, if any, are owed by the Tenant for utilities at a hearing before the Board.
17. As the applicant, the Landlord carries the burden of proving, on a balance of probabilities, that the Tenant owes the amount claimed in his application.
18. In this case, the Landlord has provided ample evidence of the utilities costs at the residential complex (i.e. the combined costs of Unit 1 and Unit 2). Bills for electricity, gas, and water costs were provided at the hearing.
19. I also understand how the Landlord has calculated what he believes to be the amount the Tenant owes for the calendar year of 2024. However, there is no evidence that the Tenant ever agreed for utilities costs to be annualized on the basis of the calendar year.
20. My reading of the agreement between the parties is that the Landlord and the Tenant have agreed to split the costs of the utilities and that these costs are to be calculated on an annual basis based on the number of occupants in Unit 1 and Unit 2. The Landlord has agreed to pay the first \$1,200.00 of costs per annual billing period and the Tenant has

agreed to pay any amounts beyond \$1,200.00. The first utilities calculation ought to have been for the period of May 1, 2020, to April 30, 2021. The second utilities calculation period would have then started on May 1, 2021, and concluded on April 30, 2022, and so on.

21. Despite providing voluminous evidence, the Landlord has not provided sufficient information to the Board to determine what amount, if any, is owed by the Tenant to the Landlord and, therefore, the Landlord's claim under section 88.2 of the Act must be dismissed.
22. The Landlord has not provided enough information to understand the utilities costs for the rental unit during the 2023-4 annualized billing period (from May 1, 2023 to April 30, 2024) or the 2024-5 annualized billing period (from May 1, 2024, to April 30, 2025). These are the billing periods the parties agreed to in the lease and the Landlord has not clearly articulated what amounts, if any, are owed by the Tenant during these periods.
23. To be clear, I am not saying that the Tenant does not owe any money to the Landlord for utilities during these periods. As stated above, I understand the parties to have agreed to split the costs in the lease agreement. It very well may be the case that the Tenant owes the Landlord for utilities usage, but the Landlord has not met his burden of establishing that fact on a balance of probabilities.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. The Tenant shall repair the damage illustrated in the April 29, 2025, inspection report on or before September 23, 2025.
3. If the Tenant fails to comply with the conditions set out in paragraph 2 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.
4. The Landlord's application under section 88.2 of the Act with respect to utilities claims is dismissed.

January 8, 2026
Date Issued

Jeremy Henderson
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.