



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

Citation: Tavares v Da Silva, 2026 ONLTB 18649

Date: 2026-03-05

File Number: LTB-L-067593-25

In the matter of: 6, 1630 DUNDAS ST W
TORONTO ON M6K1V1

Between: Victor Tavares Landlord

And

Donalda Da Silva Tenant

Victor Tavares (the 'Landlord') applied for an order to terminate the tenancy and evict Donalda Da Silva (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 Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

Victor Tavares (the 'Landlord') applied for an order requiring Donalda Da Silva (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.

This application was heard by videoconference on December 3, 2025.

The Landlord's Representative, Eric Steiman, the Landlord, the Landlord's Agent, Marina Tavares, the Tenant's Representative, Angel Xing, and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities some of the grounds in the application. Therefore, the Tenant must pay to the Landlord the amount of \$2,696.68.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N5 Notice of Termination – Substantial Inference

3. On June 18, 2025, the Landlord gave the Tenant an N5 notice of termination deemed served on June 23, 2025, alleging the Tenant has not paid the utilities as required under the lease agreement for the period of April 11, 2025 to May 14, 2025, in the amount of \$163.37, and the balance owed from the previous amount of the last bill is \$2,533.31. The total amount owing is \$2,696.68 for unpaid hydro arrears.
4. The Landlord's representative said the Tenant failed to correct the issue and pay the amount owing to the Landlord within the 7-day voiding period of June 23-30, 2025, to void the notice.
5. It was undisputed that the Tenant did not pay the amount noted in the N5 notice.
6. It was also undisputed that the Tenant signed the lease agreement on or around September 11, 2024, which required the Tenant to pay additional utility costs for hydro.
7. The Landlord's Agent, Marina Tavares ('MS'), who is also the Landlord's wife, gave testimony that the hydro account for the rental was in her husband's name. However, she testified that at the time the tenancy agreement was signed, the Tenant agreed to put the hydro account in her own name, and she failed to do so.
8. MS testified that the Landlords received the hydro bills but never sent copies of the monthly hydro invoices to the Tenant prior to issuing the N5 notice. MS also testified that she and her husband live overseas, and her son lives in their family home. The hydro invoices were mailed to their family home, and her son would let her know when they were received. However, she acknowledged that she did not advise the Tenant of receipt of the invoices nor their amounts. MS said the first time she notified the Tenant about the outstanding hydro was in November 2025, when she contacted her via Whatsapp. At the time, MS advised the Tenant that she must call Toronto Hydro to put the hydro in her own name. MS also testified that she sent the hydro bill for November 2025 through the message app, but she never sent the Tenant another invoice or the breakdown for the hydro costs to notify her of the outstanding amounts prior to service of the N5 notice. There was no documentary evidence submitted of a Whatsapp message to support MS' testimony that an invoice was sent to the Tenant in November 2025. MS explained that the relationship between the Landlord and the Tenant quickly deteriorated due to other issues with the tenancy so communication between the parties was minimal.
9. The Tenant testified that she did not receive any hydro invoices from the Landlord and, until she received the N5 notice, she was not aware of total amount of hydro arrears owing.

Analysis:

10. The N5 notice is served pursuant to section 64 of the Act which states:

64 (1) *A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the*

landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

(2) A notice of termination under subsection (1) shall,

(a) provide a termination date not earlier than the 20th day after the notice is given;

(b) set out the grounds for termination; and

(c) require the tenant, within seven days, to stop the conduct or activity or correct the omission set out in the notice

(3) The notice of termination under subsection (1) is void if the tenant, within seven days after receiving the notice, stops the conduct or activity or corrects the omission.

11. When a Landlord serves a Tenant an N5 notice alleging substantial interference the Tenant has seven days to correct the activity or conduct that gave rise to the notice. In this case, the Tenant had an obligation to pay the utility bills in accordance with the terms of her lease, and it was uncontested that she failed to do so. However, it was also uncontested that the Tenant was never made aware of the utility arrears owing as the invoices were never sent to the Tenant. The parties agreed that the hydro account was in the Landlord's name, and the invoices were mailed directly to the Landlord. As a result, the Tenant could not reasonably have known the outstanding utility cost. Having considered the evidence of both parties, I find that the Tenant was not advised of the utility charges, did not have access to the bills sent to the Landlord and that there was no request for payment made by the Landlord, until the N5 notice was served.
12. Based on the evidence before me, I am not satisfied on a balance of probabilities that there was substantial interference with the Landlord's lawful rights, privileges or interests at the time the N5 notice was served, as the Landlord chose not advise the Tenant of the hydro invoices or make a demand for payments; the Tenant had not refused to pay the invoices attached to the N5, but in fact was not provided with them nor asked to do so. It was the Landlord's inaction that impacted the Tenant's ability to pay the outstanding invoices earlier.
13. Although I accept that the Tenant had an obligation to put the hydro account into her own name, and she did not, the Landlord did not raise this issue in the application before me as a grounds for termination. The issue raised in the application was interference with the Landlord's right due to non-payment of the invoices. However, when the hydro bills arrived, the Landlord chose to take no action to request payment from the Tenant for months.
14. I do not find that it would be appropriate to terminate the tenancy for non-payment of invoices that the Tenant was not provided until the service of the N5 notice. I find that there must be some conduct that substantially interferes with the Landlord's rights, privileges or interests which *leads* to the service of the notice, in this case the Tenant did

not refuse to pay the invoices but was not provided with the invoices to make the payments.

15. I find that at the time the notice was served, the Tenant could not have paid amounts they were not aware of, there was no "request and denial of payment".. In these particular circumstances, due to the lack of notice of the invoices, I find that it would be unfair to terminate the tenancy as the payment amounts were not known prior.
16. The Landlord's request for termination of the tenancy for non-payment of utilities is denied.

Compensation for unpaid utilities

17. The Landlord seeks an order for unpaid utility costs. The Landlord's representative provided an invoice from Toronto Hydro., in the amount of \$2,696.68, for the period of September 11, 2024, to May 14, 2025, as requested in the application.
18. The Landlord's representative said that although the invoices have not been paid by the Landlord, these are costs that have been incurred through the use of the hydro and the Landlord is required to provide payment for them. Therefore, it is a cost that they will incur.
19. The Tenant admitted that she signed the lease agreement that stated she was responsible for paying the hydro costs. The Tenant stated that at the time of signing the lease agreement, the parties made a verbal agreement for the Tenant to do some work around the property in exchange for hydro arrears being absolved by the Landlord. The Tenant did not provide details of the agreement with respect to a specific amount of compensation for the detailed work to be performed. The Landlord disputed that there was a side agreement with the Tenant.
20. Section 88.2(1) of the Act states:

A landlord may apply to the Board for an order requiring a tenant or former tenant to pay costs described in subsection (4) if,

 1. 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.
21. Subsection 88.2(4) states, "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. [emphasis added]"
22. Based on the evidence before me, I find that the Tenant failed to pay utility costs that they were required to pay under the terms of the tenancy agreement. It was uncontested that the tenancy agreement that was entered into in September 2024 states that the Tenant was responsible to pay the utilities associated with the rental unit. Although, the Tenant stated there may have been a side agreement with the Landlord to do some work around the rental complex, the Tenant did not provide sufficient evidence to persuade me, on a

balance of probabilities, that a side agreement existed with the Landlord to waive the utilities arrears.

23. On the evidence before me, I find that the Landlord has incurred or will incur reasonable out-of-pocket expenses of \$2,696.68, as a result of the Tenant's failure to pay hydro costs on the basis of the invoice entered into evidence.
24. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The Tenant shall pay to the Landlord \$2,696.68, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs.
2. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
3. The total amount the Tenant must pay the Landlord is \$2,882.68.
4. If the Tenant does not pay the Landlord the full amount owing on or before April 5, 2026, the Tenant will start to owe interest. This will be simple interest calculated from March 6, 2026 at 4.00% annually on the balance outstanding.

March 5, 2026
Date Issued

Colette Myers
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.