



Order under Section 69 / 88.1 / 88.2 Residential Tenancies Act, 2006

Citation: Elfassy v Oz, 2025 ONLTB 96588

Date: 2026-03-24

File Number: LTB-L-076304-25

In the matter of: Basement Apt. 1, 28 HOVE ST
Toronto ON M3H4Y9

Between: Matthew Elfassy Landlord

And

Dogus Oz Tenant

Matthew Elfassy (the 'Landlord') applied for an order to terminate the tenancy and evict Dogus Oz (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.

Matthew Elfassy (the 'Landlord') also applied for an order requiring Dogus Oz (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.

Matthew Elfassy (the 'Landlord') also applied for an order requiring Dogus Oz (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

This application was heard by videoconference on December 9, 2025.

The Landlord and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the application is dismissed.

2. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
3. The Tenant was in possession of the rental unit on the date the application was filed.

Validity of N5 Notice

4. On July 18, 2025, the Landlord gave the Tenant a first, voidable N5 notice of termination. The notice of termination contains the following allegations: the Tenant substantially interfered with the Landlord's lawful rights, privileges, or interests by failing to pay the Tenant's portion of the utilities.
5. On September 11, 2025, the Landlord gave the Tenant a second N5 notice of termination. The notice of termination contains the following allegations: the Tenant substantially interfered with the Landlord's lawful rights, privileges, or interests by failing to pay the Tenant's portion of the utilities.
6. Section 68(1) of the *Residential Tenancies Act*, 2006 (the 'Act') provides that a second notice of termination may be given if 1) the landlord has already given the tenant a notice of termination under section 62, 64 or 67; and 2) more than 7 days, but less than six months after the first notice was given, an activity takes place, conduct occurs or a situation arises that constitutes grounds for a notice of termination under section 60, 61, 62, 64 or 67.
7. Pursuant to section 68(1), the second N5 could only raise new incidents/conduct that occurred more than 7 days after the first N5 was given, i.e. beginning July 26, 2025. The second N5 contains no new allegations. The allegations contained in the second N5 are the same as the incidents on the first N5. It appears, the second N5 was issued because the Tenant did not void the first N5.
8. As such, I find that the second N5 was not a valid second N5 because it did not contain any new incidents. Therefore, the application cannot proceed based on the second N5.
9. Furthermore, the application was not filed within 30 days of the date of termination of the first N5 per section 69(2) of the Act so the application cannot be amended to proceed on the first N5.
10. Therefore, the claim for eviction cannot proceed as the application is not based on a valid N5 notice.
11. However, the application also contained a claim for unpaid utilities. Therefore, the hearing proceeded on the claim for the unpaid utilities alone.

Unpaid Utilities

12. The Landlord sought to amend the application at the hearing to seek a total of \$771.85 from the Tenant in unpaid utilities plus the filing fee. The Landlord provided that the latest utility bills had been provided to the Tenant on December 1, 2025, and December 3, 2025, so the Tenant was aware of the latest balances and what was owing.

13. I was satisfied that the amendment was proper as the Tenant was aware that the lease required him to pay a portion of the utilities and the Landlord had provided the Tenant with the latest bills and the Tenant's required portion prior to the hearing. The amendment was therefore the most effective use of the Board's resources and was not prejudicial to either party.
14. The Landlord testified that the lease provided that the Tenant was responsible for a portion of various utilities and provided a copy of the lease. The Landlord also testified that the utilities are split depending on how many tenants are in the residential complex and this has always been clear. For example, if two tenants bills are split 50/50, if three tenants then bills are split three ways. The Landlord testified that bills are currently divided by 3 except for lawn care which the upstairs tenants pay 50% and the two downstairs tenants pay 25% each.
15. The Landlord testified that the Tenant has only been paying a small portion of what the Landlord believes is owed toward the total outstanding utilities owed under the lease. The Landlord testified that he was not sure what the other tenants were paying for utilities because he did not have their files available.
16. The Tenant testified that he has no problem paying 25% of hydro, water, and heat because that is what is permissible under the Act. The Tenant indicated he has been sending 25% of the permissible utility payments to the Landlord but he has not paid lawncare or solid waste, which is garbage collection.
17. The Tenant said that the Landlord's calculations are full uncertainty and ambiguity and the Tenant believes that the upstairs Tenants may be paying 70% of the utilities and therefore between all of the tenants the Landlord may be collecting more than 100% of the utility bills.
18. The Act defines "utilities" as heat, electricity and water. Therefore, an application for unpaid utilities would be for unpaid heat, electricity, or water bills. I am not satisfied that lawncare or garbage collection are proper utility bills.
19. As such, I am not satisfied that the Landlord has properly claimed lawncare or the portion of the Toronto utility bill dealing with solid waste management. It is clear from the Toronto utility bill that solid waste management deals with garbage collection and can be clearly separated from the water bill. These are not utilities as defined by the act and therefore cannot be claimed as unpaid utilities. Therefore, the Landlord's claim pertaining to these unpaid bills is dismissed since lawncare and solid waste management do not fit the definition of utilities.
20. As to the portion of Landlord's claim for unpaid heat, electricity, and water charges, I am not satisfied that the Landlord has clearly established what is owing.
21. On any application before the Board, the person who alleges any particular incident or event occurred has the burden of leading sufficient evidence to establish that it is more likely than not that their version of events is true. In this case that burden is the Landlord's.
22. The lease is poorly worded and ambiguous as to what the Tenant's share of the utility bills would be. The lease indicates that it would possibly be a range of 25-50% of the utility bill owing. While I understand the premise of the lease, it is a general contract law

interpretation principle that an ambiguous term is to be interpreted as against the drafter. This clause regarding the portion of the utilities should have been drafted in much clearer language.

23. However, that is not the only problem. The Landlord's own spread sheet offered uncertain evidence. The Landlord testified that the utilities were being divided by 3 but the spreadsheet was dividing the utilities by .34 which means the Landlord would be collecting 102% of the utility bills. Furthermore, the Landlord's inability to provide evidence regarding what the other Tenants were paying toward the utilities or failure to be forthcoming with the other tenants about what each was paying calls into question the veracity of the calculations.

24. As such, I am not satisfied that the Landlord has established what the total share the Tenant was to pay for the utilities and whether it is more likely than not the Tenant has paid what is owing.

25. Therefore, the Landlord's application is dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

March 24, 2026
Date Issued

Nicole Pedron
Member, Landlord and Tenant Board

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