



Order under Section 69 / 88.2 Residential Tenancies Act, 2006

Citation: SHARMA v WARMINGTON, 2026 ONLTB 27594

Date: 2026-04-07

File Number: LTB-L-106203-25

In the matter of: 40 DAVENFIELD CIR
BRAMPTON ON L6P4M2

Between: RAJESH SHARMA Landlord

And

KIM WARMINGTON Tenants
SHENIECE WISDOM

RAJESH SHARMA (the 'Landlord') applied for an order to terminate the tenancy and evict KIM WARMINGTON and SHENIECE WISDOM (the 'Tenants') because the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises

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

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.

This application was heard by videoconference on March 31, 2026. The Landlord's Representative, Sarah Vaz, and the Tenants attended the hearing.

Determinations:

1. For the following reasons, the Landlord's application is dismissed.
2. The application before the Board is premised on an N5 notice of termination alleging that the Tenants failed to pay for the hot water heater rental as required pursuant to the terms of the lease.
3. The tenancy began in 2018 and predates the introduction of the Ontario Standard Lease. However, the signed lease introduced into evidence includes a checked box for hot water heater rental, and the page is initialed by the Tenants. The Tenants paid for the hot water tank rental from 2018 to mid-2025.

4. In about June or July of 2025, the gas utility bill, which had been a single bill before, was split. Enercare, the provider, now issues two separate bills: the first, for the gas utility and the second for the hot water tank rental. The Tenants have been paying the gas utility. However, they refused to pay for the hot water tank rental arguing this should be the responsibility of the Landlord.
5. The Landlord submits that the Tenants had been paying for both items since the beginning of the tenancy, when they were both on a single bill. Further, the Tenants agreed to pay the hot water tank rental per the terms of the lease.
6. The issue here is two-fold. First, the Landlord's application alleges that the Tenants damaged the rental unit. However, there was no evidence that the Tenant damaged the rental unit. Rather, the Tenants are alleged to have substantially interfered with the Landlord's lawful rights and privileges by failing to pay the hot water tank rental. But the N5 notice upon which the application is based indicates the Tenants damaged the rental unit.
7. Section 212(2) of the *Residential Tenancies Act* ('the Act') states that an error in the contents of a form, notice, or document still constitutes substantial compliance with the Act as long as the error does not significantly prejudice a party's ability to participate in a proceeding under this Act.
8. It was clear to me during the hearing, that the Tenants knew why they were attending. They made specific submissions demonstrating they understood the contents of the Landlord's notice. As the Tenants were able to participate in the hearing, I am satisfied that they were not substantially prejudiced by the error in the Landlord's N5 notice.
9. Further, even if the N5 notice was defective, the Landlord's L2 application could proceed as it correctly identifies that the Landlord was seeking utility costs identified under "Reason 3." The consequence of the error on the N5 would have been that termination would not be available as a remedy, but this would not preclude the Landlord from obtaining an order for the reimbursement of unpaid utilities.
10. The second issue is that of the actual non-payment for the hot water tank rental charges. It appears Members are split on their view of whether rental fees ought to be included within the definition of "utilities". In reviewing other orders of the Board, there are no consistent findings, and I not aware of, nor was pointed to, binding case law governing this specific issue.
11. Submissions were made by the Landlord that deference should be given to the lease terms, which were agreed to by the parties, and the fact the Tenants acquiesced for many years before refusing to pay for the hot water tank rental.
12. Although I agree that the Tenants did not exercise their rights to challenge the lawfulness of the hot water tank rental costs, and that the Tenants agreed to pay for these charges by way of a signed lease, I am not of the view that these charges were lawful.
13. Section 2 of the Act provides that utilities include "heat, electricity, and water." There is no mention of any rental fees associated with the provision of those services. In my view, providing hot water is no different than providing heat. Furnaces are frequently rented by homeowners, yet landlords typically do not attempt to offload the cost of providing heat to

their tenants by having tenants pay for the furnace rental. Heat and hot water are both identified as vital services in s. 2. Given hot water is also a vital service, and rental fees are not stipulated within the definition of utilities found in s. 2 of the Act, I am not of the view that legislature intended rental fees associated with providing vital services to tenants to be a cost that ought to be born by tenants.

14. With respect to the Landlord's argument that the Tenants acquiesced to having paid those fees for several years, section 3(1) of the Act states that the Act prevails despite any agreement or waiver to the contrary. Thus, the parties were not free to contract out of the Act despite whatever they may have agreed to. As I have found that the Tenants should not have been paying the hot water tank rental fees at all, the fact they have done so in the past does not supersede s.3(1) of the Act as the parties were not free to contract out of the Act.

15. This order contains all of the reasons within it. No further reasons shall issue.

It is ordered that:

1. The Landlord's application is dismissed.

April 7, 2026
Date Issued

Jane Dean
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.