



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

File Number: LTB-L-105195-25

In the matter of: 604 HUNTINGTON RIDGE DRIVE
MISSISSAUGA ON L5R1Z7

Between: YONG LU Landlord
XIN LI

And

BENJAMIN GARRETT Tenant

YONG LU and XIN LI (the 'Landlord') applied for an order to terminate the tenancy and evict BENJAMIN GARRETT (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.

YONG LU and XIN LI (the 'Landlord') also applied for an order requiring BENJAMIN GARRETT (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 April 30, 2026.

The Landlords and the Tenant attended the hearing.

Preliminary Issues:

1. Two preliminary issues arose at the hearing, which were all decided at the hearing.

Mr. Lue Sang as Witness and Representative

2. Mr. Lue Sang is a licensee of the Law Society and also acts as the Landlords' property manager. He sought to represent the Landlords at the hearing and provide evidence to the

Board. The substance of the N5 Notice is centred on allegations involving Mr. Lue Sang and the Tenant.

3. After hearing submissions from the parties, I declined to permit Mr. Lue Sang to represent the Landlords at the hearing. Given that Mr. Lue Sang was required to provide evidence concerning the incidents alleged in the N5 Notice, I found it inappropriate for him to act in the dual role of both representative and witness. When making this decision I took into account the Board's Rules of Procedure, specifically Rule 1.6(q) which allows the Board to exercise its discretion to permit a party's legal representative to give evidence where appropriate. Given the nature of the application I did not find this situation to be appropriate as it required detailed evidence surrounding serious allegations on an N5 Notice.
4. Subsequently, another licensee from Mr. Lue Sang's office attended the hearing and asked to represent the Landlords. I did not find it appropriate to permit a new representative, who presumably had no prior knowledge of the proceedings and who was from the same firm as Mr. Lue Sang, to represent the Landlords on the second day of the hearing. It would have been inappropriate to allow the new licensee to question Mr. Lue Sang under oath.
5. The Landlords were asked whether they wished to seek an adjournment to obtain new representation. The Landlords advised that they were content to proceed without representation.

Who is the proper tenant?

6. The parties agree that there is a signed lease agreement naming Benjamin Garrett as the Tenant. Mr. and Ms. Garrett separated in December 2024, and Ms. Garrett currently resides in the rental unit with her children (aged 14 and 20).
7. The parties also agree that Mr. Garrett continues to pay the rent, maintains personal property in the rental unit, and remains "in possession" of the unit for the purposes of this application. The Landlords submit that Mr. Garrett is the sole tenant under the tenancy. The Tenant submits that Ms. Garrett ought to be added as a tenant.
8. Section 2(1) of the *Residential Tenancies Act* (the *Act*) provides that a tenant includes a person who pays rent in exchange for the right to occupy a rental unit. It is not in dispute that Mr. Garrett is the only individual named on the lease, only individual that pays the rent, and remains in possession of the rental unit. In these circumstances, there is no basis to find that Ms. Garrett is a tenant under the *Act*, notwithstanding her residence in the unit with her children.
9. Notably, the recent decision in *Browne v. Henley Crescent*, 2026 ONSC 455, held that section 3(2) of O. Reg. 516/06 provides that, subject to certain exceptions, a spouse whose primary residence is the rental unit may be deemed a tenant under section 2(1) of the *Act* if the tenant vacates the unit without giving a notice of termination and without entering into an agreement to terminate the tenancy. As the parties agree that Mr. Garrett has not vacated the rental unit and remains in possession, he alone meets the definition of tenant under the *Act*.

Is the N5 Notice proper on its face?

10. On October 31, 2025, the Landlord gave the Tenant an N5 notice of termination. The notice of termination contains the following allegations:
 - On October 24, 2025, on or about 3:19pm, the Tenant or his occupant refused the Landlord's agent to enter the rental unit for inspection (see attached email).
 - On October 24, 2025, on or about 3:19pm, the Tenant or his occupants are harassing the Landlord's agent by claiming that he has committed a criminal act (see attached email).
11. Mr. Lue Sang testified about the email in question from Ms. Garrett on October 24, 2025 at 3:19pm. This email was entered into evidence. The email itself is responding to an original email from Mr. Lue Sang which asked if the Landlord's contractor can attend at the rental unit the same date or attend the next week instead. Ms. Garrett responded as follows:

"Hello Barrington,

Yes, that's fine. I am home. Please also ask her to reinstall the shower rod that she removed.

I do want to note that you make me feel extremely uncomfortable today unexpectedly claiming you wanted to conduct a full home inspection which was not previously discussed or given notice for. It particularly concerns me that you made no request to inspect any of the rest of the home while here, but demanded to inspect my children's rooms even after I informed you they were home sick and still sleeping.

You may visit next week for a full inspection with notice. Please schedule a time in the morning. I am available Monday and Tuesday from 9 am until 12 pm.

Thank you,

Tara Garrett"
12. The Landlords were asked whether the N5 Notice was intended to relate solely to the single email of October 24, 2025, or whether it was meant to encompass additional emails between the parties. The Landlords confirmed that the N5 Notice was intended to address the entire incident between the parties, which includes several emails sent by Ms. Garrett between October 24 and October 28, 2025. The Landlords further confirmed that the N5 Notice was meant to encompass all of those emails.
13. On its face, the email dated October 24, 2025 does not deny entry to the unit nor does it accuse the Landlord's agent of any criminal conduct. The Landlords agreed with this characterization of the October 24, 2025 email.

14. In *Ball v Metro Capital Management Inc.*, 2002 OJ No 5931 (Div Crt), the Divisional Court considered subsection 43(2) of the Act and found that the purposes of requiring that a landlord provide reasons and details on a notice given pursuant to the Act was to:
 - (a) allow the tenant to be in a position to know the case to be met before the Board;
 - (b) allow the tenant to decide whether or not to dispute the allegations made by the landlord; and, in the case of a voidable notice,
 - (c) allow the tenant to stop the conduct or activity or correct the omission.
15. The Divisional Court found that, to be compliant with subsection 43(2), a notice should include dates and times of the alleged conduct, together with a detailed description of the alleged conduct.
16. After hearing the parties' submissions, I found that the N5 Notice was defective on its face. The Landlords intended to rely on all communications between the parties, as evidenced by their decision to attach the full email exchange to the notice. However, despite this intention, the Landlords specified only the October 24, 2025 email in the N5 Notice itself. Given the Landlords' acknowledgment that they sought to rely on a wider scope of conduct by the Tenant, I find that the notice fails to set out the required particulars and does not meet the standard articulated in *Ball*. As a result, the Landlords were unable to pursue the conduct described on the N5 Notice and the matter proceeded based on unpaid utilities only with no possibility of eviction.

Determinations:

17. The Landlords also sought compensation on the L2 Application for unpaid amounts relating to the hot water tank rental in the rental unit. Although this issue was not part of the N5 Notice, the Landlords are entitled to pursue recovery of these amounts through the L2 Application. As set out below, I find that the Landlords have established, on a balance of probabilities, their entitlement to compensation as claimed.
18. The Landlords testified that they rent the hot water tank from Reliance. Under the terms of the lease, the Tenant is responsible for payment of the hot water tank rental. The Tenant initially paid the charges without issue. However, following an incident that required Reliance to replace the hot water tank, the Tenant stopped making these payments. The lease was entered into evidence.
19. The Landlords submitted into evidence a ledger showing unpaid amounts totalling \$879.99. The ledger was corroborated by copies of the corresponding bills from Reliance. The outstanding balance included regular rental charges, a \$65.00 water heater excess service charge, and a \$35.00 account set-up fee.
20. The Tenant testified that he believes it is the Landlords' responsibility to provide hot water to the rental unit. Ms. Garrett also testified on behalf of the Tenant, explaining that Enbridge had previously collected the hot water tank rental charges as a third-party biller. She stated that once this billing arrangement ended, they believed the Tenant was no longer responsible for payment of the hot water tank rental.

Analysis

21. The evidence establishes that the parties fundamentally disagree regarding the interpretation of the lease. Notwithstanding this disagreement, the lease clearly provides that the Tenant is responsible for payment of the hot water tank rental. This interpretation is further supported by the Tenant's past conduct, as the Tenant paid these charges and only ceased payment after Reliance's billing arrangements changed.
22. The Landlords' duty under the Act is to ensure that essential and functional appliances, including a hot water tank, are provided in the rental unit. However, pursuant to the lease, the financial obligation for the rental of the hot water tank rests with the Tenant.
23. Having found that responsibility for the hot water tank rental lies with the Tenant, I further find that the Tenant failed to pay amounts they were required to pay under the tenancy agreement.
24. As a result of the Tenant's failure to pay the hot water tank rental charges, the Landlords incurred out-of-pocket expenses totalling \$879.99. However, I do not find it appropriate to require the Tenant to pay either the \$65.00 water heater excess service charge or the \$35.00 account set-up fee. The Landlords were unable to adequately explain the purpose of the excess service charge or why liability for that charge should rest with the Tenant. Additionally, I find it unreasonable to require the Tenant to bear the cost of establishing the Landlords' account, even where the Tenant is otherwise responsible for the ongoing rental payments. Accordingly, the Tenant shall pay the Landlords \$779.99, together with the Landlords' application filing fee.

It is ordered that:

1. The Tenant shall pay to the Landlord \$779.99, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs and \$186.00 for the cost of filing the application. The total amount the Tenant must pay the Landlord is \$965.99
2. If the Tenant does not pay the Landlord the full amount owing on or before May 24, 2026, the Tenant will start to owe interest. This will be simple interest calculated from May 25, 2026 at 4.00% annually on the balance outstanding.

May 13, 2026
Date Issued

Brett Lockwood
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.