



Order under Section 69 / 88.2 Residential Tenancies Act, 2006

Citation: Islam v Nicholls, 2026 ONLTB 41193

Date: 2026-05-29

File Number: LTB-L-011990-26

In the matter of: Basement Unit, 8 BLAKE CRT
AJAX ON L1T3P3

Between: Shafiul Islam Landlord

And

Jason A Nicholls Tenant

Shafiul Islam (the 'Landlord') applied for an order to terminate the tenancy and evict Jason A Nicholls (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 has been persistently late in paying the Tenant's rent.

Shafiul Islam (the 'Landlord') also applied for an order requiring Jason A Nicholls (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 May 21, 2026. The Landlord and the Tenant attended the hearing.

Determinations:

N5 Notice of Termination

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy or the claim for compensation in the application. Therefore, the application is dismissed.
2. The Tenant was in possession of the rental unit on the date the application was filed.

4. On February 7, 2026, the Landlord gave the Tenant an N5 notice of termination alleging that the Tenant substantially interfered with the Landlord's lawful rights and privileges by failing to pay for utilities that he owes under the terms of the lease agreement. The Landlord alleges the Tenant owes \$1,377.00 for unpaid utilities.
5. The Tenant disputes that he owes this money to the Landlord. The Tenant says that he did not pay for utilities at the beginning of the tenancy because they were included in his rent. However, the Landlord then changed the terms of the agreement demanding he pay for utilities.
6. The Landlord referred me to a copy of a lease and its addendum which shows the Tenant agreed to pay utilities. The Ontario Standard lease states, in section 6, Services and Utilities, that the following services are included in the lawful rent: water, hot water, hydro, and the lease goes on to say: "The following utilities are the responsibility of the Landlord: electricity, heat, water."
7. The addendum states:

"a) Utility bill is included with the rent but fair usages policy will be applicable. Total usages will not exceed more than 100 dollar in total. As utility meter is shared so if an excessive bill occurred Tenants agree to pay portion of the bill which is one fourth of additional amount."

8. The Landlord argues that because there had been excessive usage, he is entitled to refer to the fair use policy as specified and agreed to in the addendum to the lease.
9. For the following reasons, I am not persuaded that the Landlord may rely on the term found in "a)" as described in the lease addendum.
10. There is a Latin legal maxim known as *contra proferentum* which roughly translates to "against the offeror." What this means is that when there is ambiguity in a contract, the ambiguity is interpreted against the drafter of the agreement. In the lease, the Landlord has stated clearly that the Landlord is responsible for the payment of utilities including electricity, water, and heat. The addendum also says that utilities are included in the rent. However, the addendum goes on to describe a "fair use" policy. This is contradictory. Either utilities are included in the rent, or they are not. Thus, the ambiguity, that is the contradictory statements, are to be interpreted against the drafter, in this case, the Landlord.
11. However, even if there was no ambiguity in the lease, and the parties understood the terms of the lease, the Landlord is still not permitted to charge additional utilities.
12. Section 138(1) of the *Residential Tenancies Act* ('the Act') states:
 - (1) A landlord of a building containing not more than six rental units who supplies a utility to each of the rental units in the building may, with the written consent of the tenant, charge the tenant a portion of the cost of the utility in accordance with the prescribed rules if,
 - (a) the landlord provides adequate notice to the tenant in accordance with the prescribed rules; and

(b) the rent for the rental unit is reduced in accordance with the prescribed rules.

13. The Landlord led no evidence to suggest that the Tenant was given notice or a rent reduction in accordance with the prescribed rules. Therefore, I do not find that the Landlord charged the Tenant for utilities in accordance with s. 138(1) of the Act.

14. Section 134(1) of the Residential Tenancies Act (the 'Act') considers the collection of additional charges, stating, in-part:

134 (1) Unless otherwise prescribed, no landlord shall, directly or indirectly, with respect to any rental unit,

(b) require or attempt to require a tenant or prospective tenant to pay any consideration for goods or services as a condition for granting the tenancy or **continuing to permit occupancy of a rental unit** if that consideration is in addition to the rent the tenant is lawfully required to pay to the Landlord

[Emphasis added]

15. Section 134(1) of the Act prohibits a landlord from requiring a tenant to pay any additional amount for goods or services as a condition of continuing the tenancy. In this case, the Landlord's demand that the Tenant pay utility charges in order to remain in the rental unit amounts to an impermissible additional charge. To the extent the lease addendum purports to allow such charges, it is of no force or effect. Section 3(1) of the Act provides that the Act applies despite any agreement to the contrary, and parties cannot contract out of its provisions. Accordingly, the "fair use" term in the addendum is unenforceable.

16. As such, the Landlord's N5 notice of termination is void and unenforceable. The L2 application based upon the N5 notice of termination is dismissed.

N8 Notice of Termination

17. For the following reasons, the Landlord's L2 application based upon an N8 notice of termination is dismissed.

18. Section 58(1)(1) of the Act says that a landlord may give a notice of termination where a tenant has persistently failed to pay the rent on the date it becomes due. Section 58(2) of the Act says that the date of termination specified in the notice "shall be at least the number of days set out in section 44 and **shall be the day a period of the tenancy ends....**"

19. The lease shows that the rent is payable on the first day of each month and tenancy is month-to-month, having begun in 2020.

20. The N8 notice of termination provides a termination date of April 8, 2026, which the Landlord argues is sixty days after the Tenant was given the notice.

22. I do not disagree with the Landlord's submission that the N8 notice had been given with 60 days' notice. However, that is not what s.58(2) says. It says that the day "shall be the day a period of the tenancy ends." In this case, this is a month-to-month tenancy. Therefore, the period where a tenancy ends is the last day of a the month. That means that the notice must have had to state April 30, 2026, as the date of termination.
23. Further, the incorrect termination date cannot be saved by s.212 of the Act which states that substantial compliance with Board forms is sufficient. That is because s. 56(1) of [O.Reg 516/06](#) prohibits the Board from extending or shortening time related to notice requirements for terminating tenancies.
24. As the date of termination did not comply with the notice periods found under s.58(2) of the Act, the Landlord's application must be dismissed.
25. 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.

May 29, 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.