



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

**File Number:** SWL-48685-21

**In the matter of:** 102, 230 MARCONI BOULEVARD  
LONDON ON N5V1A7

**Between:** Boardwalk General Partnership Landlord

**and**

Ana O'Dwyer Tenants  
Dylan Smith  
Lerresa Lopes

Boardwalk General Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Lerresa Lopes, Ana O'Dwyer and Dylan Smith (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on July 8, 2021. The Landlord's Legal Representative, P. Duwyn ('PD'), attended the hearing on behalf of the Landlord. The Tenant Lerresa Lopes ('LL') attended the hearing. As of 2:34 p.m., the Tenants Ana O'Dwyer and Dylan Smith were not present or represented at the hearing, although properly served with notice of this hearing by the Board.

**Determinations:**

1. The Tenants have not paid the total rent the Tenants were required to pay for the period from January 1, 2021 to March 1, 2021. Because of the arrears, the Landlord served a Notice of Termination effective January 20, 2021.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. The Landlord collected a rent deposit of \$759.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit is owing to the Tenants for the period from March 6, 2020 to January 20, 2021.
4. The Tenants did not make any payments to the Landlord after the application was filed.
5. The Tenants vacated the rental unit on March 1, 2021.

Section 82 issue

6. In response to the Landlord's application, LL stated that the Tenants did not have intercom services at the rental unit for more than one year, from March 2020 until March 2021. LL sought a 50% abatement of the total arrears for this alleged breach.
7. In response, PD testified that the Tenant had advised the Landlord of the malfunctioning intercom system on March 12, 2020 and that the Landlord had immediately ordered a replacement power source for the intercom as this was the cause of the problem. However, due to the onset of the COVID-19 pandemic, the delivery of the replacement parts was delayed, and it took the Landlord approximately four to six weeks to repair the intercom and have it fully functional again. Since that time, the intercom has been working. PD testified that the Landlord had not received any further complaints from the Tenants about the intercom system.
8. In reply, LL testified that the Landlord had failed to contact the Tenants after the intercom was repaired and therefore, the Tenants did not use the service for the remainder of the tenancy.
9. Subsection 20(1) of the *Residential Tenancies Act, 2006* (the 'Act') states the following:

A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.
10. In *Onyskiw v. CJM Property Management Ltd.* (2016 ONCA 477 (CanLII) (*Onyskiw*), the Ontario Court of Appeal determined that a landlord is not automatically in breach of their maintenance obligations as soon as a problem arises, and that a contextual approach is necessary in determining whether or not a landlord has breached their maintenance obligations under subsection 20(1) of the Act. If a landlord responds to a maintenance complaint in a timely and reasonable manner, then the landlord will not be in contravention of subsection 20(1) of the Act.
11. In this case, on a balance of probabilities, I find that the Landlord responded to the Tenants' complaint about the malfunctioning intercom in a reasonable and timely manner. In light of the restrictions imposed by the COVID-19 pandemic, I find that a time period of four to six weeks to obtain replacement parts is reasonable. The fact the Tenants did not use the intercom system for the remainder of the tenancy is not relevant to whether the Landlord is in breach of its obligations under subsection 20(1) of the Act.
12. For the reasons above, I find that the Landlord was not in breach of subsection 20(1) of the Act with respect to the malfunctioning intercom system. As such, the Tenants' claim under section 82 of the Act is dismissed.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated as of March 1, 2021, the date on which the Tenants vacated the rental unit.

2. The Tenants shall pay to the Landlord \$797.96\*, which represents the amount of rent owing and compensation up to March 1, 2021, less the rent deposit and interest the Landlord owes on the rent deposit.
3. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. If the Tenants do not pay the Landlord the full amount owing\* on or before November 28, 2021, the Tenants will start to owe interest. This will be simple interest calculated from November 29, 2021 at 2.00% annually on the balance outstanding.

**November 17, 2021**  
**Date Issued**



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Arnab Quadry  
Member, Landlord and Tenant Board

South West-RO  
150 Dufferin Avenue, Suite 400, 4th Floor  
London ON N6A5N6

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

\* Refer to section A on the attached Summary of Calculations.

**Schedule 1  
SUMMARY OF CALCULATIONS**

**File Number: SWL-48685-21**

**A. Amount the Tenants must pay as the tenancy is terminated:**

<b>Reasons for amount owing</b>	<b>Period</b>	<b>Amount</b>
Arrears: (up to the termination date in the Notice of Termination)	January 1, 2021 to January 20, 2021	\$519.23
Plus compensation: (from the day after the termination date in the Notice to the date the unit was vacated)	January 21, 2021 to March 1, 2021	\$1,038.40
Less the rent deposit:		-\$759.00
Less the interest owing on the rent deposit:	March 6, 2020 to January 20, 2021	-\$0.67
Amount owing to the Landlord on the order date:(total of previous boxes)		<b>\$797.96</b>
Additional costs the Tenants must pay to the Landlord:		\$186.00
<b>Total the Tenants must pay the Landlord as the tenancy is terminated:</b>		<b>\$983.96</b>

2021 CanLII 146758 (ON LTB)