



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

**File Number:** TEL-12400-20

**In the matter of:** 15 ISABELLA STREET  
SEAGRAVE ON L0C1G0

**Between:** Arthur Tubiszewski Landlords  
Jessica Tubiszewski

**and**

Andrea Kimber Tenants  
Joshua Dalton

Arthur Tubiszewski and Jessica Tubiszewski (the 'Landlords') applied for an order to terminate the tenancy and evict Andrea Kimber and Joshua Dalton (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by video conference on April 14, 2021. Arthur Tubiszewski ('AT') attended the hearing on behalf of the Landlords. The Tenants attended the hearing.

**Determinations:**

1. The Tenants have not paid the total rent the Tenants were required to pay for the period from May 31, 2020 to September 30, 2020. Because of the arrears, the Landlords served a Notice of Termination effective August 29, 2020.
2. The Tenants were in possession of the rental unit when the the application was filed.
3. The Landlords collected a rent deposit of \$2,250.00 from the Tenants and this deposit is still being held by the Landlords. Interest on the rent deposit is owing to the Tenants for the period from May 2, 2020 to August 29, 2020.
4. The Tenants did not make any payments to the Landlord after the application was filed.
5. The Tenants vacated the rental unit on September 30, 2020.

Tenants' position

6. At the hearing, the Tenants raised a number of issues under section 82 of the *Residential Tenancies Act, 2006* ('the Act') with respect to this tenancy. These issues include the following: a) flooding at the rental unit; b) use of loft space; c) entry by two agents of the

Landlord into the residential complex; d) hot water tank rental and e) lawn maintenance and snow removal.

7. The parties agreed that the Tenants resided in the rental unit for approximately sixteen months before vacating the rental unit.

*Use of loft space*

8. The parties agreed that the parties had signed an agreement, as part of an appendix to the tenancy agreement, whereby the Landlords had agreed that he would rent out the loft space in the residential complex if the Tenants gave the Landlord 30 days' notice that of their intention to rent it.
9. The loft space was not part of the rental unit as contemplated by the initial tenancy agreement. The loft space was being used by the Landlord for storage at the time.
10. The Tenants stated that they gave 30 days' notice to the Landlords on or about January 2020 that they intended to rent the loft space and requested the Landlords to remove their belongings from the loft.
11. In response, AT testified that while the Landlords had originally agreed to rent out the loft space to the Tenants if the Tenants requested, the Landlords had changed their mind about this issue and refused when the Tenants made the request, as they did not view the Tenants as suitable occupants for the loft space. AT also submitted that the original offer to rent out the loft space to the Tenants was a one-time offer, and that the Tenants had originally declined it.
12. Under the Act, the Board has jurisdiction over this tenancy and the rental unit in dispute. The loft space did not form part of the rental unit as contemplated by the tenancy agreement. Moreover, the Tenants were never in possession of the loft space. The Act does not give the Board jurisdiction for parties' failure to adhere to promises made with respect to additional space that the Tenants never took possession of. As such, this portion of the Tenants' application is dismissed.

*Entry by two agents of the Landlord into the residential complex*

13. The Tenants submitted that two men had entered into the residential complex to pick up the Landlords' hunting gun and while doing so, had taken photographs of the complex. The Landlords had given the Tenants adequate notice that these individuals would be attending at the residential complex.
14. In their submissions, the Tenants stated that they now understood, after having spoken with Duty Counsel, that there was no breach of the Act for the Landlords' agents to take photographs of the residential complex. I agree with this position. There is no evidence that the Landlords' agents, who were on the property in accordance with the notice provisions under the Act, had been taking photographs of the Tenants' personal items or otherwise substantially interfering with the Tenants' reasonable enjoyment of the property.

15. As such, on a balance of probabilities, I find that there is insufficient evidence to find that the Landlords had substantially interfered with the Tenants' reasonable enjoyment of the property in this regard.

*Flooding at the rental unit*

16. The parties agree that there had been flooding in the basement of the rental unit on one occasion. The Tenants testified that they had contacted AT immediately upon discovering the flood, and that AT had requested the Tenant Joshua Dalton ('JD') to make a 'makeshift pump' for the night, as a malfunctioning pump was the reason behind the flooding. JD had to take the following day off work to ensure that the basement remained dry.
17. In addition, the Tenants testified that they had lost a number of personal items due to the flooding. When questioned why the Tenants had failed to submit a claim to their insurance company about this loss, the Tenants responded that they had a discussion with an insurance agent and was told that their claim would be denied, as the flooding was allegedly due to a lack of maintenance by the Landlords.
18. The Tenants submitted that they had already informed the Landlords in the past that the previous pump had been 'giving out' but that the Landlords had failed to replace it in advance.
19. In response to the flood, the Landlords arranged for a technician to attend at the rental unit on the following day to resolve the issue. The Tenants stated that the technician initially hesitated to replace the pump as he believed that the pump created by JD was 'good enough', but upon the Tenants' insistence, the technician ultimately did replace the pump in the basement that day.
20. Subsection 20(1) of the Act states:

20 (1) 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.
21. In determining the issue of whether the Landlords breached their maintenance obligations under the Act, I am bound by the Ontario Court of Appeal's decision in *Onyskiw v. CJM Property Management Ltd.* (2016 ONCA 477), where the Court 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 a landlord has breached its maintenance obligations under the Act. *Onyskiw* states that a breach may not be found if the Landlord's response was reasonable in the circumstances.
22. Therefore, the question before the Board is whether the Landlords took reasonable and timely steps after the Landlords were informed of the presence of flooding in the rental unit.

23. Based on the evidence before me, I find that the Landlords' response to the flood was reasonable and timely. The Landlords arranged for a technician to attend the rental unit on the very next day after being informed of the flood, and the technician replaced the malfunctioning pump that day. I understand that the Tenants had complained to the Landlords in the past about the state of the pump in question, but this was the first time the pump had actually failed, to which the Landlords responded in a timely manner. I also note that there is no expert evidence before the Board which shows that the Landlords could have foreseen that the pump in question would stop working in the near future.
24. I also find that the Tenants did not minimize their losses as they did not actually file a claim with their insurance company for the loss of their personal belongings as a result of the flood.
25. In light of these circumstances, in accordance with the Court's ruling in *Onyskiw*, I am not satisfied that the Landlord was in breach subsection 20(1) of the Act as the Landlord acted reasonably and responded in a timely manner when the flood occurred.

#### Lawn maintenance and snow removal

26. The Tenants submitted that they ought to have been compensated for the lawn maintenance and snow removal that they undertaken while they were on the property.
27. The tenancy agreement does not state that the Landlord is responsible for lawn maintenance and snow removal. As such, I am not satisfied that the Tenants are entitled to compensation for snow removal and/or lawn maintenance of the property.

#### Hot water tank rental

28. The Tenants submitted that they were entitled to the cost of the rental of the hot water tank, as the Landlord Jessica Tubiszewski ('JT') had verbally told the Tenants that the Landlords would be paying for this rental, as it was the Landlords' choice to rent and not purchase the hot water tank.
29. In response, AT stated that the tenancy agreement is clear that the Tenants are responsible for all utilities at the rental unit. The hot water tank rental is part of the gas bill, which the Tenants were responsible for and paid on a regular basis during the tenancy.
30. The tenancy agreement states that the Tenants are responsible for the utilities at the rental unit. An exception for the hot water tank rental is not mentioned in the tenancy agreement. There is no documentary evidence to support the Tenants' assertion that JT had agreed to modify the tenancy agreement by excluding the hot water tank rental from the agreement. As such, this portion of the Tenants' claim is also dismissed.

**It is ordered that:**

1. The tenancy between the Landlords and the Tenants is terminated as of September 30, 2020, the date on which the Tenants vacated the rental unit.
2. The Tenants shall pay to the Landlords \$6,245.98\*, which represents the amount of rent owing and compensation up to September 30, 2020, less the rent deposit and interest the Landlords owe on the rent deposit.
3. The Tenants shall also pay to the Landlords \$186.00 for the cost of filing the application.
4. If the Tenants do not pay the Landlords the full amount owing\* on or before November 14, 2021, the Tenants will start to owe interest. This will be simple interest calculated from November 15, 2021 at 2.00% annually on the balance outstanding.

**November 3, 2021**  
**Date Issued**



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Arnab Quadry  
Member, Landlord and Tenant Board

Toronto East-RO  
2275 Midland Avenue, Unit 2  
Toronto ON M1P3E7

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: TEL-12400-20**

**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)	May 31, 2020 to August 29, 2020	\$6,145.21
Plus compensation: (from the day after the termination date in the Notice to the date the unit was vacated)	August 30, 2020 to September 30, 2020	\$2,367.04
Less the rent deposit:		-\$2,250.00
Less the interest owing on the rent deposit:	May 2, 2020 to August 29, 2020	-\$16.27
Amount owing to the Landlords on the order date:(total of previous boxes)		<b>\$6,245.98</b>
Additional costs the Tenants must pay to the Landlords:		\$186.00
<b>Total the Tenants must pay the Landlords as the tenancy is terminated:</b>		<b>\$6,431.98</b>

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