



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

Citation: Doverhold Investments Ltd. v Laverty, 2023 ONLTB 77594

Date: 2023-12-01

File Number: LTB-L-048740-23

In the matter of: 305, 45 LIVINGSTON RD
SCARBOROUGH ON M1E1K8

Between: Doverhold Investments Ltd. Landlord

And

Kevin Laverty and Pamela Laverty Tenants

Doverhold Investments Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Kevin Laverty and Pamela Laverty (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on November 6, 2023. The Landlord's legal agent, A. Hoehn (AH), the Landlord's legal representative, L. Corsetti, and the Tenants attended the hearing.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$1,555.95. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$51.15. This amount is calculated as follows: \$1,555.95 x 12, divided by 365 days.
5. The Tenants have paid \$1,500.00 to the Landlord since the application was filed.

6. There is no last month's rent deposit.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Rent Arrears

8. The Tenants disputed the amount outstanding. The Tenant, K. Lavery (KL), testified that in June 2023, he sent an e-transfer to the Landlord's agent AH in the amount of \$1,700.00 at her request. AH's email account was hacked, and AH never requested money from the Tenants via e-transfer. KL incurred bank fees and the Landlord incurred NSF charges as a result. As such, the Tenants' position was that the arrears outstanding is only \$9,155.90 as the Landlord's hacked email was the fault of the Landlord.
9. AH testified that \$1,700.00 was not received in June 2023 and that the Landlord is not capable of accepting e-transfers.
10. I find that the rent arrears owing to November 30, 2023 are \$10,719.90. The Tenants are responsible for ensuring that rent is paid to the Landlord. So, while it is unfortunate that a fraudulent third party was the recipient of the Tenants' money, I do not find that the Landlord should be at a loss.
11. As I have found that the transaction was the Tenant's responsibility, I find that the Landlord is entitled to \$20.00 to reimburse the Landlord for administration charges incurred as a result of 1 cheque given by or on behalf of the Tenants which was returned NSF.

Section 82

12. At the hearing the Tenants raised issues pursuant to section 82 of the *Residential Tenancies Act, 2006* (the 'Act'). Section 82 states that at a hearing of an application made under section 69 of the Act, the Tenant is permitted to raise any issue that could be the subject of an application made by the Tenant. These issues may lead to an abatement of rent which would be set off against any arrears of rent owing to the Landlord.
13. The Tenants submit that they do not have cold water and the fridge is excessively loud. KL testified that he noticed the absence of cold-water issue when he moved in approximately two years ago. He immediately filled out a work order and did not receive a response. The issue is still outstanding, and he has to use a wrench to turn on the cold water. The Tenants never followed up with the Landlord about the work order.
14. KL stated he first noticed the issue with the fridge a couple of weeks after he moved in. The noise sounds like a go-kart and he is sometimes woken up by it. He also filled out a work order and did not receive a response. The Tenants never followed up with the Landlord about the work order.
15. The Tenants requested that the Landlord fix the issues and for an abatement of rent.
16. AH testified that she attended the Tenants' unit a week prior to the hearing, and they did not mention an issue with the cold water or the fridge.

17. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, the Court of Appeal for Ontario rejected the position that a landlord is automatically in breach of its obligation to maintain and repair under subsection 20(1) as soon as an interruption in service occurs or the unit is in need of repair. The Court found that the reasonableness of landlord's response and conduct to the maintenance issue(s) is a factor in deciding breach and/or remedy and that this is consistent with the Board's Interpretation Guideline #5.
18. I must also consider subsection 30(2) of the Act, which requires me to consider whether the Tenants advised the landlord of the alleged breaches before applying to the Board.
19. On a balance of probabilities, I find that the Landlord is in breach of their maintenance obligations. The uncontested evidence was that KL must use a wrench to turn on the cold water and that the fridge noise is so excessive that KL is woken up by it. As such, I am satisfied that the cold water and the fridge are in disrepair. It was undisputed that the Tenants filled out a work order regarding the issue approximately two years ago and there was no response. It was also undisputed that the issues are still ongoing. As such, I am also satisfied that the Landlord's response was unreasonable.
20. The Tenants are entitled to an abatement of rent of \$1,114.00. This amount will be deducted from the amount owing to the Landlord. This amount represents 4% rent abatement for cold water and 2% rent abatement for the fridge from October 30, 2022 to the date of the hearing. The percentage is fixed at this amount because of the impact on the Tenant. The Tenant has been inconvenienced by using a wrench for the cold water and being awoken by the fridge. However, I find that the impact is minimal because the Tenants had not raised it with the Landlord as an issue since the work order. In my view, if the Tenants were bothered by these issues, it would have been complained of again since the start of the tenancy. The Tenants are entitled to a remedy from a year prior to when these issues were raised, being October 30, 2022.
21. The rent abatement is \$742.67 for the cold water and \$371.33 for the fridge. I also find it appropriate for the Landlord to be ordered to fix the outstanding issues.

Relief from Eviction

22. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenants and find that it would not be unfair to postpone the eviction until December 31, 2023 pursuant to subsection 83(1)(b) of the Act.
23. The Tenants proposed a repayment plan of \$1,820.98 per month until the arrears are paid in full. KL testified to his income and expenses. KL has lived in the neighbourhood for 45 years. If the payment plan is not imposed, KL requested six months to vacate.
24. The Landlord disputed the repayment plan, and the Tenants should not be afforded a sixmonth delay. The Tenants cannot afford the rental unit and because they have only made

one payment since the application was filed, it is unlikely that the Tenants will continue to pay rent for an additional six months.

25. In consideration of the foregoing, I find that it would not be unfair to postpone the eviction. The information provided at the hearing regarding KL's income and expenses establishes that the Tenants are unable to adhere to the proposed payment plan. This postponed termination will give the Tenants time to organize their move or try to obtain a loan for funds needed to void the order. A longer delay will not be granted as the arrears are substantial. **It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$11,367.85 if the payment is made on or before December 31, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after December 31, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before December 31, 2023**
5. If the Tenants do not void the order, the Tenant shall pay to the Landlord \$8,562.85. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$51.15 per day for the use of the unit starting November 7, 2023 until the date the Tenant moves out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before December 12, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 13, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 31, 2023, then starting January 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after January 1, 2024.
10. The Landlord shall fix the cold water and fridge issue on or before December 15, 2023.

December 1, 2023

Date Issued

Camille Tancioco

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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on July 1, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before December 31, 2023

Rent Owing To December 31, 2023	\$13,775.85
Application Filing Fee	\$186.00
NSF Charges	\$20.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$1,500.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$1,114.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$11,367.85

B. Amount the Tenants must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$10,970.85
Application Filing Fee	\$186.00
NSF Charges	\$20.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$1,500.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$0.00

Less the amount of the interest on the last month's rent deposit	- \$0.00
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$1,114.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total amount owing to the Landlord	\$8,562.85
Plus daily compensation owing for each day of occupation starting November 7, 2023	\$51.15 (per day)