



Order under Subsection 87(1) Residential Tenancies Act, 2006

Citation: Heartwood Place v Lewis, 2023 ONLTB 61795

Date: 2023-09-18

File Number: LTB-L-046482-22

In the matter of: 310, 26 Ainslie Street South Cambridge
ON N1R3K1

Between:	Heartwood Place	Landlord
	And	
	Kevin Lewis and David Lewis	Tenants

Heartwood Place (the 'Landlord') applied for an order requiring Kevin Lewis and David Lewis (the 'Tenants') to pay the rent that the Tenants owe.

This application was heard by videoconference on August 29, 2023.

The Landlord, the Landlord's Representative F. Douglas and the Tenant K. Lewis attended the hearing.

Determinations:

1. As of the hearing date, the Tenants were still in possession of the rental unit.
2. The Tenants did not pay the total rent they were required to pay for the period from June 1, 2022 to August 31, 2023.
3. The lawful rent is \$775.00. It is due on the 1st day of each month.
4. The rent arrears owing to August 31, 2023 are \$140.00
5. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Section 82 issues raised by the Tenants

1. The Tenants wished to raise an issue pursuant to section 82 of the *Residential Tenancies Act, 2006* ("Act").
2. The Tenants raised the following maintenance issues:



- the failure of the boiler and the increased cost of heating
3. The Tenants have the burden of proving these allegations on a balance of probabilities.
 4. The Tenants allegations concern maintenance issues. Section 20(1) of the *Residential Tenancies Act, 2006* (the “Act”) states:

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.

5. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, the Court of Appeal held that the LTB should take a contextual approach and consider the entirety of the factual situation in determining whether there was a breach of the landlord’s maintenance obligations, including whether the landlord responded to the maintenance issue reasonably in the circumstances. The court rejected the submission that a landlord is automatically in breach of its maintenance obligation as soon as an interruption in service occurs.

Failure of the boiler

6. The Tenant K.L. asserted that the boiler failed. They concede that the Landlord provided an electric heater to provide heat in the winter months. The Tenant also said that a letter was provided that had information on four separate programs where the government assists people with their hydro bills. The Tenant provided numbers reflecting higher energy usage during this period, but, not bills from the hydro company reflecting dollar amounts. They contend that the money owing is the difference between what their hydro bill would have been and what it ended up being. They feel that the Landlord is responsible for providing heat, and the extra cost is a reflection of the Landlord not providing heat. The Tenant did not provide evidence that this was the reason for the increased energy usage.
7. The Landlord demonstrated that the process for replacing the boiler was undertaken as quickly as possible. They also stated that the increased hydro usage presented by the Tenant reflected a month after the boiler had been replaced.
8. I am satisfied that the Landlord made their best efforts to meet their obligations by replacing the boiler as quickly as possible and by providing heaters to the Tenant. The failure occurred on February 17, 2022, and the installation of the new boiler was completed on March 22, 2022. The Landlord testified that they began getting quotes for a new boiler on February 18, 2022. The Landlord explained that the length of time was a result of them having to excavate the old boiler and of this new boiler being an industrial boiler and that parts had to be brought in from the United States. Its installation required the use of a crane. There is insufficient evidence to establish that the Landlord is in breach of its obligations under section 20(1) with respect to this issue.



9. The Tenant is not entitled to an abatement of rent. The Landlord has met their obligations under section 82 of the act.
10. The Tenant testified that, should I find against their claim for an abatement, that they would not be able to pay all the arrears at once. The Landlord was asked if they could make an accommodation if such a ruling was made. The Landlord and the Tenant agreed that,
- were I to find against the abatement under section 82 of the Act, a payment plan would be put into place allowing the Tenant to repay the amount owing.

It is ordered that:

1. The Tenants shall pay to the Landlord \$326.00. This amount includes rent arrears owing up to August 31, 2023 and the cost of the application.
2. The Tenants shall pay the amount in paragraph 1 according to the following schedule:
 - (a) The Tenants shall pay installments of \$15.00 on or before the 1st day of the month for the 21 month period commencing October 1, 2023 to June 1, 2025.
 - (b) The remaining balance of \$11.00 shall be paid on or before July 1, 2025.
 - (c) The Tenants shall pay the Landlord the monthly rent in full and on or before the first day of the month for the period October 2023 to July 2025, or until the arrears are paid in full, whichever date is earliest.
3. If the Tenants do not pay the Landlord the amount owing on or before the due dates noted in paragraph 2, the full amount will become due and the Tenants will start to owe interest 11 days after the late payment. This will be simple interest calculated at 6.00% annually on the balance outstanding.

September 18, 2023
Date Issued

William Greenberg
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.