



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

**Citation:** Marchand v Smith, 2023 ONLTB 57789

**Date:** 2023-08-24

**File Number:** LTB-L-074888-22

**In the matter of:** 47 HADDINGTON ST  
CAMBRIDGE ON N1R3P8

**Between:** Denis Marchand Landlord

**And**

Jaclyn Smith and Kevin Snider Tenants

Denis Marchand (the 'Landlord') applied for an order to terminate the tenancy and evict Jaclyn Smith and Kevin Snider (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on June 6, 2023.

The Landlord, the Landlord's Representative F. Gomez and the Tenant K. Snider attended the hearing. Tenant J. Smith attended as a witness.

**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 \$1,990.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$65.42. This amount is calculated as follows: \$1,990.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to June 30, 2023 are \$15,920.00.

7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,990.00 from the Tenants and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
9. Interest on the rent deposit, in the amount of \$83.99 is owing to the Tenants for the period from March 23, 2020 to June 6, 2023.

#### Section 82 issues raised by the Tenants

10. The Tenants raised a number of issues pursuant to section 82 of the *Residential Tenancies Act, 2006* ("Act"). The Tenants provided their evidence to the Board and the Landlord prior to the hearing. Unless otherwise noted, the Landlord's Representative do not deny the claims.
11. The Tenants raised the following maintenance issues:
  - basement bedroom ceiling and door frame;
  - window in basement bedroom;
  - basement bathroom ceiling and door frame;
  - basement bathroom fan;
  - lack of heat in basement bathroom;
  - smoke alarms;
  - backyard fence;
  - holes in bathroom wall;
  - reasonable enjoyment;
  - notice of termination in bad faith
  - misleading Board;
  - filing false documents;
  - excessive notices of entry.
12. The Tenants have the burden of proving these allegations on a balance of probabilities.
13. 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.
14. 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.

#### Basement Bedroom and Bathroom Ceiling and Door Frame Not Built to Code

15. The Tenant asserted that the basement bedroom and door frame ceiling was not built to building code as they are not the correct height. The Landlord asserted that the building is exempt from part of the code and it has been inspected by the municipality and passed the inspection. Because the Municipality is satisfied that there are no infractions, I find that the Tenants have not established that the Landlord has breached its obligations under section 20(1) of the Act.

#### No Window in Basement Bedroom

16. The Tenants testified that the basement bedroom does not have a window. The lease states that the unit is a 3-bedroom home, which includes the basement as a third bedroom.
17. The Landlord countered that the lease was for the home without designating the number of bedrooms and that the Tenants have chosen to make the basement a third bedroom, knowing that it did not have a window. A copy of the lease was provided by the Landlord which reflects his version. The Tenants testified that the lease presented was not the true lease, and that they did not receive a copy of the lease at the time they signed it.
18. Beyond their assertions, the Tenants could not provide any evidence that the lease presented by the Landlord is not the true lease. I am accepting it as the true lease, and find that the lease does not specify that it is a three bedroom home. The Tenants have chosen to use the basement as a bedroom. As a result, the Landlord is not providing a bedroom that is in breach of any building codes. Therefore, I find that the Tenants have not established that the Landlord has breached its obligations under section 20(1) of the Act with respect to this issue.
19. As a result of the Landlord converting the room into a bedroom, a window has been installed.

#### Basement Bathroom Fan

20. The Tenants claim that there was no fan installed in the bathroom in the basement. It was fixed prior to the Tenants taking possession of the unit. As a gesture of good will, the Landlord offered the Tenants an abatement of 1% for 3 months. This was declined by the

Tenants. Because this was resolved prior to the Tenants taking possession of the unit, it had no impact on their enjoyment of the unit. I am denying all claims by the Tenants.

#### No Heat in Basement Bathroom

21. The Tenants testified that there is no heat in the basement bathroom. However, I am satisfied that the Landlord installed a baseboard heater. The Landlord did this before receiving any complaints from the Tenants. The municipality is satisfied with the state of the heat in the bathroom. As there were no complaints before the issue was resolved and the municipality is satisfied with the installation of the baseboard heater, I find that the Tenants have not established that the Landlord has breached its obligations under section 20(1) of the Act with respect to this issue.

#### Smoke Alarms Not Installed

22. The Landlord was notified by the Tenant in April 2020 that there were not enough working smoke alarms. The Landlord provided the Tenants with two smoke alarms for them to install themselves. The Landlord also installed a wired smoke alarm in the master bedroom. The Tenants wanted another smoke alarm for the basement bedroom. The Landlord did not believe that this was his responsibility since they did not view this space as a bedroom. In June 2022, the Landlord decided to renovate to make the basement to make it a bedroom. This required a lot of back and forth with the municipality. A smoke detector was installed in December 2022 as part of the renovations converting the basement room to a bedroom.
23. As set out above, I find that the lease does not specify that there is a bedroom located in the basement. Therefore, the basement was not a bedroom at the time the Tenants requested an additional smoke alarm. As a result, I am denying this claim by the Tenants.

#### Backyard Fence

24. The Tenants testified that the fence started to fall down in winter 2022 and they informed the Landlord right away. The Landlord came out to the property to view the fence in March 2022. The Landlord started fixing the fence in September 2022 and finished it in October 2022. The fence only fell down once. An interim measure was put in place to keep the fence in place but pictures indicate that it was two braces and they took up a significant portion of the yard. The Tenant told me that the family was unable to use the yard because of the fear that one child might go through the fence.
25. The Landlord testified that the street was blocked off by construction and that he had various contractors who had to leave because the road was closed. He stated that he felt that he needed the consent of other neighbours that bordered the fence. No reason was given for this.

26. The amount of time that the Landlord took to finish the repairs to the fence, X months, was excessive. The Landlord should have made a greater effort to fix the fence in a more timely manner. I accept the Tenant's testimony that he could not use the backyard for the summer of 2022 due to its condition, and this effected his family's use and enjoyment as they have small children. I am granting a 25% rent abatement for the four month period of June 2022 to September 2022 while there was no proper fence. This abatement totals \$497.50 x 4 months, for a total of \$1,990.00.

#### Holes Created During Renovations

27. The Tenant says that the downstairs was left with numerous holes in the wall for an extended period of time, while renovations on the basement were taking place from October 2022 to March 2023. The Tenant testified that the holes resulted in a draft in the basement.
28. The Landlord testified that it was necessary to do the work. The largest hole, the one where the vanity in the bathroom would be, was covered and only reopened for inspection by the municipality. He also said that the municipality delayed visiting site to approve the work being done behind the walls which is what resulted in the delay in fixing the holes. He does not believe that the Tenants suffered from the holes.
29. I find that the presence of the holes was unavoidable due to the work that Landlord was doing. I also find that delay in addressing the holes was because of a delay by the municipality's inspectors. Therefore, I find that the Tenants have not established that the Landlord has breached it obligations under section 20(1) of the Act with respect to this issue.

#### Reasonable Enjoyment

30. The Tenant reported that a business owned by the Landlord has mail delivered to their residence. They found out in March 2020. They do not feel that they should have to share a mail box. The Landlord provided evidence that the address had been changed and says that he is not responsible for mail addressed to the business that still arrives at the unit. Further, he says that this, in no way, affects the enjoyment of the unit by the Tenants.
31. The Landlord appears to have taken reasonable steps necessary to prevent his business mail from being delivered to the rental unit, and it had minimal impact upon the Tenants. Therefore, I find that the Tenants have not established that the Landlord has breached it obligations under the Act with respect to this issue.

#### Notification of Termination in Bad Faith

32. The Landlord issued an N12 notice of termination for the purchaser of the home, but the sale ended up not going through. The Landlord did not rescind the N12. It was

established that no N2 application was ever filed with the Board, and the N12 has now expired.

33. The Landlord was permitted under the Act to serve an N12 notice on the basis that he had entered into an agreement of purchase and sale and the purchaser intended to move into the unit. The fact that the Landlord did not file an eviction application because the sale fell through is not a breach of the Act.

#### Landlord Misled Board

34. The Tenants asserts that during a hearing for a previous L1 rent arrears application the Landlord misled the Board in proceeding with a voided order. Specifically, the Tenants had paid off all of their arrears prior to the hearing. I am satisfied that the Landlord's actions were nothing more than an error, and I see no evidence that the Landlord was attempting to abuse the Board's process. I am denying any claims by the Tenants.

#### Filing False Documents

35. The Tenants believe that the basis for the Landlord applying for a review of a previous ruling on a previous file was falsehoods on the request. Nothing was presented to prove this. No allegations were made against the Tenants. The Tenants have no standing. I am denying their claims.

#### Notices of Entry

36. The Tenant told me that there were 29 requests for notice of entry during the period from March 2020 to June 2023. He said that they had become bothersome and harassing. He and his spouse work from home, and one of their children is home schooled. They believe that the Landlord could have done work instead of coming to check on things that needed to be done. They also complained about the instances where the Landlord did not show up, or, where he gave less than 24 hours notice.
37. The Landlord offered that there were actually 46 instances where they gave requests for notice of entry. They volunteered that 10 of those times they did not appear, but, 5 of those were at the request of the Tenants. Two of those times were, by the Landlord's own admission, for personal reasons. One of the instances of giving less than 24 hours notice was also at the request of the Tenants, to fix the air conditioner. The second notice of less than 24 hours has no explanation. They contend that they are not harassing. They have to drive an hour each way which is an inconvenience. They would prefer that they did not have to do it. They contend that it was always to fix up the property. The Landlord offered the Tenants a 10% abatement for the one month where the renovations were at their height, but, this was declined by the Tenants.
38. I do find that 46 notices in an 39 month period is excessive. However, I also see that each of the 36 visits had a purpose. No evidence has been presented by the Tenant to suggest

that the visits were unnecessary. Because of the two notices where the Landlord did not appear for personal reasons, and the one notice where less than 24 hours notice was given, I am granting an abatement of 6% for 1 month. The abatement works out to \$119.40.

39. Therefore, the Tenants are entitled to a total abatement of \$2,109.40 for the issues they raised under section 82. This amount shall be applied to the rent arrears owing by the Tenants.

Relief from eviction

40. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

41. The Tenant told me that they have been setting aside all rent due pending the outcome of this hearing. As a result, no extra time is deemed necessary.

**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:**
  - \$17,976.60 if the payment is made on or before August 31, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

- \$19,966.60 if the payment is made on or before September 4, 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 September 4, 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 September 4, 2023**
  5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$10,325.13. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are

deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.

6. The Tenants shall also pay the Landlord compensation of \$65.42 per day for the use of the unit starting June 7, 2023 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before September 4, 2023, the Tenants will start to owe interest. This will be simple interest calculated from September 5, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before September 4, 2023, then starting September 5, 2023, 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 September 5, 2023.

**August 24, 2023**

**Date Issued**

William Greenberg

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 March 5, 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 August 31, 2023**

Rent Owing To August 31, 2023	\$19,900.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenants for an abatement	- \$2,109.40
<b>Less</b> the amount of the credit that the Tenant are entitled to	- \$0.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$17,976.60</b>

**B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before September 4, 2023**

Rent Owing To September 30, 2023	\$21,890.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenants for an abatement	- \$2,109.40
<b>Less</b> the amount of the credit that the Tenants are entitled to	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$19,966.60</b>

**C. Amount the Tenants must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$14,322.52
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,990.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$83.99

<b>Less</b> the amount the Landlord owes the Tenants for an abatement	- \$2,109.40
<b>Less</b> the amount of the credit that the Tenants are entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$10,325.13</b>
Plus daily compensation owing for each day of occupation starting June 7, 2023	\$65.42 (per day)