



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Knapp v Teskey, 2023 ONLTB 53750

**Date:** 2023-07-31

**File Number:** LTB-L-067862-22

**In the matter of:** 690 ROSELAND DR S  
WINDSOR ON N9G1T8

**Between:** Kenneth Knapp Landlord

**And**

Mark Teskey and Christine Teskey Tenant

Kenneth Knapp (the 'Landlord') applied for an order to terminate the tenancy and evict Mark Teskey and Christine Teskey (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on May 23, 2023.

The Landlord's Representative, Mark Gebriel, the Tenant and the Tenant's Representative, ToriLee Jenkins attended the hearing.

Parties are aware that issues raised under section 82 of the Act considered by the Board

### **Determinations:**

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant 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 Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,400.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$46.03. This amount is calculated as follows: \$1,400.00 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 May 31, 2023 are \$14,200.00.
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 \$1,400.00 from the Tenant 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.

Section 82 issues:

Harassment:

9. There was no evidence led from the Tenant about allegations that the Landlord's Agent harassed the Tenant.

Changed Locks:

10. The Tenant testified she called police and a locksmith replaced the keys to the rental unit on February 28, 2022 after a break in. There was no evidence that the Landlord changed the locking device. The Tenant was given a key. There was no evidence that the Landlord was even aware of the incident.

Chimney/Furnace:

11. On November 9, 2022, the Landlord's property manager sent a handyman to repair the chimney leak, and this was after the city inspector was in the unit. The repair person put a chimney liner, rerouted the pipes and put a hole on the side of the furnace. On January 30, 2023, the Tenant called Brant Heating and Cooling because the pilot light was off on the water heater. The gas technician on inspection determined that the heat exchange cracked, and the gas was turned off in the unit. The report from technician dated January 31, 2023, corroborated the Tenant's testimony, that the furnace was condemned because it states, "appliance indoor piping unsafe" and confirmed the furnace had a "defective heat exchange". The Tenant informed the property manager immediately about the problem and left the unit to stay with family because there was no heat. As of the date of the hearing the Landlord has not repaired the heat exchanger and the furnace remains shut off. As a consequence, the Tenant have not been able to utilize the unit for all intended and usual purpose. Although they have accessed the unit to retrieve some personal items and cut the grass, they continue to stay out of the unit for safety reasons. It is the responsibility of the Landlord to provide vital service and by failing to repair the furnace, the Tenants were without heat from January 30, 2023, to the date of the hearing. This is a serious offence given the winter months. . I acknowledge the Tenant still had access to the unit and still had their property in the unit, but they were not able utilize the unit for all intended purposes nor were they staying in the unit because it was winter and there was no heat.

12. I find the Landlord has seriously breached their maintenance obligations and a rent abatement of 100% from January 30, 2023, to May 23, 2023 or \$5,350.60 is reasonable. No abatement of rent is order from November 9, 2022 to January 30, 2023 as there was heat in the unit

**Section 83:**

13. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to grant relief from eviction pursuant to subsection 83(1)(a) of the Act.
14. The Board has the discretion to refuse to evict the Tenant because the Landlord is in serious breach of their maintenance obligations and the issue of the furnace has yet to be repaired. There was no evidence from the Landlord to contradict the Tenant's testimony that the furnace is still condemned, therefore I accepted the Tenant's testimony that the heat exchanger was still cracked, and they could not stay in the unit given there was no heat. Given the seriousness of the infraction, the Landlord's application for eviction is denied. The Tenant had testified to impairments and that they have also filed a civil action against the Landlord in another court of competent jurisdiction.

**It is ordered that:**

1. **The** Tenant shall pay the Landlord \$9,035.40 on or before August 11, 2023 which represents the arrears owing to May 31, 2023 and the cost of the application fee less the abatement. **See** Schedule 1 for the calculation of the amount owing.
2. The Landlord shall repair or replace the furnace/ heat exchanger immediately and ensure that it is proper functioning order approved by the gas company.
3. The Tenant is authorized to deduct \$46.03 per day starting May 24, 2023 until the date the Landlord repairs or replaces the furnace or until the tenancy terminates which ever comes first
4. The Landlord has the right to collect to collect the full amount owing or any balance outstanding under this order only after the repairs are complete and/or after the tenancy is terminated.

**July 31, 2023**

**Date Issued**

\_\_\_\_\_  
Sandra Macchione

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.

Schedule 1  
SUMMARY OF CALCULATIONS

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

Rent Owing To May 31, 2023	\$14,200.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$5,350.60
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$9,035.40</b>

2023 ONL/TB 53750 (CanLII)