



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

**Citation:** Blydorp v Hall, 2023 ONLTB 32373

**Date:** 2023-05-08

**File Number:** LTB-L-045252-22

**In the matter of:** 483317 30 Side Road  
Amaranth Ontario L9V1N2

**Between:** Alice Blydorp Landlord  
Leo Blydorp

**And**

Joanne Butt Tenant  
Matthew Hall

Alice Blydorp and Leo Blydorp (the 'Landlord') applied for an order to terminate the tenancy and evict Joanne Butt and Matthew Hall (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes; and, because they, another occupant of the rental unit or someone they permitted in the residential complex have substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords or another tenant. The Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date. The Tenants raised issues pursuant to section 82 of the *Residential Tenancies Act, 2006*

This application was heard by videoconference on February 23, 2023 and March 3, 2023. The Tenants were given until March 10, 2023 to provide post hearing submissions (in respect of the email authenticity issued noted below)

The Landlord Leo Blydorp, the Landlord's representative S. Blydorp, and the Tenants attended the hearing.

**Determinations:**

L1 Application

1. The Landlords served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The notice was served by leaving the document in the Tenants' mailbox. 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 \$1,900.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$62.47. This amount is calculated as follows: \$1,900.00 x 12, divided by 365 days.
5. The Tenants have paid \$22,800.00 to the Landlords since the application was filed.
6. The rent arrears owing to March 31, 2023 are \$3,070.00. This amount is not disputed by the Tenants.
7. The Landlords incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$1,900.00 from the Tenants and this deposit is still being held by the Landlords. 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 \$190.13 is owing to the Tenants for the period from July 27, 2016 to March 3, 2023.

Tenants' section 82 claims

10. Section 82 of the *Residential Tenancies Act, 2006* (the "Act") permits the Tenants to raise any issue that could be the subject of an application provided certain notice requirements are met. In accordance with section 82 of the Act the Tenants raised the maintenance concerns addressed below.

*Appliances, Rodents, Deck*

11. The Tenants raised certain maintenance issues that were statute-barred, as follows:
  - (i) the washer, dryer, fridge and stove stopped working shortly after moving into the rental unit, therefore forcing the Tenants to buy new appliances in or around October 2016;
  - (ii) rats were seen inside the rental unit, causing the Tenants to purchase cats sometime in 2017, with no further issues since;

- (iii) the Tenant Joanne Butt (JB)'s foot "*went through the deck*" sometime in 2018. As a result the Tenants were forced to purchase lumber at a cost of \$150 shortly thereafter in order to put a board over the hole.

12. The above-noted section 82 issues were raised in February 2023, approximately 6 years after the old appliances were replaced and the rat issue was resolved; and, approximately 5 years after the alleged deck incident. The Tenants thus failed to file an application, or raise the above noted section 82 issues within one year as required by subsection 29(2) of the Act, and thus, these allegations are dismissed.

#### *Water Filter*

13. The Tenants' written section 82 submissions alleged the "*Water filter*" and "*UV light bulb*" were replaced, however, the Tenant did not pursue this allegation at the hearing. This allegation is, accordingly, dismissed.

#### *Furnace*

14. The Tenant Matthew Hall (MH) testified the electric furnace is no longer working, stating it comes on for a short period of time and then stops. The Tenants alleged they are forced to use the wood stove and electric heater in order to heat the rental unit. MH acknowledges the Tenants have sufficient heat, but states the Tenants' hydro bills are high. Although the Lease provides that the Landlords will supply and maintain a furnace in working order, the Landlord Leo Blydorp (LB) testified he was never made aware that the furnace did not work at any point prior to the August 24, 2022. Based upon the testimony given, I am satisfied on a balance of probabilities the Landlords have failed to maintain and/or repair the furnace as required by the Act, and thus, I have provided a remedy in my order below.

#### *Balcony/Deck*

15. In addition to the unfortunate balcony/deck incident occurring in 2018 (addressed above), the Tenants assert the deck is rotting, and in overall poor shape. In support of this allegation, the Tenants produced pictures of the balcony/deck taken in December 2022. The balcony/deck does appear to show signs of peeled paint, some rotting and overall aging. While it is unclear whether the entire deck needs to be repaired/replaced, it is clear that, at a minimum, there are portions of the balcony/deck that are in need of repair and/or replacement. I am satisfied on a balance of probabilities the Landlords have failed to maintain and/or repair the furnace as required by the Act, and thus, I have provided a remedy in my order below.

*Driveway*

16. The Tenants allege the driveway contains potholes and produced pictures showing potholes on the Tenants' driveway. MH states as a result, he has had car repairs and is precluded from driving a small car. LB testified he has seen the potholes, but states he was able to drive his Toyota Corolla on the driveway without any issue.
17. The Tenants produced a picture showing approximately 4 potholes which evidence of water pooling. It was unclear from the pictures the depth of the potholes or the impact that such holes would have when driving over top. The onus to prove this allegation rests with the Tenants. Based upon the testimony and pictures submitted, I am not satisfied on a balance of probabilities that this issue rises to the level of constituting a breach on the part of the Landlord under section 20 of the Act. This allegation is dismissed.

*Door, Windows, Hole in Roof*

18. The Tenants allege there are holes in and around the windows, between the floor and rear-door of the residence, and on the roof at the back of the house. Pictures were tendered of the back door containing a small gap between the floor and the door, as well as a window frame showing some missing putty and a gap appearing under the eavestrough. As a result, MH states the Tenants are forced to place a blanket on the floor beneath the rear door, to avoid the loss of heat. MH also indicated that because of the hole below the eavestrough, this gap provides an open access point for animals. Based upon the testimony and pictures submitted, I find the rear-door is in need of repair or replacement to address the gap that has grown over time through usage and further, I find the hole near the roof/below the eavestrough is also in need of repair. I have provided a remedy for such breach in my order below.

*Roof*

19. The Tenants allege snow and ice slide off of the steel roof constituting a safety risk. According to the Tenants, snow/ice guards should be installed to break up the ice and snow. The Tenants produced a picture from 2022 purportedly showing snow sliding off of the roof, and MH indicated the Landlord's failure to install ice guards poses a safety concern for people walking below.
20. The onus to prove to breach under the Act rests with the Tenants. The Tenants' evidence lacked particulars as to the amount, frequency and severity of the snow/ice purportedly falling off, nor have they shown - or alleged - that the lack of snow guards constitutes a breach of a property standards bylaw. As the Tenants have not proven on a balance of probabilities that the roof is not in a good state of repair, or that the quality of the Tenants' habitation has been impacted to such an extent to render the rental unit not "fit for habitation", this allegation is dismissed.

*Remedy/Abatement*

21. The Tenants sought an abatement of \$2052 per repair. An abatement of rent is a contractual remedy based on the principle that if a party is not receiving 100% of what they are paying for, then they should be entitled to abatement equal to the difference in value. Although there is an ongoing positive obligation on the part of the Landlords to inspect and ensure the rental unit is in a good state of repair, section 30(2) of the Act provides that in determining a remedy, the Board shall consider whether the Tenants advised the Landlord of the alleged breaches before applying to the Board.
22. Here, the Tenants produced emails purportedly written to the Landlords outlining one or more of the maintenance concerns raised on the following dates: October 20, 2017; June 6, 2018; November 20, 2018; July 10, 2019; and, May 25, 2020 (collectively, the “**prior emails**”), as well as a more recent email dated August 24, 2022 (the “**August 24, 2022 email**”)
23. The Landlord, LB, asserts only the August 24, 2022 email was received, stating he performed an exhaustive search of his emails and could only locate the August 24, 2022 email. The Landlord’s representative noted the formatting for the August 24, 2022 email was different than the formatting for all prior emails. In particular, the August 24, 2022 email contained a header with two distinct lines and even spacing in the header. On the other hand, the formatting for the prior emails contained only one line. The Landlord thus challenged the authenticity the purported emails. At the hearing, the Tenants asserted the emails were, in fact, sent to the Landlord. I provided the Tenants with an opportunity to make post hearing submissions in this regard. The Tenants’ post hearing submission, however, was not responsive to the request made. While based upon the limited information presented it is not conclusive the emails are unauthentic, I find it is more likely than not that the Tenants’ emails prior to August 24, 2022 were not received by the Landlord. In this regard, I accept the Landlord’s submission that he was not made aware of the Tenants’ maintenance issues prior to August 24, 2022
24. Given the lack of notice given to the Landlords - and the additional challenges noted by the Landlord in inspecting the property thereafter - my order shall provide for work to be performed in a timely manner, only. While the inspection/access challenges noted by the Landlords do not absolve the Landlord from performing their maintenance obligations, in the circumstances, I do not find that an abatement of rent is appropriate.

*Section 83*

25. Section 83 requires that I consider all the circumstances, including the Tenants’ and the Landlord’s situations to determine if it would be appropriate to grant section 83 relief from eviction. The Tenant MH advised that he is employed and there are 6 people living at the rental unit, including the Tenants’ two grandchildren. The Tenants are looking to stay at the

rental unit and requested a payment arrangement stating they could afford an additional \$100-200/month towards the arrears. The Landlord sought eviction, noting the arrears are longstanding and the Tenants have not shown a willingness to repay the arrears owing over a period of several years.

26. I have considered all of the disclosed circumstances in accordance with subsection 83 of the *Act*, including the parties' personal circumstances, the impact of COVID-19 and whether the Landlords attempted to negotiate a repayment agreement with the Tenants, and find that it would not be unfair to postpone the eviction until June 30, 2023 pursuant to subsection 83(1)(b) of the *Act*. The delayed eviction date should afford the Tenants some additional time to secure alternative housing, or alternatively, pay the arrears and void the order as provided in paragraph two on my order.

### L2 Application

27. The Landlords' L2 application was filed in March 2022 and alleges the Tenants' behaviour has substantially interfered with the Landlords' reasonable enjoyment of the residential complex and/or lawful rights, privileges, or interests.
28. The Landlords' Form N5 contains a termination date March 30, 2022 and a service date of March 10, 2022. Since this is the first N5 served by the Landlords, it must be a voidable N5 as required under s.62 of the Residential Tenancies Act, 2006 (the "*Act*").
29. The Landlords allege the Tenants have been advertising campsite rentals on the property, without the Landlords' consent and contrary to municipal bylaw. In this regard, the Landlord states that the Tenants advertised campsite rentals on Facebook and produced a copy of the posted advertisement from August 2021. MH acknowledged the listing but stated the Tenants only had "2 guests" stay in tents on the property and that these guests who were acquaintances of the Tenants. Moreover, MH indicated the Facebook listing was taken down immediately after being requested by the Landlords. Based upon the evidence presented, I am satisfied the incident was an isolated event and short in duration. I further find the Tenants' immediately ceased advertising upon being requested by the Landlord; and, that this allegation was voided.
30. The Landlords also alleged the Tenants' have not paid their dog licencing fees and accordingly, the Tenants' charges have been transferred to the Landlords' property taxes. In particular, the Landlords state approximately \$1800 has been added by the Township to the Landlords' tax roll. The Tenant, MH, acknowledges the Tenants did not pay the licensing fees, but disputes the amount owing to the Township. Although the Tenants disagree with the charges, they have not taken the appropriate steps to ensure that this issue is resolved with the municipality, so that the Landlord is not adversely affected. I thus find the Tenants

have substantially interfered with the Landlords' lawful rights, privileges, or interests, as a result.

31. In the event the Tenants' void the L1 Application as noted in my order below, I find it would not be unfair to deny the eviction under s.83 of the Act so long as the Tenants' licensing issue with the municipality is rectified within a reasonable period of time. Conditional relief will be granted with respect to the Landlord's L2 Application, on the terms set out below.

**It is ordered that:**

*L1 Application*

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:**
  - \$7,071.00 if the payment is made on or before May 31, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

- \$8,971.00 if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.

(The foregoing amounts shall be abated by any rent paid by the Tenants to the Landlord after the March 3, 2023 hearing date)

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 June 30, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant 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 June 30, 2023**
5. As of the date of the hearing, the amount of the rent deposit and interest the Landlords owe on the rent deposit exceeds the arrears of rent, compensation and the cost of filing the application the Landlords are entitled to by \$531.73. See Schedule 1 for the calculation of the amount owing. However, the Landlords are authorized to deduct from the amount owing to the Tenants \$62.47 per day for compensation for the use of the unit starting March 4, 2023 until the date the Tenants move out of the unit.
6. The Landlords or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
7. The Tenants shall also pay the Landlords compensation of \$62.47 per day for the use of the unit starting March 4, 2023 until the date the Tenant moves out of the unit.
8. If the Tenants do not pay the Landlord the full amount owing on or before June 30, 2023, the Tenants will start to owe interest. This will be simple interest calculated from July 1, 2023 at 6.00% annually on the balance outstanding.
9. If the unit is not vacated on or before June 30, 2023, then starting July 1, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after July 1, 2023.

*Section 82 issues*

11. The Landlords shall repair or replace the furnace. In the event the Landlords do not perform the necessary work on or before September 30, 2023, the Tenants shall be entitled to an on going **ten (10%)** per cent rent abatement beginning with the October 1, 2023 rent period and continuing each subsequent month until the furnace is rendered in proper working order.
12. The Landlords shall
  - (i) repair and/or restore the balcony/deck to a safe condition; and,
  - (ii) repair/replace the back door of the rental unit as well as the hole below the eavestrough/near the roof.

In the event the Landlords do not perform the work set out in this paragraph on or before June 30, 2023, the Tenants shall be entitled to an on going **fifteen (15%)** per cent rent abatement beginning with the July 1, 2023 rent period and continuing each subsequent month until the work is completed.



*L2 Application*

32. On or before June 30, 2023, the Tenants shall ensure the dog licensing fees arrears previously added to the Landlords' property taxes are removed and/or fully satisfied with the municipality.
33. The Tenants shall also ensure that any future dog licensing fees arrears are not added to the Landlord's property taxes.
34. If the Tenants fail to comply with the conditions set out in paragraph 32 or 33 of this order, the Landlords may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenants. The Landlords must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenants.

**May 8, 2023**

**Date Issued**

\_\_\_\_\_  
Peter Nicholson

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 January 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.

\*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

**Schedule 1**  
**SUMMARY OF CALCULATIONS**

**A. Amount to continue the tenancy if the payment is made on or before May 31, 2023**

Rent Owing To May 31, 2023	\$29,670.00
Application Filing Fee	\$201.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$22,800.00
<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}	- \$0.00
<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>\$7,071.00</b>

**B. Amount to continue the tenancy if the payment is made on or before June 30, 2023**

Rent Owing To June 30, 2023	\$31,570.00
Application Filing Fee	\$201.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	\$22,800.00
<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}	- \$0.00
<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>\$8,971.00</b>

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

Rent Owing To Hearing Date: March 3, 2023	\$24,157.40
Application Filing Fee	\$201.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	\$22,800.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,900.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$190.13

<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	- \$531.73
Plus daily compensation owing for each day of occupation starting March 4, 2023	Order Page: \$62.47 (per day)

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