



I hereby certify this is a true copy of an Order dated
May 16, 2025
Landlord and Tenant Board

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

Citation: Bielby v Lamothe, 2025 ONLTB 34794

Date: 2025-05-16

File Number: LTB-L-058550-24

In the matter of: 53 RANDOLPH ST
WELLAND ON L3B4C3

Between: Linda Bielby Landlords
Roy Trevisan

And

Dean Lamothe Tenants
Patricia Antoniou

Linda Bielby and Roy Trevisan (the 'Landlords') applied for an order to terminate the tenancy and evict Dean Lamothe and Patricia Antoniou (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

At the hearing and pursuant to section 82 of the *Residential Tenancies Act, 2006* (the 'Act') the Tenants applied for an order determining that the Landlords:

- substantially interfered with the Tenants' reasonable enjoyment of the rental unit;
- harassed, threatened, coerced, obstructed or interfered with the Tenants; and
- failed to meet the Landlords' maintenance obligations under the Act or failed to comply with health, safety, housing or maintenance standards.

This application was heard by videoconference on April 30, 2025.

The Landlords and the first-named Tenant above attended the hearing. The Landlords were represented by Jessica Travers. The first-named Tenant was self represented. The second-named Tenant above was represented by Damian Cordaie.

Determinations:

1. The Landlords' application for eviction for non-payment of rent is complicated by the fact that the second-named Tenant above served notice to terminate pursuant to s. 47.2 severing the joint tenancy of the Tenants effective February 24, 2025. That raises questions of allocation between the two Tenants. In particular the Board must determine how a payment of \$5,000.00 made by the second-named Tenant should be credited.
2. The Tenants' claims raised pursuant to section 82 concern:
 - Allegations of verbal harassment and invasion of privacy;

- The lack of a railing for the stairs;
 - The smoke and carbon monoxide detectors; and
 - Bathroom mould and a lack of ventilation.
3. For the reasons that follow, the Landlords' application is granted, and a standard order shall issue. The Tenants' section 82 claims are granted in part and denied in part and abatements totalling \$1,925.00 are offset against the arrears owing.

THE RENT ARREARS

4. There is no dispute that on July 2, 2024, the Landlords served the Tenants with a valid Notice to End Tenancy Early for Non-payment 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.
5. There is also no dispute that the second-named Tenant above served the Landlords with a valid N15 notice to End a Tenancy pursuant to s. 47.2 of the Act, and moved out pursuant to that notice. Therefore, she terminated the joint tenancy and her interest in it effective February 24, 2025. This means she is jointly and severally liable for the arrears that accumulated up to February 24, 2025, but is not responsible for any arrears or daily compensation related to the period starting February 25, 2025.
6. Both Tenants were in possession on the date the application was filed. The first-named Tenant above was in possession as of the date of hearing before the Board.
7. As of October 1, 2024, the lawful monthly rent increased to \$1,793.75. It is due on the 1st day of each month.
8. After the application was filed, but before the joint tenancy was terminated, the second-named Tenant above paid \$5,000.00 to the Landlords.
9. The second-named Tenant argues that the payments she made to the Landlords prior to vacating should be credited to her and her alone. The problem with that argument is that the tenancy was a joint tenancy up to February 24, 2025. Both Tenants were and are responsible for all of the rent arrears and daily compensation that accrued up to that point in time. As the payments were made prior to the severance of the joint tenancy the payments must be allocated to the arrears that accumulated during the joint tenancy. During that period of time a payment made by one tenant is legally a payment made by or on behalf of both Tenants.
10. The total rent arrears owing as of the date of hearing before the Board for the period ending April 30, 2025 total \$14,556.25.
11. The arrears owing jointly by both Tenants for the period ending February 24, 2025 are calculated as follows:
- For the period ending January 31, 2025, the arrears of rent are:
 - 4 months X \$1,750.00 (for the months of June to September, 2024) + 4 months x \$1,793.75 (for the months of October, 2024 to January, 2025) - \$5,000.00 paid = \$9,175.00;

- For the period February 1, 2025 to February 24, 2025 the arrears are 24 days x \$1,793.75/month x 12 months ÷ 365 days/year = \$1,415.34;
- For a total of \$10,590.34.

12. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs as against both Tenants jointly.
13. The Landlords collected a rent deposit of \$1,750.00 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.
14. Interest on the rent deposit, in the amount of \$76.47 is owing for the period from August 1, 2023 to April 30, 2025.
15. Pursuant to s. 47.1(8) the rent deposit paid to the Landlords endures to the benefit of the first-named Tenant. In other words, the deposit and any interest owing on it runs with the land.
16. This means that the joint liability of the two Tenants for the period up to February 24, 2025, is a total of \$10,776.34 which represents the rent arrears and daily compensation owing up to February 24, 2025 and the Landlords' cost of filing the application.
17. If the first-named Tenant moves out as a result of this order, the deposit and the interest on the deposit will be credited to him and offset against the daily compensation owing that started to accrue on February 25, 2025.

THE TENANTS' SECTION 82 CLAIMS

The Landlords' Request that the Board Refuse to Hear the Tenants' Claims

18. At the beginning of the hearing the Landlords raised a preliminary issue and argued that the Board should decline to hear the Tenants' section 82 claims. For the reasons that follow, I am satisfied that the Board has no jurisdiction to refuse to hear the Tenants' claims in the circumstances here.
19. This application initially came before the Board on October 22, 2024. No evidence was heard and the application was adjourned by the presiding Member.
20. The Landlords state that the Member who presided on October 22, 2024, orally directed the Tenants to pay ongoing rent to the Landlords until the application was heard, and warned if they did not the Board would not consider the Tenants' section 82 issues. The Landlords argue that because of the Member's statements and the Tenants' non-payment after the hearing of October 22, 2024, the Board should not entertain the Tenants' section 82 claims.
21. It is very common for the Board to issue interim orders when adjourning arrears of rent applications requiring the tenant to pay new rent on time until the application is heard. It reduces the prejudice to the landlord of the delay caused by the adjournment. It is also common for such interim orders to say that if the tenant does not comply with the order to pay new rent, the Board may exercise its discretion to refuse to consider the tenant's evidence and submissions.

22. This argument on the part of the Landlords was difficult to verify at the hearing. The prior Board Member did not issue the standard interim order described above, nor is there an endorsement or direction on file to the same effect. Further, the adjournment sheet from October 22, 2024, also does not confirm the Landlords' statement concerning what was said.
23. As a result, I reserved on the Landlords' motion that I refuse to consider the Tenants' section 82 claims and indicated I would listen to the hearing recording from October 22, 2024 before making a decision on the request. But in the meantime, and in order to save time, I proceeded to hear the Tenants' section 82 claims in their entirety in the event the hearing recording from October 22, 2024 did not support the Landlords' assertion as to what was said. Despite explaining the two possible outcomes of my review of the hearing recording of October 22, 2024, the Landlords elected to forgo cross-examination and lead no evidence with respect to the Tenants' s. 82 claims.
24. I have now had an opportunity to listen to the recording from the hearing of October 22, 2024. At around the 17 minute mark of the recording the Member concludes:

I think we should adjourn for now... I **may** also issue an interim order just requesting that the Tenants continue to pay their rent on time from now until the next scheduled hearing. So if the Tenants do that that's fine if not then at **the next hearing the Member there will have to decide how to proceed.**

[Emphasis added.]

25. As the recording indicates the Member did not tell the parties the Board would be issuing the interim order requested by the Landlords. Rather, the Member said he might do so. He also did not say that non-compliance with the requirement to pay rent to the Landlords would in fact result in the Board refusing to hear the Tenants' evidence and submissions. Rather, he stated the next hearing Member would have to decide how to proceed.
26. Section 82 says in part:

(1) At a hearing of an application by a landlord under section 69 for an order terminating a tenancy and evicting a tenant based on a notice of termination under section 59, **the Board shall permit the tenant to raise any issue that could be the subject of an application made by the tenant under this Act if the tenant,**

(a) complies with the requirements set out in subsection (2); ...

(2) The requirements referred to in subsection (1) are the following:

1. The tenant shall give advance notice to the landlord of the tenant's intent to raise the issue at the hearing.
2. The notice shall be given within the time set out in the Rules.
3. The notice shall be given in writing and shall comply with the Rules.

[Emphasis added.]

27. Rule 19.4 of the Board's Rules of Procedure says:

Unless the LTB has directed or ordered otherwise, a tenant who intends to raise issues under sections 82(1) or 87(2) of the RTA during a hearing for a landlord's application about rent arrears shall provide the other parties and the LTB with the following at least 7 days before the scheduled CMH or hearing:

1. a written description of each issue the tenant intends to raise; and
2. a copy of all documents, pictures and other evidence that the tenant intends to rely upon at the hearing.

28. On April 23, 2025, 7 days before the hearing before the Board, the Tenant uploaded into Tribunals Ontario's Portal (TOP) a section 82 claim form with his disclosure which he says he served to the Landlords. The Landlords do not disagree with that statement.

29. Therefore, I am satisfied that the Tenants complied with the requirements set out in s. 82(2) which means that pursuant to s. 82(1) the Board is mandatorily required to permit them to pursue those claims. If the Board had issued the interim order the Landlords asked for on October 22, 2024, then pursuant to ss. 195, 204(1) and the Divisional Court's decision in *Shields v. Lancelotte*, 2016 ONSC 4433, the Board would have the power to consider whether or not to refuse to hear the Tenants' section 82 claims, but under the circumstances here, the Board cannot do that and is required to address those claims.

Issue # 1 - Harassment

30. The Tenant says that the Landlords have harassed him as far back as May 2024. He describes the harassment as verbal harassment as well as harassing the Tenant by invading his privacy and personal space by virtue of the installation of video surveillance.

31. The Tenant does not offer very much evidence in terms of the Landlords verbally harassing him. Nor did the Tenant provide any specific dates or incidents which he claims the Landlords specifically harassed the Tenant. He also says the next-door neighbor installed video surveillance cameras that happened to be pointed directly at the Tenants' rental unit, and that the neighbor had done this based on the Landlords' request to do so, and that this was the primary reason for the Tenants' harassment claim. The evidence fails to establish that the Landlords had any involvement and/or directed the neighbor to install the security camera. Nor does the evidence suggest that the Landlords had any control or ownership of the property located next door in which the camera was installed. I am also mindful that upon viewing footage of the camera, I can see that despite capturing the Tenants' front entrance way, it appears that the intent of the camera is to capture the neighbors' motor vehicle and not the entry way of the Tenant.

32. Based on the evidence regarding the Tenants' section 82 claim for harassment, I find that the Tenant failed to demonstrate on a balance of probability that the Landlords harassed the Tenants. Therefore, no further determination shall be made regarding this issue.

Issue # 2 – Lack of railings for stairs to basement

33. The Tenant says that since moving into the rental unit in August 2023, the unit did not have any railings for the stairway leading from the kitchen located in the upper portion of the unit to the lower portion of the unit where the washroom and Tenant's bedroom is located. The Tenant describes the stairs as being long and steep.
34. The Tenants made a request to the Landlord shortly after occupying the unit to have a railing installed so that the Tenants can safely travel up and down the stairs without fear of falling. The Landlords responded to the Tenants' request by attempting to install the safety railing for the stairs by themselves. This only lasted as a temporary solution as the railing came out of the wall shortly thereafter. The Landlords re-attended the unit and made a secondary attempt to install the railing on their own which lasted for approximately two months at which time the railing came loose again. The Landlords returned and had a railing successfully re-installed with the assistance of a professional on March 20, 2025.
35. The lack of any railing on a stairwell between floors of a building is a safety hazard. That is why it is a requirement of the *Building Code* and most municipal property standards by-laws requires them. As a result, I am satisfied that the failure to have at least one working railing on the stairs to the lower level in the rental unit constitutes substantial interference with the Tenants' reasonable enjoyment and is a breach of s. 22 of the Act.
36. With respect to remedy, the Tenants seek a rent abatement of 25% from when the tenancy commenced on August 1, 2023 to March 20, 2025.
37. The Tenants are not entitled to abatement for this entire period. I say this because the Tenants' section 82 claim form was filed with the Board on April 23, 2025, and pursuant to s. 29(2) the Board's jurisdiction is limited to the one-year period prior to the filing of the Tenants' s. 82 claim form. That means the Tenants are only entitled to abatement for the period April 23, 2024 to March 20, 2025.
38. I am mindful that the Landlords did make multiple attempts to resolve the issue but were unsuccessful in doing so on the first two attempts. The Landlord's third attempt on March 20, 2025 was successful. I am also mindful of the fact that for some of the time in the relevant time period, the Tenants did have a working railing and the impact on them of the Landlords' default was primarily one of being concerned and needing to be cautious when using the stairs. Given the circumstances here and my knowledge of like similar cases, it seems to me a reasonable abatement of the rent would be \$1,575.00 which is about 8% of the rent charged for the period April 23, 2024 to March 20, 2025.
39. Apportioning this amount on a per diem basis to the periods before and after the joint tenancy was severed on February 24, 2025, results in an abatement for the period up to February 24, 2025 of \$1,461.14 and \$113.86 for the period February 25, 2025 to March 20, 2025.

Issue # 3 – Expired Smoke and Carbon Monoxide Detectors

40. The Tenant says that he discovered that the smoke detector and the carbon monoxide detector in the rental unit were expired. He also testified that despite being expired both units still appeared to be functional and have working batteries installed but the Tenant was uncertain that the units would function as required based on being expired units. He informed the Landlords of this issue on June 17, 2024. The Landlords replaced the smoke alarm and carbon monoxide detector on or about October 17, 2024.
41. The Tenants argue that this is a safety concern and the delay to have the units replaced was unreasonable. The Tenants seek an abatement of 30% for the period of four months from June 17, 2024 to October 17, 2024.
42. Based on the evidence, given that the issue concerns fire safety equipment, I find that a delay of four months to have a new smoke detector and carbon monoxide detector installed to be unreasonable. Up to date smoke and carbon monoxide detectors are required by the *Fire Code*. Failing to replace them in a timely manner is a breach of s. 20 of the Act.
43. That being said, I am mindful that despite the units being expired, the Tenant's evidence was clear that the units still appeared to be operational or functional. For this reason, I find it would not be unreasonable to award the Tenants a 5% rent abatement for a period of 4 months commencing June 17, 2024 through to October 17, 2024 for a total of \$350.00.
44. Given the period the abatement covers, the entire amount shall be applied to the period prior to the joint tenancy terminating on February 24, 2025.

Issue # 4 – Mould in Bathroom and lack of ventilation

45. The Tenant says that since occupying the rental unit, he observed what he believed to be mould in the bathroom surrounding the bathtub where the bathtub is normally caulked. He informed the Landlord of this issue on or about August 2024, and that the Landlord has not taken any steps to address it. The Tenant tendered multiple photographs of the bathtub with what can be seen as black spots surrounding the bathtub.
46. Based on the evidence presented, I am satisfied that the bathtub in the unit has a substance around it that may or may not be mould but in the absence of mould sampling or testing I am unable to say that it is. The substance in the pictures could just as easily be dirt or grime around the bathtub. As such, no further determination will be made regarding this issue.

RELIEF FROM EVICTION

47. With respect to the Tenants' s. 82 claims, none of the breaches found above rise to the level of "serious" breaches for the purposes of s. 83(3). The failure to put in a secure and stable railing is a breach of the Act but at most, made the stairs somewhat unsafe to use. Similarly, the failure to keep the alarms current had little impact on the Tenants and is a relatively minor breach. Therefore, the Tenant is not entitled to mandatory relief from eviction.

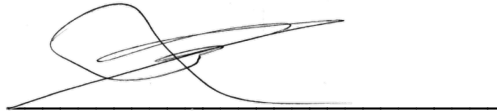
48. The Tenant who is still in possession does not seek relief beyond the Board's standard order. I took this to mean he believes he can pay any outstanding rent arrears after any abatements ordered are deducted.
49. The Landlords say they are experiencing great financial difficulty as a result of the Tenant's ongoing failure to pay the rent as it comes due. The Landlords tendered a copy of the banking statement showing that they have had to resort to withdrawing almost half of their savings in the amount of approximately \$19,000.00 from their GIC savings account.
50. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, including whether the Landlords 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.
51. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlords and the Tenant, Patricia Antoniou, terminated effective February 24, 2025.
2. The tenancy between the Landlords and the Tenant, Dean Lamothe, is terminated unless the Tenants void this order.
3. **The Tenants may void this order and continue the tenancy with Dean Lamothe as the sole Tenant by paying to the Landlords or to the LTB in trust:**
 - 1) \$12,817.25 if the payment is made on or before April 30, 2025; or
 - 2) \$14,611.00 if the payment is made on or before May 27, 2025. See Schedule 1 for the calculation of the amount owing.
4. The Tenant, Dean Lamothe, 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 plus any additional rent that became due after May 27, 2025 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
5. **If the Tenants do not pay the amount required to void this order the Tenant must move out of the rental unit on or before May 27, 2025.**
6. If the Tenants do not void this order then:
 - 1) The Tenants shall pay to the Landlords \$8,965.20, which represents rent arrears and daily compensation owing up to February 24, 2025, plus the Landlords' cost of filing the application, and minus rent abatements awarded for the period ending February 24, 2025 (\$1,811.14). **The Tenants are jointly and severally liable to the Landlords for this amount.**

- 2) If the Tenants do not pay the Landlords the full amount owing under paragraph 6(1) above on or before May 27, 2025, the Tenants will start to owe interest. This will be simple interest calculated from May 28, 2025 at 5.00% annually on the balance outstanding.
 - 3) The Tenant, Dean Lamothe, shall also pay to the Landlord \$1,892.89. This amount represents daily compensation owing for the period starting February 25, 2025 to the date of the hearing before the Board minus the rent deposit and interest the Landlords owe on the rent deposit and minus the rent abatement awarded for the period starting February 25, 2025 (\$113.86).
 - 4) The Tenant, Dean Lamothe, shall also pay the Landlords compensation of \$58.97 per day for the use of the unit starting May 1, 2025 until the date the Tenant moves out of the unit.
 - 5) If the Tenant, Dean Lamothe, does not pay the Landlords the full amount owing under paragraph 6(3) above on or before May 27, 2025, the Tenant will start to owe interest. This will be simple interest calculated from May 28, 2025 at 5.00% annually on the balance outstanding.
7. If the unit is not vacated on or before May 27, 2025, then starting May 28, 2025, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
 8. 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 May 28, 2025.

May 16, 2025
Date Issued



Ilan Shingait
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 November 28, 2025 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 of the Tenant, Dean Lamothe, if the payment is made on or before May 27, 2025

Rent Owing To May 31, 2025	\$21,350.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$5,000.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlords owe the Tenants for an abatement	- \$1,925.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy of the Tenant, Dean Lamothe	\$14,611.00