



Order under Section 88.2 Residential Tenancies Act, 2006

Citation: 1000258859 ONTARIO LTD v Vanderjagt, 2026 ONLTB 9477

Date: 2026-02-04

File Number: LTB-L-018036-25-RV

In the matter of: 306, 2495 DUFFERIN ST
YORK ON M6B3R3

Between: 1000258859 ONTARIO LTD

Landlord

And

Donna Lynne Vanderjagt
Flavio Parodi

Tenants

1000258859 ONTARIO LTD (the 'Landlord') applied for an order requiring Donna Lynne Vanderjagt and Flavio Parodi (the 'Tenants') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenants' failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

The application was resolved by an order issued on August 6, 2025. That order was overturned on review, and the matter was directed to a new hearing.

The new hearing was held by videoconference on January 26, 2026.

The Landlord's representative Allen Welman, the Tenants, and the Tenants' representative Samuel Mason attended the hearing. Oneal Sookoo and Winston Lynch testified for the Landlord.

Reasons:

1. This case is about whether the Tenants are required to pay for hydro, or whether hydro is included in their rent.
2. The Tenants moved into the unit in 2006. The landlord at the time was Sidney Welman. For more than 15 years, the Tenants did not pay for hydro.
3. In the 2020's, Mr. Welman's health declined and his brother, Allen Welman, took over management of the building. He manages the property through a numbered company which is the applicant Landlord in this proceeding.
4. When the Landlord took over the property, it reviewed Mr. Welman's business records and found a document which it took to be the Tenants' lease. The lease included a clause

which the Landlord interpreted as requiring that the Tenants pay for hydro, which they had not been doing.

5. The Landlord did not ask the Tenants to pay for the hydro bills going back to 2006, but it asked them to start paying going forward. The Tenants refused, taking the position that hydro was included in their rent. The Landlord then brought this application seeking an order that the Tenants start paying the hydro bills.
6. For the following reasons, I find that the tenancy agreement does not require the Tenants to pay for hydro. Hydro is included in their rent. The application will be dismissed.

What was the parties' written agreement regarding hydro?

7. Winston Lynch has been the building's superintendent since before 2006. He was an employee of Mr. Welman and is now an employee of the Landlord.
8. Mr. Lynch testified that he negotiated the tenancy with one of the Tenants, Ms. Vanderjagt, on behalf of Mr. Welman. He provided Ms. Vanderjagt with a lease form, which she filled out, signed, and returned to him. He then gave the form to Mr. Welman to sign.
9. The form in question was an "offer to rent" form. Clause 5 of the form stated that the tenant agreed:

To open and pay all utilities accounts such as hydro, water, cable, telephone, heating, electricity. Landlord is responsible to pay the realty tax.

10. Ms. Vanderjagt testified that Mr. Lynch provided two copies of the form – one for her, and one for Mr. Welman. On her copy, next to Clause 5 she wrote "only agree to pay cable & phone." She only partially completed this copy of the form. It was never completed or signed, and the evidence does not establish that she showed it to Mr. Lynch or Mr. Welman.
11. Ms. Vanderjagt completed and signed the other copy of the form, and gave it to Mr. Lynch to provide to Mr. Welman for his signature. She testified that she was given a copy of the completed form with Mr. Welman's signature, but no longer has it.
12. When the Landlord took over management of the building in the 2020's, it received Mr. Welman's business records. The records included a signed copy of the form. Ms. Vanderjagt testified that although this version of the form appears to be the one that she signed, it has handwritten notes which she does not recognize, which must have been added after she signed it.
13. In other words, the evidence is clear that there was a written tenancy agreement. There is no reliable copy of the agreement in evidence before me, but the evidence establishes that the agreement was made using the Mr. Welman's standard form, which included Clause 5.
14. I am also satisfied that the written agreement did not include Ms. Vanderjagt's handwritten amendment to Clause 5. She testified that she made that amendment to an unsigned copy of the form, not to the copy that she and Mr. Welman signed.

15. I therefore find that the text of Clause 5 represents the written agreement between the parties regarding utilities in the tenancy.

What did the written agreement mean?

16. The Supreme Court of Canada set out the modern approach to contract interpretation in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 (CanLII), [2014] 2 SCR 633. I must determine “the mutual and objective intentions of the parties as expressed in the words of the contract.” To understand those intentions, I can consider the surrounding circumstances. Surrounding circumstances can help interpret the written text, but cannot overwhelm the words of the written agreement or “deviate from the text such that the court effectively creates a new agreement.” (*Sattva* at para. 57).
17. The Court in *Sattva* considered surrounding circumstances known to both parties at or before the date of contracting (*Sattva* at para. 60). However, in *Lafergola v. French*, 2025 ONSC 1619 (CanLII), the Ontario Divisional Court confirmed that the parties’ conduct after signing a contract can also be considered in interpreting the contract. In that case, a written tenancy agreement provided that a landlord could assign parking spaces. Immediately after signing the agreement, the landlord assigned spot 69 to the tenant, who used that spot without interruption or change for many years. The Court upheld the Landlord and Tenant Board’s (LTB) finding that the use of spot 69 was an implied term of the tenancy.
18. In the present case, if Clause 5 were read in isolation, the most likely interpretation would be that the Tenants were required to open a hydro account and to pay the bills for that account. However, there are several surrounding circumstances which are inconsistent with that interpretation.
19. First, it is not clear that it would have been possible for the Tenants to open a hydro account. There is no evidence as to whether, in 2006, the building had per-unit hydro accounts. Suite sub-meters were not a widespread technology in Ontario at the time. Mr. Lynch testified that the building’s other tenants paid \$40.00 flat-rate fees for hydro, which suggests that it might not have been possible to bill tenants for their individual usage.
20. Second, Ms. Vanderjagt testified that Mr. Lynch told her that hydro would be included in the tenancy, except that there would be an extra \$60.00 fee if she used air conditioning. Her testimony was consistent with the parties’ subsequent conduct, and I find it to be credible. An interpretation of Clause 5 requiring the Tenants to pay for hydro would be inconsistent with the parties’ oral agreement.
21. Third, Mr. Lynch testified that he told Ms. Vanderjagt that hydro would be a \$40.00 flat rate. Hence, even if I were to prefer his testimony over Ms. Vanderjagt’s, the parties’ oral agreement would still not be consistent with an interpretation of Clause 5 requiring the Tenants to open a hydro account and pay for hydro usage.
22. Fourth, the Tenants did not open a hydro account or pay for hydro. For more than 15 years, Mr. Welman paid the hydro for the unit without complaint. This suggests that Mr. Welman’s understanding of the tenancy agreement was that the Tenants were not responsible for hydro.

23. Fifth, when the Tenants used window air conditioning in the summer months, Mr. Welman charged them \$60.00 monthly “to cover the cost of Hydro consumed by ‘Air Conditioning.’” The extra charges only make sense if Mr. Welman was otherwise responsible for paying for hydro.
24. In light of the surrounding circumstances, I find that hydro is not one of the utilities accounts which the Tenants are required to open and pay under Clause 5. The parties did not intend to agree that the Tenants would pay for hydro. The real substance of the tenancy agreement is that the Landlord is responsible for hydro.
25. I am satisfied that that interpretation does not overwhelm the text of Clause 5. The clause is awkwardly written. It requires the Tenants to open and pay “all utilities accounts” without specifying them. It gives several examples of utilities accounts, one of which is hydro, but does not say that all the examples are relevant to this particular tenancy. While the most direct interpretation would be that hydro is a utility and therefore is included in “all utilities accounts,” the surrounding circumstances lead me to conclude that the parties did not intend that hydro would be one of the utilities to which Clause 5 would apply.

Result

26. The tenancy agreement does not require that the Tenants pay for hydro. The Landlord’s application must be dismissed.

Housekeeping

27. This application was originally decided by order LTB-L-018036-25, issued on August 6, 2025. The Tenants requested a review of the order. On October 22, 2025, Member Aboussafy issued her review decision. In her Reasons, she concluded that the order contained a serious error, and that the review would be granted and the matter directed to a new hearing.
28. However, Member Aboussafy’s order contains a clerical error. The order directs the matter to a new hearing, but also provides that the review is denied and that the original order is confirmed and remains unchanged.
29. It is necessary to correct the error and give effect to Member Aboussafy’s decision by cancelling the original order. As the Member who presided over the new hearing, in my view it is within my jurisdiction to cancel the original order and replace it with my decision in the new hearing, as Member Aboussafy intended. An order will issue accordingly.

It is ordered that:

1. Order LTB-L-018036-25, issued on August 6, 2025, is cancelled and replaced by this order.
2. The Landlord’s application is dismissed.

February 4, 2026

Date Issued

Dale Whitmore

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.