



## **Order under Section 126 Residential Tenancies Act, 2006**

**Citation:** 2716303 Ontario Inc. v Lemire et al, 2026 ONLTB 12629

**Date:** 2026-02-05

**File Number:** LTB-L-065326-23

**In the matter of:** Units 1A, 1B and 2, 315 Detroit Street  
Windsor, Ontario, N9C 2P4

**Between:** 2716303 Ontario Inc. Landlord

**And**

Mark Berlasty, Tina Berlasty, Nigel Lemire Tenants

2716303 Ontario Inc. (the 'Landlord') applied for an order permitting the rent charged to be increased by more than the guideline for one or more of the rental units in the residential complex.

This Application was filed with the Board on January 3, 2023, for an order permitting the rent charged to be increased by more than the guideline for one or more of the rental units in the residential complex. The first effective date (FED) identified on the Application is April 1, 2023.

The Application was resolved by a written hearing.

### **Preliminary Matters**

1. The Act requires an Application for an Above Guideline Rent Increase be filed with the Board at least 90 days prior to the FED identified on the Application. In this case, the FED is April 1, 2023. As noted above, the Application was received by the Board on January 3, 2023, which is less than 90 days prior to April 1, 2023.
2. When notified by the Board that the Application was filed beyond the time requirement in s. 126 of the Act, the Landlord filed evidence concerning the steps taken to file the Application. The evidence shows that the Landlord sent the Application, via courier, to the Board's offices (15 Grosvenor Street, Toronto) on December 29, 2022. The Landlord's evidence further shows the Application was delivered to an Ontario government mail facility in Toronto on December 30<sup>th</sup>.

3. The Landlord requests the Application "...be considered as filed on December 29 2022 within the required timeline..." even though it was not received at the Board offices until January 3, 2023.
4. Delivery of an Application to a government mail facility is not the same as filing the Application with the Board. I find the Application was not filed with the Board until January 3, 2023, which is less than 90 days prior to the FED, and therefore beyond the filing deadline set out in s. 126 of the Act.
5. However, I will consider the Landlord's evidence and submissions in response to the inquiries of the Board as a request to shorten the time for the filing of the Application to January 3, 2023, the date it was filed with the Board.
6. The Board's authority to shorten the time requirements related to making an application under section 126 is found in subsection 190(1) of the Act. The provision reads:

**190 (1)** The Board may extend or shorten the time requirements related to making an application under section 126, subsection 159 (2) or section 226 *in accordance with the Rules.* (*emphasis added*)

7. The relevant Rule of the Board is Rule 16.4, which reads:

The following factors may be considered in deciding requests to extend or shorten any time requirement under the RTA or these Rules:

- a. the length of the delay, and the reason for it;
  - b. any prejudice a party may experience;
  - c. whether any potential prejudice may be remedied;
  - d. whether the request is made in good faith; and
  - e. any other relevant factors.
8. The Rules further state that the Board may decide a request to extend or shorten a time requirement in the Act without requesting submissions from other parties to the Application.<sup>1</sup>
  9. I find the relevant factors to consider in respect to this request are the length of the delay, the potential prejudice that would result from granting or denying the request, and whether the request was made in good faith.
  10. I find that the delay in filing the Application was effectively only one business day. I find that the Tenants will suffer little or no prejudice if the filing deadline is shortened, while the Landlord will be severely prejudiced if the request is denied

---

<sup>1</sup> Rule 16.5

because it would result in the dismissal of the Application. Finally, I find that the Landlord made good faith efforts to file the Application within the time period for doing so.

11. Based on these factors, I grant the Landlord's request to shorten the time requirement for the filing of this Application to January 3, 2023.
12. The Board issued a Notice of Hearing for a Case Management Hearing (CMH) scheduled for June 25, 2025. The Board ordered the Landlord to serve the Tenants with a copy of the Notice of Application and the Notice of Hearing.
13. The Landlord filed a Certificate of Service as proof that on May 16, 2025, the Application was served on Units 1A, 1B and 2. The Certificate indicated the following units had not been served: Units 3, 4, 5 and 6.
14. The Board conducted the CMH on June 25, 2025. None of the tenants attended the CMH. As a result, the Board directed that the merits of the Application be determined by way of a written hearing.
15. On July 14, 2025, the Board issued a Notice of Written Hearing and ordered that the Landlord serve the Notice on all Tenants. The Notice of Written Hearing set the following deadlines:
  - a. The Landlord was required to serve a copy of the Application together with a copy of the Notice of Written Hearing on the Tenants no later than August 3, 2025;
  - b. The Notice gave the Tenants until September 3, 2025, to make submissions in response to the Application; and
  - c. If the Tenants filed any submissions, the Landlord was permitted until September 17, 2025, to reply.
16. Despite evidence of proper service of the Application and the Notice of Written Hearing, no submissions were received from the Tenants.
17. The Notice of Written Hearing issued on July 14, 2025, explicitly stated: "New evidence may not be filed by the landlord at this stage without permission from the LTB." Despite this, on July 15, 2025, the Landlord filed a document titled Evidence Brief containing evidence in support of the Application.
18. Although the Landlord did not seek permission from the Board to file additional evidence, I find the Tenants had sufficient time to review and respond to the evidence prior to their deadline for submissions and, in any event, will not suffer any prejudice if an extension of time is granted to file the evidence. Therefore, I grant the Landlord an extension of time to file the Evidence Brief and will consider that evidence in this decision.

19. Finally, even though no submissions were received from any of the Tenants, the Landlord filed additional submissions on September 16, 2025. Since no Tenant submissions were filed, the Landlord was not entitled to file additional submissions. Therefore, the submission filed on behalf of the Landlord on September 16, 2025, was given no weight in this decision.

**It is determined that:**

20. I find that the Landlord has justified a rent increase above the guideline because the Landlord incurred eligible capital expenditures for the residential complex or one or more of the rental units in it.

**THE DEFINITION OF CAPITAL EXPENDITURE**

21. The Landlord must lead evidence to establish that each of the capital expenditures claimed meets the definition of "capital expenditure" as set out in s. 18(1) of the regulation. It says:

"capital expenditure" means an expenditure for an extraordinary or significant renovation, repair, replacement or new addition, the expected benefit of which extends for at least five years including,

- a. an expenditure with respect to a leased asset if the lease qualifies as determined under subsection (2), and
- b. an expenditure that the landlord is required to pay on work undertaken by a municipality, local board or public utility, other than work undertaken because of the landlord's failure to do it,

but does not include,

- c. routine or ordinary work undertaken on a regular basis or undertaken to maintain a capital asset in its operating state, such as cleaning and janitorial services, elevator servicing, general building maintenance, grounds-keeping and appliance repairs, or
- d. work that is substantially cosmetic in nature or is designed to enhance the level of prestige or luxury offered by a unit or residential complex;

**"ELIGIBLE" CAPITAL EXPENDITURES**

22. In addition to meeting the definition of capital expenditure, each of the Landlord's claimed items must be an "eligible" capital expenditure.

23. Subsections 126(7) and (8) of the Act say:

(7) Subject to subsections (8) and (9) and except under the prescribed

circumstances, a capital expenditure is an eligible capital expenditure for the purposes of this section if,

- a. it is necessary to protect or restore the physical integrity of the residential complex or part of it;
- b. it is necessary to comply with subsection 20 (1) or clauses 161 (a) to (e);
- c. it is necessary to maintain the provision of a plumbing, heating, mechanical, electrical, ventilation or air conditioning system;
- d. it provides access for persons with disabilities;
- e. it promotes energy or water conservation; or
- f. it maintains or improves the security of the residential complex or part of it.

(8) A capital expenditure to replace a system or thing is not an eligible capital expenditure for the purposes of this section if the system or thing that was replaced did not require major repair or replacement, unless the replacement of the system or thing promotes,

- g. access for persons with disabilities;
- h. energy or water conservation; or
- i. security of the residential complex or part of it.

#### THE 18-MONTH WINDOW

24. Pursuant to s. 26(2) of the regulation a rent increase shall not be ordered in respect of a capital expenditure unless the work was completed during the 18-month period ending 90 days before the effective date of the first intended rent increase referred to in the application. In this case the 18-month window is from July 1, 2021 to January 1, 2023.

25. The expenditure must also be "incurred" which essentially means the work must have been paid for prior to the application being filed. This is not an issue with respect to any of the items claimed in this application.

#### THE USEFUL LIFE

26. If the expenditure meets the requirements set out above, then the Board must establish the useful life of the work done in order to calculate the allowable increase.

27. Section 27 of the regulation says:

27. (1) The useful life of work done or a thing purchased shall be determined from the Schedule subject to the following rules:

- a. Where the useful life set out in Column 3 of the Tables in the Schedule is less than 10 years, the useful life of work done or a thing purchased shall be deemed to be 10 years.
- b. If, when a thing is purchased, it has previously been used, the useful life of the thing shall be determined taking into account the length of time of that previous use.
- c. If the work done or thing purchased does not appear in the Schedule, the useful life of the work or thing shall be determined with reference to items with similar characteristics that do appear in the Schedule.
- d. Despite paragraphs 2 and 3, for the purposes of making a finding under this section, the useful life of work done or a thing purchased shall not be determined to be less than 10 years.

(2) If the useful life of work done or a thing purchased cannot be determined under subsection (1) because the work or thing does not appear in the Schedule and no item with similar characteristics appears in the Schedule, the useful life of the work or thing shall be what is generally accepted as the useful life of such work or thing but in no case shall the useful life be determined to be less than 10 years.

### Capital Expenditures

28. The Landlord justified a rent increase above the guideline because of capital expenditures. The justified rent increase above the guideline is not the same for all the affected units. The maximum rent increase above the guideline is 2.26%, but the increase is lower for Tenants who have moved into their units more recently. See Schedule 1 for the unit specific increases.

29. The Landlord's application is for the following capital expenditures:

1. Roof Replacement;
2. Common Area Refurbish; and
3. Intercom System.

### **Item #1 – Roof Replacement**

30. The Landlord submits the existing roof was leaking and beyond repair. The Landlord submits the work on the roof was completed on July 18, 2022, at a cost of \$19,775.00. The Landlord submits the work was necessary to protect the physical integrity of the residential complex. As a result, the Landlord submits the work was necessary to comply with housing standards and represents an eligible capital expenditure under s. 126(7)(b) of the Act.

31. Based on the evidence filed by the Landlord, including a photo of a portion of the ceiling in the common area around a roof access door that appears to have suffered water damage from the roof, I find the existing roof was leaking. I therefore find that the roofing work completed by the Landlord was necessary to protect the physical integrity of the residential complex and constitutes an eligible capital expenditure under s. 126(7)(b) of the Act.
32. I accept the Landlord's unchallenged evidence that the total cost of this expenditure was \$19,775.00, and the work was completed on July 18, 2022. I therefore find that the work was completed in the prescribed capital expenditure window and constitutes an eligible capital expenditure under s. 26(2) of O. Reg. 516/06.
33. The Landlord submits that the anticipated useful life of the new roof is 15 years. This is consistent with the useful life of a "built up roof", which is item #12 on Table 6 ("Thermal and Moisture Protection") on the Schedule titled "Useful Life of Work Done or Thing Purchased", which forms part of O. Reg. 516/06 (the "Useful Life Schedule"). Therefore, I find that the useful life of the Roof Replacement is 15 years.

## **Item #2 – "Common Area Refurbish"**

34. The Landlord submits the "refurbishment" of the common area of the complex was necessary to comply with housing standards. The Landlord filed a copy of the City of Windsor's Property Standards By-law, which sets out minimum maintenance standards with respect to residential complexes in the City of Windsor.
35. The Landlord provided photographs of parts of the common area of the complex – the laundry room, the stairwell, and parts of the hallways – in support of the claim. The photographs are described as "before" photos, showing the condition of the areas before the completion of the work. No photos were provided showing the areas after completion of the work.
36. The Landlord provided an invoice from "PD Student Painting" that describes the work as "Common area refresh", and an invoice from "Personal Steam Cleaning & Janitorial Ltd." describing work performed on the terrazzo floors in the building.
37. As noted above, s. 18(1) of the Act requires that a "capital expenditure" must be "an expenditure for an extraordinary or significant renovation, repair, replacement or new addition, the expected benefit of which extends for at least five years." As noted above, the Landlord provided photos depicting the condition of the common area *before* the completion of the work but provided no photos showing the common area *after* completion of work. In the absence of "after" photos, the most relevant evidence as to whether the work completed by the Landlord was

“extraordinary or significant” is the information set out in the invoices provided by the Landlord.

38. In my view, based on the description of the work completed as set out in the invoices, I find that the common area “refresh” does not represent an “extraordinary or significant...renovation” or “repair”. I therefore find that the “common area refurbish” (or “*refresh*”, as described by the painters) does not meet the definition of a capital expenditure as set out in s. 18(1) of O. Reg. 516/06.
39. Even if I were to accept that this work was “extraordinary or significant”, the Landlord has failed to prove that the work meets the requirements of s. 126(7)(b) of the Act. To meet the eligibility test under s. 126(7)(b) the Landlord must show that its obligations under s. 20(1) of the Act would not be fulfilled without the expenditure. Apart from the limited area around the roof access hatch, I find the work completed by the Landlord was not necessary to comply with the City of Windsor property standards bylaw. As for the work completed around the roof access, I find the work completed in that limited area does not justify the total expenditure claimed by the Landlord. As a result, this item is denied.

### **Item #3 – Intercom system**

40. The Landlord submits there was no existing “controlled intercom system” installed in the complex, and therefore this work was necessary to “reduce improper entry and increase security” at the residential complex. The Landlord submits this work represents an eligible capital expenditure under s. 126(7)(f) of the Act because it improves the security of the residential complex.
41. The Landlord submits the total cost of the new intercom system was \$3,060.65, and the work was completed September 14, 2021. The Landlord submitted an estimate describing the work to be completed and proof of payment in the amount claimed.
42. I accept the Landlord’s uncontested submission that the installation of an intercom system will improve security in the residential complex. I therefore find that this work constitutes an eligible capital expenditure under s. 126(7)(f) of the Act.
43. I find that the total cost of this expenditure was \$3,060.65, as claimed by the Landlord. I accept the Landlord’s uncontested assertion that the work was completed on September 14, 2021. I therefore find that the new intercom constitutes an eligible capital expenditure under s. 26(2) of O. Reg. 516/06.
44. The Landlord submits that the anticipated useful life of the new intercom system is 15 years. This is consistent with the useful life of an “intercom”, which is item #7 on Table 14 (“Electrical”) on the Useful Life Schedule. Therefore, I find that the useful life of the new intercom system is 15 years.

General

45. The first effective date of the rent increase above the guideline is April 1, 2023.
46. For the purposes of s. 26(6) of O. Reg. 516/06, the weighted useful life for the capital expenditures allowed in this Order is 15 years.
47. Since the Board is making this Order more than three months after the first effective date of set out in the Application, I have discretion under s. 205(2) of the Act to Order that if any Tenant owes any sum of money to the Landlord as a result of the order, the Tenant may pay the Landlord the amount owing in up to 12 monthly installments.
48. I find it would be reasonable in this case to allow the Tenants 6 months to repay any money owing to the Landlord as a result of this Order. Therefore, I exercise my discretion under s. 205(2) of the Act to Order that the Tenants may pay to the Landlord any amount owing as a result of this Order in 6 monthly installments.
49. The Certificate of Service filed by the Landlord on May 16, 2025, indicates that some rental units listed in the Application were not served with the Application and Notice of Written Hearing. The LTB shall therefore amend the Application by removing these rental units. As a result, this order for a rent increase above the guideline under section 126 of the Act does not apply to the following units: 3, 4, 5, and 6.

**It is ordered that:**

1. The Landlord may increase the rents charged by the percentage increases and within the time periods set out in Schedule 1.
2. The percentage increase set out in Schedule 1 may be taken in addition to the annual guideline in effect on the increase date for the unit.
3. The Landlord shall pay to the Tenants any sum of money that is owed as a result of this order within 90 days of the date of this order.
4. The Tenants may pay any amount owing to the Landlord as a result of this order in 6 monthly installments, beginning March 1, 2026.

**February 5, 2026**  
**Date Issued**

---

**James Gorham**  
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.

**Important Notes:**

1. The landlord may increase the rent charged by the ordered increase within the time period specified if at least 12 months have passed since the last rent increase or since the tenant moved in, and if the landlord has given the tenant at least 90 days proper Notice of Rent Increase. Any part of the ordered increase that is not taken within the time period specified cannot be added to subsequent rent increases in subsequent time periods.
2. If the landlord has given a Notice of Rent Increase for a rent increase that is less than the ordered increase, the landlord may only take the rent increase set out in the Notice.
3. If the Tenant's rent is increased pursuant to the percentage increase ordered for capital expenditures and the same Tenant remains in the unit after the expiration of the weighted useful life for capital expenditures, then the rent will be reduced. Refer to Schedule 2 for information about the date and amount of the rent reduction.
4. The annual guideline for 2023 is 2.50% and for 2024 is 2.50%.

**Schedule 1 - Ordered Rent Increase Above the Guideline****First Effective Date of Rent Increase in this Order is April 1, 2023**

The Landlord may increase the rent charged for the units affected by this order by the total percentages set out below and within the time periods set out below. These percentage increases may be taken in addition to the annual guideline in effect on the increase date for the unit.

|                             | For the period of April 1, 2023, to<br>March 31, 2024 |                                        |                         |                     |
|-----------------------------|-------------------------------------------------------|----------------------------------------|-------------------------|---------------------|
| Rental Unit Address<br>Name | % inc for Cap<br>Exp (Max 3%)                         | Total Increase<br>(Excludes Guideline) | Weighted<br>Useful Life | Total % for Cap Exp |
| 1A, 315 Detroit Street      | 1.95%                                                 | 1.95%                                  | 15                      | 1.95%               |
| 1B, 315 Detroit Street      | 2.26%                                                 | 2.26%                                  | 15                      | 2.26%               |
| 2, 315 Detroit Street       | 2.26%                                                 | 2.26%                                  | 15                      | 2.26%               |

## **Schedule 2 - Rent Reduction related to Capital Expenditures**

### **A. Date of Rent Reduction**

**If the Tenant's rent is increased based on capital expenditures during the period 2023 then:**

The date of the rent reduction will be the day before:

- the date of the Tenant's first rent increase under this order, plus
- the number of years for the weighted useful life for capital expenditures for the unit (set out in Schedule 1).

*Example:*

*If the Tenant's rent was increased on June 1, 2021 and the weighted useful life for capital expenditures is 10 years, then the rent will be reduced on May 31, 2031.*

**If the Tenant's rent was *not* increased based on capital expenditures during the period 2023 but was increased during the later periods set out in the order then:**

The date of the rent reduction will be the day before:

- the First Effective Date of Rent Increase in this order, plus
- the number of years for the weighted useful life for capital expenditures for the unit (set out in Schedule 1).

*Example:*

*If the first effective date of increase in this order is April 1, 2021 and the weighted useful life for capital expenditures is 10 years, then the rent will be reduced on March 31, 2031.*

### **B. Amount of Rent Reduction**

**If the Tenant's rent is increased by the total percentage increase set out in this order then:**

The rent must be reduced by the total percentage increase set out in this order for capital expenditures.

**If the Tenant's rent is *not* increased by the total percentage increase set out in this order then:**

The rent must be reduced by an amount determined in accordance with the prescribed rules which may be equal to or less than the total percentage increase set out in this order for capital expenditures.