



Order under Section 69 Residential Tenancies Act, 2006

File Number: LTB-L-080552-24

In the matter of: 15 MONTFORD DR
NORTH YORK ON M2M3H2

Between: Khaled Mohamed Elzaabalawi Landlord

And

Alex Riajskikh Tenants
Olesy Alekseev

Khaled Mohamed Elzaabalawi (the 'Landlord') applied for an order to terminate the tenancy and evict Alex Riajskikh and Olesy Alekseev (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

The Tenants pursuant applied for an order determining that the Landlord:

- failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards, and
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household.

This application was heard by videoconference on April 7, 2026.

The Landlord and the Tenants attended the hearing.

Representing the Landlord: George Brown

Representing the Tenants: Andrew McMaster

Witness for the Landlord: Irshad Khan

L1 Application Determinations:

1. The Landlord 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.
2. The Tenants were in possession of the rental unit on the date the application was filed.

3. The Tenants vacated the rental unit on August 31, 2025. Rent arrears are calculated up to the date the Tenants vacated the unit
4. The lawful rent is \$8,500.00. It was due on the 6th day of each month.
5. The Tenants have paid \$75,206.42 to the Landlord since the application was filed.
6. The rent arrears owing to August 31, 2025 are \$29,969.28.
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 \$8,500.00 from the Tenants and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
9. The total amount owing by the Tenants to the Landlord is **\$21,655.28** under the L1 Application. This amount includes rent arrears owing to the date the Tenants moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenants. (See Schedule 1 for the calculation of the amount owing including set off against the Tenants' section 82 issues below.)

Section 82 Determinations:

10. The Tenants alleged in their document "Issues a Tenant Intends to Raise" pursuant to section 82 of the Act, that the Landlord failed in their maintenance obligations and substantially interfered with their reasonable enjoyment of the rental unit by:
 1. Failing to remediate the basement leak in a reasonable and timely manner.
 2. Failing to repair the elevator in a reasonable and timely manner.
 3. Failing to maintain the Air Conditioning system.
 4. Failing to provide a two-car garage as promised.

Basement Flood.

11. I am satisfied that the Landlord failed to meet their obligations under subsection 20(1) of the Act to maintain the rental unit and substantially interfered with the Tenants in the process of remediating the flood problem.
12. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, the Court of Appeal held that the LTB should take a contextual approach and consider the entirety of the factual situation in determining whether there was a breach of the landlord's maintenance obligations, including whether the landlord responded to the maintenance issue reasonably in the circumstances. The court rejected the submission that a landlord is automatically in breach of its maintenance obligation as soon as an interruption in service occurs.
13. The key facts are not in dispute. On September 28, 2023, after significant rainfall, part of the basement flooring in the recreation room area experienced water penetration and the Tenants notified the Landlord on September 28, 2023. On April 12, 2024, after spring

rainfall, the basement floor again became wet. The Tenants informed the Landlord on that date. On June 27, 2024 significant water infiltration occurred. The Tenants also informed the Landlord on that date.

14. It is also not disputed that the foundation cracks were a latent defect and not caused by the Landlord. What is in dispute is whether the work to remediate the problem and the disrepair that resulted was done in a reasonable and timely manner, and if the work substantially interfered with the Tenants' reasonable enjoyment of the rental unit.
15. Ms. Alekseev testified that the very little communication occurred between themselves and the Landlord or the Landlord's agent Irshad Khan. The Tenants were left to deal directly with contractors and insurance providers with no support or direction from the Landlord. She testified she asked for a clear plan and was given none. They also asked for compensation, which was not given. Ms. Alekseev testified no action was taken until July of 2024 to remediate the problem. After that point, the Tenants submit they had to coordinate everything with contractors. The leak problem was finally repaired in November and the interior finished in December.
16. The Tenant Ms. Alekseev could not recall the names of the first contractors that worked on the exterior of the building, and believed the second group, who finished the basement, were the insurance providers. She testified that the first group were only unskilled laborers and it wasn't until the Tenants demanded an engineer's assessment of the problem, that the foundation cracks were found and repaired. This is not disputed by the Landlord.
17. The Tenants submit the Landlord did not properly respond to the problem, and it was not repaired fully until December 20, 2024 with full cleanup completed on January 13, 2025.
18. The Landlord submits they acted in a reasonable and timely manner, responding quickly to each complain and finally resolving the issue on December 20, 2024.
19. Mr. Irshad Khan, real estate agent for the Landlord, acted in a property management capacity for the Landlord. He provided evidence that they took steps quickly each time they were called as follows:
 1. In June of 2023, the Landlord responded to a call from the Tenants' mother about the sub pump. It was investigated by a plumber and found to be operational. They explored the grading issue, and a pipe may have been the problem.
 2. In early October, 2023 after looking at the problem with a contractor, and speaking to the Landlord about it, they knew that finding the source of the water would require deep digging and removal of interior finishes, and they preferred to wait until the Tenants vacated the rental unit. Mr. Khan testified the Landlord believed the tenancy term ended in February of 2024 and the Tenants would move after. They chose to do nothing more at that time.
 3. On April 12, 2024 he inspected the water issue and found it mostly in the corner of the basement living area. A contractor for the original builder came a dug the adjacent window well to investigate the source of the water. Nothing was found, and some work was done to protect against any water infiltration, but Mr. Kahn could not recall what was done exactly. It was determined that if heavy rains again caused flooding, the foundation would have to be completely dug to find the source

of the water. Again the Landlord chose not to proactively investigate the problem further.

4. On June, 2024 the Landlord responded to the Tenants' call after the final and large flood due to heavy rainfall in the region. Mr. Kahn testified they moved quickly with the insurance providers contractor. They removed drywall in the basement living area halfway up the wall and removed the living room flooring. Finding no issue, the contractors began to dig the foundation outside. The foundation was ultimately dug on both sides and at the back of the house. Soil removed was placed in piles in the backyard. Cracking in the foundation was found and repaired, but not until mid-November, 2024. After the crack was repaired, further delay ensued as the insurance company required hydrostatic testing of the repaired foundation to ensure no water leakage before they would authorize interior restoration.
20. The Landlord does not dispute that the Tenants asked for an engineer, or that it took four and a half months to find and repair the foundation cracking.
21. The Landlord also does not dispute that he delegated time management of the insurance contractors to the Tenants, because he lived out of the country and could not take care of the problem himself.
22. I find that the landlord did not act in a reasonable or timely manner. It was not reasonable to stop investigation of water infiltration which was clearly causing water damage to basement flooring, simply because the Tenants tenancy term was ending and they might leave. The Landlord's maintenance obligations extend to the very last day of the Tenancy. It was also not reasonable that they stopped investigating the problem in April of 2024, to wait and see what a heavy rainfall would do. Even if the contractors covered under home warranty would not or could not do the work properly, the Landlord is still responsible.
23. Delegation to the Tenants of the task of coordinating and scheduling contractors was also not reasonable. It was further not reasonable to undertake the water leak investigation in pieces, and not to bring in a professional engineer immediately. Given there was no evidence the insurance company was party to any delay, I find the Landlord's lack of communication, coordination and involvement unreasonable. The Tenant was left in the dark as to what the problem was, how it was being fixed and how long it would take.
24. I find the 6 months that it did take to find and fix the foundation leak unreasonable. No reasonable explanation was given for that delay.
25. Accordingly, based on the facts before me I find the Landlord failed to meet the Landlord's obligations under subsection 20(1) of the Act to investigate and remediate the basement water infiltration in a reasonable and timely manner. I also find the Landlord substantially interfered with the reasonable enjoyment of the rental unit by failing to respond to the problem in a reasonable and timely manner.

Basement Flood Remedy

26. The Tenants requested an abatement of rent from June 27, 2024 to December 18, 2024. While an abatement of rent is appropriate, rent abatement amount of 40% is not reasonable.

27. Having found that the manner in which the repair work was completed substantially interfered with the Tenants' reasonable enjoyment of the rental unit I must consider the factors set out in section 8(4) of Regulations O. Reg 516/06 to determine if and in what amount, a rent abatement is appropriate.
28. In this case, I find a rent abatement is not prohibited under section 8(4) of the Regulations, because all the conditions in that section were not met. In this case, I note no notice was given by the Landlord as to the nature of the work to be undertaken, the expected impact on the Tenants, nor the timeframe. No reasonably accurate or comprehensive information was given. The Tenants were left with no direction or communication from the Landlord, and a complete lack of understanding about how long the fix would take. No evidence was presented as to why four and a half months to find a foundation issue was reasonable or timely, or that the Landlord did everything possible to expediate the investigation.
29. Section 8(5) of the Regulations sets out the criteria to consider as to the amount of rent abatement. I will not list them here. In this case the work was not carried out in a reasonable manner. I find that digging up the foundation in stages over several months, and piling the soil in the backyard, effectively making the entire outside of the property unavailable for use throughout the summer and fall was not reasonable. The deep holes and large piles were unsafe for children or occupants.
30. It was unreasonable that the Tenants were delegated the obligation to coordinate timing. The Landlord took no steps to minimize the disturbance, to encourage faster workflow or to adequately supervise the work and led no evidence that the delays were reasonable and unavoidable. I note an expert was not brought in until much later in the process at the insistence of the Tenants. It appears the work was done in every case to avoid expense, from the first decision not to take investigative action in October of 2023, to the halting steps taken after the flood in June of 2024.
31. The house is 6000 square feet. The basement is 2000 sq feet. Much of the basement was unusable during the six months the remediation and restoration took place. Although I find there is no evidence to suggest that the wine cellar and sauna could not continue to be used. The basement was a secondary living space. Although they lost the use of the recreation room to watch TV they had a TV room upstairs. They lost the use of the backyard until at least the end of November.
32. Given the square footage lost, and the interference with their reasonable enjoyment of the home I find that a lump sum rent abatement of **\$12,000.00** is appropriate for the loss of the basement and backyard for 6 months.
33. The Tenants also claim the cost of their POD rental and moving costs. The Tenants testified that each time it rained, water would infiltrate, and they had to move all their goods to dry areas. Finally in June, when earnest construction began, they felt the need to move all their basement possessions to a 'POD' in front of the house until the flood remediation was completed. I am not satisfied that the POD was necessary, however.
34. The Tenants provided no evidence that they attempted to mitigate their damages by using the garage, upstairs spaces, or continuing to use the spaces that were not renovated in the basement. Although Ms. Alekseev stated the garage contained other items such as lawn furniture, there was no evidence why the lawn furniture could not have been kept on the

back porch, or why the two-car garage could not fit both the lawn furniture and the basement items. I therefore will not grant the Tenants the POD rental cost.

Elevator not Functional.

35. The Tenants submit their elevator ceased to function properly shortly after they moved in. The Tenants could not say what the problem was but stated the door would not open and would stop short of the floor. The Tenants provided no documentary or photographic proof of the disrepair. It is not disputed the Landlord was informed of the problem in early September of 2023.
36. Ms. Alekseev testified that the problem was not fixed until “2-3 months” before they moved out in August of 2025, I accept that the date was actually August 9, 2025 as proved by the email exchange and documentation provided by the Landlord.
37. Contrary to the Tenants’ evidence, the Landlord testified that they immediately investigated the issue and found that the door, when it rose to the third floor, would not automatically open, and had to be manually opened. They did not agree that the elevator stopped short of a floor.
38. The parties agree the original installer was called because the installation was under warranty. The Landlord delegated the coordination of the repair with the Tenants and it was set for November 30, 2023. However, on November 30, 2023 the Tenants were not available at the scheduled time.
39. A Landlord cannot delegate their responsibilities under section 20(1) of the Act. The Landlord gave no reasonable explanation why they did not follow up with the contractor to reschedule the repair until August 9, 2024, when the elevator was repaired. Waiting for a reminder from the Tenant is not a reasonable explanation.
40. For the reasons above, I find that the Landlord failed to meet the Landlord's obligations under subsection 20(1) of the Act to repair the elevator door in a reasonable period of time. The Tenants however, failed to prove the disrepair as it relates where the elevator stopped.

Remedy for Elevator

41. The Tenants requested a rent abatement of 5% of the monthly rent from October 2023 to August 9, 2024. While an abatement is appropriate, an amount less than requested will be ordered. I am satisfied the elevator door still worked manually. I do not believe the Tenants that the elevator was unusable as manual use, while inconvenient is still use. I am satisfied the elevator was a small part of the use of the home. No evidence was presented that it was necessary to any member of the household, nor did the Tenants provide any evidence as to the impact of having to open the door manually.
42. I find therefore that a lump sum abatement in the amount of **\$700** for the 254 days between December 1, 2026 to August 9, 2026..

Air conditioner and Heating not operating to 'standard'.

43. The Tenants led no evidence regarding the heating in the rental unit, and therefore that claim is dismissed.
44. The Tenants claimed the Air Conditioner ('AC Unit') was not operating properly. Ms. Alekseev testified that when it was above 28 degrees in the summer months in 2024 and 2025, the air conditioning system would fail to adequately cool the top floor of the house, which would stay above 25 degrees. The Tenants provided no specific dates when this occurred or the temperatures inside and out on those dates.
45. The Tenants told the Landlord about the problem on September 6, 2023. She agrees the Landlord came to look at the problem before September 28, 2023 but they did nothing to fix the problem. It was fixed in the summer of 2025 before they moved out of the house. She testified the Landlord replaced the entire AC Unit but produced no documentation supporting that the previous unit lacked capacity as the Tenants claim, or that the unit was replaced. No photos were produced showing the old unit, or the new one. She could not recall the date it was fixed.
46. The Landlord agreed that the AC Unit would not fully cool the upper floor, however, denies that the capacity was an issue. The Landlord provided evidence that he called the installation contractor as the home was still under new home warranty. That contractor proved to him that the capacity certificate given upon installation indicates it was suitable for a 6000 sq foot home, he topped up the freon gas inside the unit but otherwise did no other test or repair. The Landlord, knowing the AC Unit was not working properly, simply accepted the installation contractors word, and chose to wait until the Tenants complained again about the heat.
47. Mr. Elzaabalawi testified that in 2025, when the Tenants complained again, he called a new, different contractor. That contractor found the compressor to be failing and replaced it. The Landlord denies the contractor replaced the AC Unit. When asked, the Landlord denied the compressor may have been failing prior to that time, however he could not reasonably explain the lack of cool air on the second floor in 2024, and he disagreed it may have been likely the insurance contractor would intentionally fail to find a problem to avoid bearing the repair cost.
48. I find it more likely than not based on the evidence before me that the AC Unit was failing as early as 2024. I find that the Landlord failed to meet the Landlord's obligations under subsection 20(1) of the Act to repair air conditioner in a reasonable period of time.

Remedy for AC Unit

49. The Tenants requested a rent abatement of 5% for the poorly working AC Unit for the months of July and August 2024, and May through August of 2025. While a small rent abatement is appropriate I find the amount and the range of time requested by the Tenants is unreasonable.
50. The Tenants failed prove with sufficient detail the number of dates on which the heat was above degrees during those periods. It is unlikely, for example that the temperature was

above 28 degrees in May. I also find the Tenants failed to prove the temperature inside the rental unit exceeded anything that caused substantial interference.

51. The Tenants' representative submitted that the temperature was above the maximum mandated by the City of Toronto, however, they provided no by-law or other evidence to support that contention. The Tenants also gave no evidence as to the impact that the lack of cooler air caused.
52. While I can surmise that some days through the summer of 2024 and 2025 were hot, and it may have been uncomfortable, without detailed information I cannot reasonably determine more than a nominal remedy.
53. I accept the Landlord failed to repair the issue until the last minute. I find it appropriate that some remedy should follow, and conclude it is reasonable that the Landlord pay the Tenants a lump sum nominal rent abatement amount of **\$500.00** for the AC Unit disrepair.

Garage Size.

54. The Tenants claim the garage was promised as a two-car garage but because of the stairs which were built inside, did not fit two cars.
55. It is not disputed that the Tenancy agreement does not promise a two-car garage, but states only 'parking'. The Tenants testify that the MLS listing for the house may have said the garage was two car, but they failed to produce a copy of that listing at the hearing. The Tenants both acknowledge that they looked at the wide door and assumed it was two car.
56. The Landlord's agent Irshad Khan testified that when he conducted a walk-through with the Tenants on July 4, 2022 and gave the keys to the Tenants, they discussed the garage, and he explained that the stairs had to be built to code, so they took more space, and that reduced the depth of the garage on one side. As a result only a smaller car could fit. The driveway outside fit four cars.
57. The Tenant, Alex Raijskikh upon redirect, disputes that any conversation about the garage was had on July 4, 2022. He testified they did not discover the garage was too small until after they moved in, and they tried both their cars and his parents' car.
58. Regardless of when the Tenants realized the garage problem, I find their failure to do their due diligence and ensure the house met their needs is not the fault of the Landlord. I find the Tenants have not proven on a balance of probabilities that the garage was promised as two car or that the Landlord substantially interfered with their reasonable enjoyment of the rental unit.
59. The Tenants' claim regarding the garage issue is therefore dismissed.

Total Section 82 Remedy

60. The total amount owing by the Landlord to the Tenants is **\$13,200.00** under the Tenants' section 82 claims.

61. After the application of set-off I find that the total amount owing the by Tenants to the Landlord is \$8,455.28. (See Schedule 1 for the calculation of the amount owing including set off against the Tenants' section 82 issues below.)

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated as of August 31, 2025, the date the Tenants moved out of the rental unit.
2. The Tenants shall pay to the Landlord **\$8,455.28**. (See Schedule 1 for the calculation of the amount owing including set off against the Tenants' section 82 issues below.)
3. If the Tenants do not pay the Landlord the full amount owing on or before April 24, 2026, the Tenants will start to owe interest. This will be simple interest calculated from April 25, 2026 at 4.00% annually on the balance outstanding.

April 13, 2026
Date Issued

Julie Broderick
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 SET OFF CALCULATIONS

A. Amount the Tenant must pay as the tenancy is terminated

Rent Owing To Move Out Date of August 31, 2025.	\$105,175.70
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$75,206.42
Less the amount of the last month's rent deposit	- \$8,500.00
Subtotal amount owing to the Landlord (L1 Application)	\$21,655.28
Less the Amount the Landlord must pay the Tenant (s. 82 Claim)	-\$13,200.00
Total Set off Amount owing by the Tenant to the Landlord	\$8,455.28