



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

File Number: LTB-L-072501-25

In the matter of: 108, 1616 OUELLETTE AVE
WINDSOR ON N8X 1L2

Between: 2868554 Ontario Inc. Landlord

and

Robert Douglas Kirk
Sheila Florence Murphy Tenants

2868554 Ontario Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Robert Douglas Kirk and Sheila Florence Murphy (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on April 14, 2026.

The Landlord's legal representative and the Tenants attended the hearing. The Landlord called Sri Pyla to testify.

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. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$1,200.00. It is due on the 1st day of each month.
4. The Tenants agreed that they have not made any payments since the application was filed and that rent arrears owing to April 30, 2026 are \$10,800.00, but sought compensation for numerous issues that they advanced under section 82 of the *Residential Tenancies Act, 2006* (the 'Act').

Tenant Issues

5. The Tenants have delivered a 13-page pleading that lists some 24 items of disrepair and several pages of narrative which, read generously, sound in substantial interference. The

essence of the Tenants' claims is that, on moving into the rental unit, they discovered that they had been deceived because the rental unit did not match what was promised in the advertisement. It was in a state of total disrepair, infested by bedbugs and cockroaches.

6. The Tenants further allege that in addition to ignoring their maintenance requests, the Landlord made entries without proper notice and also failed to intervene when neighbours, and strangers off the street, interfered with the Tenants' right to reasonable enjoyment by smoking indoors, using drugs, loitering, leaving waste in common areas and assaulting the Tenants. The Tenants say security at the residential complex was lax and the Landlord was indifferent to it.
7. The Tenants led no evidence on the majority of the allegations contained in their pleadings. They made passing reference to bedbugs, a loose toilet and peeling paint but without details. They presented no confirmatory evidence such as photographs and were unable give the dates on which they lodged their complaints with the Landlord.
8. The Tenants testified that other residents, or persons allowed into the residential complex by them, assaulted the Tenants in December 2025 (and at other times) resulting in police involvement. They say the Landlord knew that criminality is rampant in the residential complex but failed to prevent it. No police reports were produced.
9. The Tenants also testified that they were given a voidable N5 notice of termination requiring them to refrain from using foul language, accompanied by a demand that they must compensate the alleged victim. The notice itself was not produced but the undated handwritten demand letter with an illegible signature was produced. The Tenants say this proves the Landlord blamed them for the problems with the neighbours instead of intervening reasonably to prevent the problems.
10. On the subject of illegal entries, the Tenants testified that the Landlord's staff gave notice of entry by WhatsApp messenger, which they found objectionable because only one of them was comfortable using that platform. The messages were not produced and the dates and times of these entries were not in evidence. The Landlord's property manager acknowledged she sent courtesy reminders by WhatsApp but did so in addition to serving paper notices. Section 27 of the Act requires written notice; it prescribes no particular form and does not specify the method of delivery. Even if I accept the Tenants' evidence at its highest and find that only WhatsApp notices were given, that would not be a breach of the Act in the absence of any evidence to show that such notices were otherwise non-compliant with subsection 27(3).
11. The Landlord's property manager acknowledged receiving a complaint about a leak which was fixed the same day. The property manager denied receiving any other complaints about maintenance or any other subject from the Tenants. She testified that interactions with the Tenants were fraught with threats and abusive language so she avoided interactions with them. The Tenants acknowledged they did not lodge any of their complaints in writing.
12. I find the Tenants have failed to present sufficient credible evidence to substantiate any of their myriad allegations. I cannot accept the Tenants' disparate explanations for failing to produce confirmatory materials because I found them to be implausible, internally inconsistent and logically incoherent.

13. The Tenants explained that they didn't realize they had to request records from third parties (such as police reports), believing they would be automatically given to them in the fullness of time; that they had technical difficulty delivering their materials, and that they weren't given sufficient advance notice of the hearing in which to produce their records or secure the attendance of their witnesses within the 14-day deadline.
14. At their initial appearance before the Board, the Tenants were given directions and deadlines for disclosing their issues and supporting evidence. That deadline was 4½ months in advance of the hearing. The Tenants filed their pleadings containing the photograph of the demand note and a photograph showing household waste outside the residential complex. This suggests the Tenants understood the evidentiary value of confirmatory evidence and that they had overcome their technical difficulties producing it.
15. The Tenants testified that they have taken legal advice and had determined they had an excellent claim against the Landlord. It seems implausible that advice would not include producing supporting documents.
16. The Tenants were unable to explain why they believed they had a 14-day deadline to serve and file evidence when there is no such rule. In any case, notice of hearing was mailed to the Tenants on March 20, 2026, giving them ample time to produce their materials.
17. I draw an adverse inference from the Tenants' failure to produce documentary evidence to substantiate their claims. Except where expressly prohibited by law, an adverse inference is discretionary. The trier of fact may, where it is warranted upon consideration of all the circumstances, draw an inference against the party who is in possession or control of relevant evidence but fails to produce it without adequate explanation. The inference that may be drawn is that the evidence would be contrary to the party's case or at least would not support it. This is not a rule of law nor a rule of evidence. It is an expression of logic and human experience that may, in appropriate cases, inform the fact-finding exercise. In this case, I draw the inference that supporting materials do not exist.
18. Guided by the Court of Appeal's decision in *Onyskiw v. CJM Property Management Ltd.* (2016),¹ I find that the Tenants have failed to prove a breach of section 20 of the Act because they led insufficient credible evidence to show any disrepair, or to show that the Landlord failed to respond to any disrepair in a reasonable manner.
19. The Divisional Court's decisions in *Hassan v. Niagara Housing Authority* (2000)² and *First Ontario Realty Corp. v. Appelrouth* (2012)³ instruct that the Landlord has a positive obligation to take all reasonably necessary measures within a reasonable time against those who substantially interfere with the Tenants' right to reasonably enjoy their rental unit for all usual purposes. I find that the Tenants have led insufficient credible evidence to prove that other residents (or guests) of the residential complex had interfered with their reasonable enjoyment, and also led insufficient credible evidence to prove on a balance of probabilities that the Landlord knew or ought to have known that anyone was substantially

¹ 2016 ONCA 477.

² 48 R.P.R. (3d) 297, [2000] O.J. No. 5650 at para. 16 (Div. Ct.).

³ 2012 ONSC 2545 at para. 25 (Div. Ct.).

interfering with their reasonable enjoyment. Therefore I find the Landlord did not breach any obligation under section 22 of the Act.

20. During closing submissions, the Tenants requested an adjournment so that they may produce the missing evidence and move to reopen their case. On considering the factors identified in Rule 21.8 of the Board's *Rules of Procedure*, I determined that no further adjournments were required in order to permit an adequate hearing.
21. The Tenants requested a three-month delay of eviction based on their circumstances that include ill health and lack of suitable housing options in this particular locality. The Landlord pointed to no particular circumstances apart from the quantum of arrears.
22. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that a delay of eviction until May 31, 2026 would not be unfair to give the Tenants additional time to clear the arrears or organize their move.
23. The Landlord collected a rent deposit of \$1,200.00 from the Tenants and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
24. Interest on the rent deposit, in the amount of \$19.95 is owing to the Tenants for the period from June 30, 2025 to April 14, 2026.
25. Based on the monthly rent, the daily rent/compensation is \$39.45. This amount is calculated as follows: \$1,200.00 x 12, divided by 365 days.
26. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The tenancy between the Landlord 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 Landlord or to the LTB in trust:**
 - \$10,986.00 if the payment is made on or before April 30, 2026. See Schedule 1 for the calculation of the amount owing.

OR

 - \$12,186.00 if the payment is made on or before May 31, 2026. See Schedule 1 for the calculation of the amount owing.
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 May 31, 2026 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants 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 May 31, 2026.**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$9,118.35. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$39.45 per day for the use of the unit starting April 15, 2026 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before May 31, 2026, the Tenants will start to owe interest. This will be simple interest calculated from June 1, 2026 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before May 31, 2026, then starting June 1, 2026, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 June 1, 2026.

April 27, 2026
Date Issued

Nersi Makki
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 17, 2026 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 if the payment is made on or before April 30, 2026

Rent Owing To April 30, 2026	\$10,800.00
Application Filing Fee	\$186.00
Total the Tenants must pay to continue the tenancy	\$10,986.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before May 31 2026

Rent Owing To May 31, 2026	\$12,000.00
Application Filing Fee	\$186.00
Total the Tenants must pay to continue the tenancy	\$12,186.00

C. Amount the Tenants must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$10,152.30
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$1,200.00
Less the amount of the interest on the last month's rent deposit	- \$19.95
Total amount owing to the Landlord	\$9,118.35
Plus daily compensation owing for each day of occupation starting April 15, 2026	\$39.45 (per day)
**Ongoing daily compensation continues to accumulate until the total amount owing (excluding costs) is \$50,000.00.	