

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

**File Number:** SWL-00438

**In the matter of:** [Address of Rental Unit]  
Kitchener ON

**Between:** Charlton Linton Landlords  
Cynthia Linton

**and**

[Tenant] Tenant

Charlton Linton and Cynthia Linton (the 'Landlords') applied for an order to terminate the tenancy and evict [Tenant] (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlords also applied for an order to terminate the tenancy and evict the Tenant because he, another occupant of the rental unit or someone he permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords or another tenant.

This application was heard in Kitchener on March 6, 2007.

The Landlord, Cynthia Linton, and the Tenant attended the hearing. Landlord was represented by her daughter, Patricia Rose.

**Evidence and Findings on the Landlord's L1 application:**

The Tenant did not dispute that rent was in arrears as set out in the application.

At the Hearing, the Tenant offered that he is willing to move out and would need two weeks to find other accommodations. The Landlord consented to this.

Tenant raised an issue with regard to maintenance in accordance with section 82 (1) of the Residential Tenancies Act. He testified that a leather family heirloom of cultural significance had been destroyed when water entered a closet in his unit during repairs of an upper level toilet.

He could provide no proof of the value of the item but suggested that it was worth several thousand dollars.

The Landlord produced a letter from Rampertab Mech, a repair person. It states, in part, that he could not find any evidence of water leakage, damage or odour upon his visit January 8, 2007, following a complaint by the Tenant.

The Tenant requested an abatement of rent in the amount of the current rent arrears.

**Determinations on the Landlord's L1 application:**

1. The Tenant has not paid the total rent he was required to pay for the period from February 1, 2007 to March 31, 2007. Because of the arrears, the Landlords served a Notice of Termination effective February 16, 2007.
2. The authority to order repair and replacement costs is derived from section 30 of the Residential Tenancies Act. That section reads, in part:

**30.** (1) If the Board determines in an application under paragraph 1 of subsection 29 (1) that a landlord has breached an obligation under subsection 20 (1) or section 161, the Board may do one or more of the following:

1. Terminate the tenancy.
2. Order an abatement of rent.
3. Authorize a repair or replacement that has been or is to be made, or work that has been or is to be done, and order its cost to be paid by the landlord to the tenant.
4. Order the landlord to do specified repairs or replacements or other work within a specified time.
5. Order the landlord to pay a specified sum to the tenant for,
  - i. the reasonable costs that the tenant has incurred or will incur in repairing or, where repairing is not reasonable, replacing property of the tenant that was damaged, destroyed or disposed of as a result of the landlord's breach, and
  - ii. other reasonable out-of-pocket expenses that the tenant has incurred or will incur as a result of the landlord's breach.

Section 20 of the Act sets out:

- 20.** (1) A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.

In *McQuestion v. Schneider* (1975), 8 O.R. (2d) 249, the Court found that the previous section 94 of the Landlord and Tenant Act did not impose an absolute liability for injuries or damage that may be caused by a latent defect of which neither the landlord nor the tenant had, nor could reasonably be expected to have had knowledge of. In order for the remedy requested to be available to the Tenant, the Board must first determine that the damage occurred as a result of the Landlord's breach of his maintenance obligations. The Board must consider whether the Landlord was aware or should reasonably have been aware that the issue existed before I can compensate the Tenant for any damages and there was no evidence before me to support such a conclusion.

There is nothing beyond the testimony of the Tenant upon which to base a value on the damaged item, and there is no corroborating evidence that water entered the closet. In fact, there is evidence to the contrary from a contractor who looked for evidence of water damage.

Therefore, repair and replacement costs of the Tenant's possession cannot be considered.

**Evidence and Findings on the Landlord's L2 application:**

The Tenant resides in a basement apartment in the Landlord's home.

A Tenancy Agreement, dated September 01, 2006, was filed at the hearing. In that agreement the Tenant agreed not to smoke inside the house.

The Tenant acknowledged having entered into that agreement and having been told verbally when he moved in that smoking was not permitted, as the Landlord's daughter is allergic.

The Landlord provided a lengthy log of incidents where cigarette smoke was entering the upper level of the home from the basement apartment. The log shows that from February 10 to March 3, 2007, there were multiple, daily incidents of smoke being detected in the Landlord's living areas.

A letter from Camille Linton was entered into evidence by the Landlord. This letter set out the effects on Ms. Linton. She described how she has been awakened at 3:00 a.m. by the odour of cigarette smoke and how that odour has made it difficult to sleep. The letter also states that she is being tested for an allergy to smoke.

Patricia Rose testified that she could actually see smoke in some of the upper level rooms on occasion. She also submitted a fact sheet from the National Cancer Institute on second-hand smoke and a page from the Health Canada website concerning the health effects of second-hand smoke.

**Determinations on the Landlord's L2 application:**

1. The Tenant has permitted smoke in the rental unit.
2. This conduct has substantially interfered with the Landlords', and the Landlords' family's reasonable enjoyment of the residential complex.

**It is ordered that:**

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before March 30, 2007.
2. The Tenant shall pay to the Landlords \$361.67\*, which represents the amount of rent owing and compensation up to March 16, 2007.
3. The Tenant shall also pay to the Landlords \$8.22 per day for compensation for the use of the unit starting March 17, 2007 to the date he moves out of the unit.
4. The Tenant shall also pay to the Landlords \$150.00 for the cost of filing the application.

5. If the Tenant does not pay the Landlords the full amount owing\* on or before March 27, 2007, the Tenant will start to owe interest. This will be simple interest calculated from March 28, 2007 at 6.00% annually on the balance outstanding.
6. If the unit is not vacated on or before March 30, 2007, then starting March 31, 2007, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords, on or after March 31, 2007.

**March 16, 2007**  
**Date Issued**

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Lloyd Phillipps  
Member, Landlord and Tenant Board

SouthWest Region  
4th floor, 150 Dufferin Avenue  
London ON N6A 5N6

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 September 30, 2007 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.

\* Refer to section A on the attached Summary of Calculations.

**Schedule 1  
SUMMARY OF CALCULATIONS**

**File Number: SWL-00438**

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

| <b>Reasons for amount owing</b>   | <b>Period</b>                         | <b>Amount</b>   |
|---|---------------------------------------|---|
| Arrears: (up to the termination date in the Notice of Termination)                                  | February 1, 2007 to February 16, 2007 | \$131.51  |
| Plus compensation: (from the day after the termination date in the Notice to the date of the order) | February 17, 2007 to March 16, 2007   | \$230.16  |
| Amount owing to the Landlords on the order date: (total of previous boxes)                          |                                       | <b>\$361.67</b>   |
| Additional costs the Tenant must pay to the Landlords:  |                                       | \$150.00  |
| Plus daily compensation owing for each day of occupation starting March 17, 2007:                   |                                       | \$8.22 (per day)  |
| <b>Total the Tenant must pay the Landlords if the tenancy is terminated:</b>                        |                                       | <b>\$511.67, +<br/>\$8.22 per day<br/>starting March 17,<br/>2007</b> |