Order under Section 31
Residential Tenancies Act, 2006

Citation: Kitching v Accommod8u, 2026 ONLTB 1073
Date: 2026-01-05
File Number: LTB-T-101232-23

In the matter of: E5- room 5, 143 Columbia Street West
Waterloo ON N2L3L2

Between: William David Kitching — Tenant

And

Accommod8u — Landlord

William David Kitching (the 'Tenant') applied for an order determining that Accommod8u (the 'Landlord'):

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.

This application was heard by videoconference on December 5, 2024.

The Landlord's Legal Representative, Gayle St Clair, the Tenant, and the Tenant's support person, David Kitching, attended the hearing.

Determinations:

Preliminary Issue: LTB Jurisdiction

1. At the hearing, the Landlord's Legal Representative raised the issue that since the Landlord was not a party to the utility contract between the Tenant and the utility provider, the LTB does not have jurisdiction to hear a contractual dispute that is essentially between the Tenant and a third party. Therefore, the application must be dismissed. The Tenant replied that the Landlord misled how the utilities were to be paid and did not respond to the Tenant's attempts to gain clarity on the situation. I find that the application concerns the Landlord's leasing practices and how they, and the lack of communication with the Tenant, resulted in substantial interference with the Tenant's enjoyment of the residential unit. The application thus proceeded using those parameters.

<u>T2 Application:</u>

2. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenant $1,024.38, inclusive of the cost of filing the application.

3. The Tenant moved into the unit on September 2, 2023 and vacated on December 20, 2023.

4. The residential complex is described as a two-story townhouse plus basement. The Tenant rented one of five rooms, with his located in the basement. There were other tenants living in the residential complex at the time the Tenant moved in.

5. The Tenant testified that at the time he signed the one-year fixed term lease, he was aware that heat and electricity were the Tenant's responsibility. The Tenant submitted a copy of the lease agreement as evidence. Prior to signing, the Landlord's Agent provided an estimate of approximately $10.00 - $40.00 for monthly hydro costs that seemed reasonable to the Tenant. This dialogue was confirmed by an email chain between the Tenant and the Landlord's Agent. The Landlord then emailed the Tenant on September 1, 2023 with instructions and a link on how to set up a hydro account with Enova Power.

6. The Tenant received his first hydro invoice dated October 11, 2023 for the period from September 2 – September 25, 2023 totaling $618.39. The Tenant paid the invoice on November 6, 2023. A copy of the bill was submitted as evidence.

7. The Tenant then received the second invoice dated November 8, 2023 for the period from September 25 – October 25, 2023 totaling $258.23. A copy of this bill was also submitted as evidence. The Tenant testified that the invoice amounts were higher than the estimate given to him when he signed the lease, so he emailed the Landlord on November 30, 2023 prior to paying the second invoice. The email informed the Landlord that the Tenant believed he was being charged for the entire residential complex as opposed to only his unit as well as an initiation fee. The Tenant requested the Landlord's assistance to remedy the issue as well as reimbursement for all fees and portions of the utilities that should have been charged to the other tenants.

8. The Tenant then sent follow up emails to the Landlord on February 4, 2024, March 13, 2024, and June 10, 2024. After each email was sent, the Tenant would receive an automated response that one of the Landlord's Agents would reply to the Tenant, but no one responded.

9. The Landlord's Legal Representative acknowledged that a Landlord Agent should have followed up with the Tenant after the automated message was sent and could not explain why that was not done. The standard reply, however, would have been that as the Landlord is not responsible for hydro for the rental unit, the Tenant would have to speak with the utility provider to sort out the issue. The Landlord's obligation was only to provide general guidance to the Tenant about who the existing provider was.

10. The Landlord's Legal Representative also could not provide details regarding why the Tenant would have been charged hydro for the entire building or what the suite meter

situation is for the residential complex, as she did not receive a reply from the Landlord regarding the issue prior to or during the hearing.

11. The Tenant paid the second hydro invoice on December 4, 2023.

12. On cross-examination, the Tenant confirmed that he spoke with other tenants in the residential complex and was told they did not have their own separate accounts set up with Enova Power. The Tenant later contacted Enova Power via phone and was told that the entire residential complex was assigned to his hydro account. However, the Tenant also confirmed on cross-examination that he did not contact Enova Power between September 6 to December 28, 2023. The Tenant managed to shut down the account with no assistance from the Landlord on December 28, 2023.

13. The Tenant received two more hydro invoices; one dated December 8, 2023 for the period from October 25 – November 24, 2023 totaling $390.67, and the final invoice dated January 15, 2024 for the period from November 24 – December 29, 2023 totaling $413.18. Copies of both bills were submitted as evidence. The Tenant did not pay the third invoice, but he did pay all outstanding amounts on February 8, 2024.

14. The Tenant was a student at the time with limited financial means. The Tenant testified he was incredibly stressed by the utility issue as it required him to significantly re-budget to pay the hydro bills. This was also happening during the exam period which only compounded the stress he felt. The Tenant repeatedly reached out for assistance from the Landlord only to be ignored via an automated reply.

15. Having considered the parties' evidence and submissions, I am satisfied on the balance of probabilities that the Landlord substantially interfered with the Tenant's reasonable enjoyment of the rental unit or residential complex for the reasons set out below.

16. The utility bills submitted confirm the Tenant was charged hydro for the entire residential complex, yet his lease was only for one room within the property. The Tenant was also responsible for his portion of hydro for the shared facilities such as the kitchen and bathroom, but he was not contractually obligated to pay hydro beyond that.

17. The Tenant was not told about how the hydro was paid prior to him moving in, only that it was estimated to be about $10.00 - $40.00 per month. The Tenant was not aware if one tenant was to pay the entire bill and be reimbursed by the others, or if there were individual suite meters that would account for each tenant's usage and the provider would bill each directly. The Tenant also showed that he reached out to the Landlord on multiple occasions asking for help regarding the issue, yet no assistance was provided. The Landlord therefore placed the Tenant in an unreasonable situation by giving him the impression he would only be paying for his own utilities, providing no assistance or information regarding how utilities are divided or charged to other tenants in the building, and then left the Tenant to pay hydro for the entire residential complex and sort out reimbursement from the other tenants for the costs. I am therefore satisfied that the Landlord substantially interfered with the Tenant's reasonable enjoyment of the rental unit or residential complex by having to pay the hydro bill for the entire building.

<u>Remedies</u>

18. The Tenant confirmed that he essentially assigned the lease for the remaining 7 months of the fixed term tenancy. There was no evidence to show the Landlord consented to the assignment. The assignee paid $200.00 less per month to the Tenant, so the Tenant had to make up the difference when paying the Landlord. The Tenant confirmed that he no longer seeks for the LTB to terminate the tenancy on December 31, 2023, as claimed in the application, but rather seeks to recover the $1,400.00 total rent loss from the Landlord. As the Tenant appears to have illegally assigned the tenancy, this is not a claim brought properly before me under section 22 or 29 of the Act, and the claim for this remedy is therefore dismissed.

19. At the hearing, the Tenant also withdrew remedies related to his last month's rent deposit and key deposit. Therefore, these remedies were also not considered.

20. The four hydro statements show a period for charges from September 2, 2023 to December 29, 2023 in the amount of $1,680.47, inclusive of a $460.00 "Deposit Charge" not an "initiation fee". The Tenant was credited the deposit amount for the last statement dated January 15, 2024 which included the outstanding balance from the previous third invoice dated December 8, 2023. Therefore the $460.00 deposit is subtracted from the total claimed by the Tenant with the remaining amount totaling $1,220.47 ($1,680.47 - $460.00).

21. The Landlord's Legal Representative argued that Tenant did not mitigate his circumstances by attempting to get the other tenants to reimburse him after he paid each invoice. However, the Tenant was not aware of the terms of the other tenants' leases including what arrangements each had for utilities with the Landlord. There was no discussion with the Tenant at the beginning of the tenancy regarding how the utilities would be paid, only that he was responsible for his own. To then place the burden on the Tenant to follow up with other tenants, all on separate leases, to reimburse his costs is not reasonable.

22. The Tenant argued he should only pay the estimated $40.00 per month the Landlord's Agent quoted him in emails prior to signing the lease, meaning the Tenant should only be responsible for $160.00 of hydro costs ($40.00 x 4 months). However, the lease signed after the Tenant communicated with the Landlord's Agent does not specify the Tenant is only responsible for a maximum of $40.00 per month for hydro. Having considered the evidence before me, I am not satisfied that the Tenant proved on a balance of probabilities that the Landlord should be held to an estimate that is not corroborated by the lease.

23. The Tenant rented one of five rooms in the residential complex and shared common areas and facilities. There were also other tenants present when the tenancy began. Thus, it stands to reason that the Tenant was responsible for 20% of the hydro costs for the 4-month period covered by the invoices which would cover his costs for his rental unit and his share of the common areas. Therefore, the Tenant is only responsible for $244.09 of hydro costs ($1,220.47 x 20%). As such, the Landlord is responsible for the remaining balance of $976.38 for the Tenant's out-of-pocket expenses ($1,220.47 - $244.09).

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is **$1,024.38**. This amount represents:
   - $976.38 for the reasonable out-of-pocket expenses the Tenant has incurred.
   - $48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by January 16, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by January 16, 2026, the Landlord will owe interest. This will be simple interest calculated from January 17, 2026 at 4.00% annually on the balance outstanding.
4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

January 5, 2026
Date Issued

Fotoula Hatzantonis
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.