



Order under Sections 30 and 31 Residential Tenancies Act, 2006

File Number: LTB-T-021552-22

In the matter of: Basement, 1217 WOODBINE AVE
EAST YORK ON M4C4E1

Between: Paul Machado Tenant

And

Joao Joaquim Landlords
Eneida Contreiras

Paul Machado (the 'Tenant') applied for an order determining that Joao Joaquim ('JJ') and Eneida Contreiras ('EC') (together, the 'Landlords'):

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.
- withheld or interfered with their vital services or care services and meals in a care home.

The Tenant also applied for an order determining that the Landlords failed to meet their maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards.

This application was initially scheduled to be heard by videoconference on January 17, 2025 but was adjourned for insufficient time to be heard

The application came on again for hearing by videoconference on May 28, 2024. As a preliminary matter the parties agreed that the name Eneida Contreiras be added as a named Landlord to the Tenant's application. The Tenant requested that the application be amended to name both the Landlords and that amendment is reflected both in interim order LTB-T-021552-22-IN issued on June 10, 2024 (the 'Interim Order') and in this order. The time that day was used to clarify and, where appropriate, narrow the issues for determination at the continuation of the hearing, as set out in the Interim Order and repeated below.

The substantive hearing of the application commenced by videoconference on June 19, 2024. The Tenant and the Landlords attended the hearing. F. Faveri ('FF') attended a portion of the hearing as a witness. The hearing proceeded for more than 3 hours and was adjourned to July 2, 2025 for completion.

On June 25, 2024 the Landlord filed a request that the format of the hearing be changed to in-person. As set out in the endorsement dated June 30, 2025, that request was denied.

The hearing of the application continued to completion on July 2, 2025. The Tenant and the Landlords attended the hearing. FF attended a portion of the hearing as a witness.

Determinations:

1. The Tenant took occupancy of the unit, a basement in a semi-detached house, at the beginning of February 2021.
2. The upper unit above the Tenant's unit in the house was occupied by other tenants (the 'Upper Tenants').
3. The Tenant vacated the unit May 31, 2021, allegedly because of the noise from the upper unit and the Landlords' failure to adequately address his complaints about noise, pests and other issues.
4. As set out in the Interim Order dated June 10, 2024, the scope of issues for determination in the hearing of the Tenant's application is as follows;

T2 Issues:

- a. Noise from the upper unit – issues pertaining to excessive noise from the upper unit – The Tenant alleged that the Landlords gave the Upper Tenants preferential treatment and failed to properly and/or fairly address the Tenant's complaints in a reasonable manner.. The noise from the Upper Tenants, in all the circumstances, amounted to harassment. The Tenant alleged that the Upper Tenants were agents of the Landlords such that the Upper Tenants' behaviour amounted to harassment by the Landlords;
- b. Landlords' improper communication with, and improper involvement of, the Tenant's prior housing worker, F. Faveri ('FF');
- c. Behaviour of the Upper Tenants when the Tenant vacated the unit (overlap with issue (a)); and
- d. Withholding of vital services – absence of heat in the Tenant's unit.

T6 Issues:

- a. Failure to provide consistent heat;
- b. Failure to address problems with rats immediately outside the unit and problems with cockroaches, ants and spiders inside the unit; and
- c. Failure to repair the bake portion of the oven in the unit.

5. The Tenant's rent was \$975.00 per month. The Tenant confirmed during the hearing that his requested remedies consisted of rent rebate and out of pocket expenses. He sought a rent rebate of 50%, or \$487.50 per month, for 4 months for the T2 issues and \$100.00 per month for the T6 issues. As I explained to the Tenant during the hearing, my consideration of remedy could not predate 1 year prior to the April 17, 2022 application filing date. Any rent rebate would be limited to the 1 ½ months from mid-April 2021 to the May 31, 2021 termination of the tenancy. The Tenant also sought recovery of \$74.37 in out of pocket expenses associated with vacating the unit as a result of the Landlords' alleged misconduct.
6. My determinations with respect to the Landlords' liability for each of these issues, and remedies as appropriate, follows. Reference to exhibits in the 'Tenant Brief' are references to TOP Doc-3376348.

Noise

7. The Tenant's evidence about noise from the upper unit was:
 - a) Shortly after the Tenant moved into the unit in early February 2021, the Landlord JJ came to change a filter. Both JJ and the Tenant could hear the sound of someone running loudly in the upper unit. The Landlord JJ indicated that he would rectify the problem if the Tenant advised him of any issue;
 - b) The first 11 days of the Tenant's occupancy were fine with respect to the noise, but the noise from upstairs subsequently became excessive. The basement ceiling was low (less than 7 feet) and the sound from upstairs penetrated strongly into the Tenant's unit;
 - c) The Tenant complained to the Landlord by email on March 3, 2021 (refer Exhibit 1 at page 13 of the Tenant Brief). The Landlord JJ responded the same day to say that he would contact the Upper Tenants (Refer Exhibit 2 at page 14 of the Tenant Brief);
 - d) The noise continued, as did the Tenant's complaints to the Landlords, through the month of March (Refer Exhibits 3 and 4 at pages 15 and 19 of the Tenant Brief);
 - e) The Tenant referred me to a number of recordings taken in March, April and May 2021 (Refer Exhibit 18, being TOP Docs 2552962, 2545422, 3367056 and 2545413). It was difficult to confirm what the actual true volume was of the noise being recorded and I put little weight on them as evidence of the level of noise;
 - f) There was no indication that the Tenant provided the Landlords with any recordings at the time he complained of the noise. According to the Landlords the Tenant played recordings to them on two occasions over the phone;
 - g) By the beginning of April 2021 the Tenant realized that he could not stay in the unit with the noise and so notified the Landlord on April 1, 2021 that he would be

vacating the unit May 31, 2021 because of the noise (Refer Exhibit 5 at page 19 of the Tenant Brief);

- h) The Landlord JJ emailed the Tenant on April 2, 2021 to say that the Upper Tenants denied making noise, but that the tenants had explained that they had children at home during the day because of COVID and so there was some jumping. The Tenant responded to say that the noise at night was a hard hitting noise, unlike noise from the children. The Landlord JJ responded, indicating that he accepted the Tenant's notice of termination and that he would address the Tenant's concerns (Refer Exhibits 6, 7 and 8 at pages 20 to 23 of the Tenant Brief). There was no indication in the Landlords' written communications to the Tenant that the Landlords had taken any steps to independently verify the Tenant's concerns about noise;
- i) The noise issue continued. The Landlord JJ emailed the Tenant on April 25th with a message from the Upper Tenants, denying excessive noise and saying that they themselves heard noise from outside;
- j) By the end of April the Tenant felt that the Landlord was not taking his complaints about the noise seriously. He felt the need to wear earplugs. The Tenant believed, because the noise had stopped for a time after the Landlord's initial visit at the beginning of February, that the Landlord had some control over the Upper Tenants' behaviour. When nothing improved following his repeated complaints after mid-February, the Tenant came to believe that the Landlord was simply taking the side of the Upper Tenants without any further investigation or attempts to control the problem. There was no indication that the Landlords were taking any steps to address his concerns except to accept the position of the Upper Tenants;
- k) A further incident at the beginning of May 2021 led the Tenant to believe the Landlords had some control over the Upper Tenants' noise. At roughly 10:30 am the Landlord JJ came with his cousin, who was planning to move into the unit after the Tenant's departure, to do some measurements. Despite the fact that the noise from the upper unit had been relatively constant on other days, there was no noise at all from 8:00 until 1:30 pm – similar to the lack of noise for the 11 days following the Landlord JJ's visit to the unit when the Tenant first took occupancy; and
- l) The Tenant understood that the Landlords' sole response to the Tenant's complaints about noise was to pass on the Tenant's complaints to the Upper Tenants. The Upper Tenants responded to the complaints in early May 2021 by email to the Landlords (Refer Exhibit 17 at page 45 of the Tenant Brief). They indicated that their children spent most of their time on the second floor of the upper unit and only used the main floor (being the floor directly above the Tenant's unit) for meals. The children went to bed no later than 8:30 pm and there was no noise coming from their unit;
- m) The Tenant testified that the excessive noise over the 4 months of his tenancy had affected his hearing. He suffered, as a result of the noise, from tinnitus and a buzzing or ringing in his ears. His use of the unit was affected by the fact that he had to put his mattress on the floor to get as far from the ceiling noise as possible

and was compelled to wear construction earplugs because his ears had become sensitive. The Tenant produced no evidence in support of his claim of tinnitus or of any causal link between the alleged condition and the amount of noise in the unit.

3. The Landlords challenged the Tenant's claims of undue noise as follows:
 - a) When the Landlords approached the Upper Tenants about the Tenant's noise complaints, the Upper Tenants denied making undue noise. Their responses to the Tenant's complaints about the noise are set out in their written responses to the Tenant's emails (Refer Exhibit 17 at page 45 of the Tenant Brief);
 - b) The Landlords testified that they independently investigated the Tenant's noise complaints on two occasions;
 - i) On the first occasion, JJ was in the house which is attached to the house in which the Tenant's unit is located when he received a phone call from the Tenant. The Tenant complained of noise and let the JJ hear the problem sound. The sound was a sort of 'boom...boom...boom', more consistent with a sort of construction sound than sounds from children running or playing. JJ went next door to the Upper Tenants' unit. He was admitted to the unit but could hear no noise. The Upper Tenants' children were sleeping and there was no sound like the sound he had heard from the Tenant over the phone. In that there was no sound like the sound he had heard over the phone, JJ concluded that the Tenant must have been playing some sort of recording of a sound; and
 - ii) On the second occasion, the Landlords JJ and EC received a call at home from the Tenant. The Tenant played a recording of sounds like construction sounds. EC was concerned that the Upper Tenants were undertaking some sort of unauthorized construction work in the unit and the Landlords both rushed over to the unit of the Upper Tenants. They found no sound like the sound the Tenant had called about;
 - b) The Landlord JJ acknowledged that, aside from the two investigations set out above, his written communications with the Tenant described the totality of the Landlords' responses to the noise complaints. The Landlords did not contest the Tenant's assertion that the Landlords had never responded to the noise complaints by visiting the Tenant himself on either of the two occasions the Landlords visited the upper unit to investigate, though the JJ testified that he attempted unsuccessfully to contact the Tenant on one of the two occasions;
 - c) JJ testified that on the day in May 2021 when JJ visited the Tenant's unit with his cousin to inspect the unit – being the day on which the Tenant alleged that the noise from upstairs stopped - the Landlords had not informed the Upper Tenants that they would be visiting the Tenant's unit;
 - d) It was JJ's uncontroverted testimony that his cousin took occupancy of the Tenant's unit on June 1, 2021, immediately after the Tenant's departure. That cousin still occupies the unit. The Upper Tenants continued to occupy the upper unit for 2 ½ or

3 years following the commencement of the cousin's occupancy. They moved out of the upper unit roughly 1 to 1 ½ years before the July 2025 hearing, having had an additional child and needing more space. The cousin had no issues with noise for the duration of the Upper Tenants' occupancy. Further, the tenant who had occupied the Tenant's unit prior to the Tenant's occupancy had lived there for 3 years. The Upper Tenants had lived the unit above for the duration of that tenant's tenancy and the Landlords had received no noise complaints from that tenant.

3. I find that the Landlords' efforts to investigate the noise complaints fell short in that they failed to engage the Tenant directly in their investigations – particularly on the two occasions they followed up with visits to the upper unit. They took no steps to visit the Tenant's own unit at times when the Tenant alleged the noise was occurring or to communicate with the Tenant about any steps in that regard. The Tenant's conclusion that the Landlords were merely accepting the word of the Upper Tenants over the word of the Tenant was understandable in the face of the written communications he received from the Landlord. I also find that this belief contributed to his decision to vacate the unit.
4. That said, I find that the Tenant has failed to establish that the noise of which he complained was significantly worse than noise which might be expected in a basement unit with hardwood floors in the unit above or that it caused the alleged medical problems. In making this determination I give weight to two factors: the lack of noise complaints from the tenants who occupied the unit both before the Tenant took occupancy and after the Tenant vacated; and the lack of noise on the occasions when the Landlords visited the upper unit contemporaneously with two of the Tenant's complaints.
5. I find that the Tenant is entitled to a modest rental rebate for the Landlords' shortcomings in fully investigating, and communicating with the Tenant about, the noise complaint. The Tenant is entitled to a payment of \$146,25, being a 10% rebate for the period mid-April 2021 (being one year prior to filing of the Tenant's application) to the May 31, 2021 termination of his tenancy,

Heat

3. The Tenant's evidence about heat was:
 - a) The Tenant sent the Landlord and his caseworker, FF, an email on February 7, 2021 setting out a number of concerns about the unit (Refer Exhibit 13 at page 9 of the Tenant Brief). He noted that the heat had been cut off the first night of his occupancy from 1:00 am to 7 am and that the basement was cold;
 - b) The lack of heat was mainly a problem at night. By the time the Tenant left the unit, at the end of May, the cold was not excessive but cooler at night;
 - b) The Tenant testified that, subsequent to his February 7th email, he raised the issue verbally with the Landlord in a telephone conversation toward the end of February.

He also raised it in his email of May 4, 2021 to the Landlord (Refer Exhibit 15 at page 41 of the Tenant Brief); and

- c) The Landlord's sole response was to pass on the Tenant's complaint to the Upper Tenants, who controlled the heat for the house. The Upper Tenants responded by email in early May 2021 to say that they did not know that their heat control affected the heat in the basement. Nonetheless, they indicated that they would not leave the heat on throughout the night because the upper unit would be too hot and because they had been advised by the Landlords to save on hydro.
- 4. The Landlords took the position that the Tenant had not informed them about the heat issue until the email in early May. The Landlord JJ denied that the Tenant had raised the issue verbally with him.
- 5. I find that the Tenant has not established that he raised the heat issue with the Landlords between the February 7th email (in which he mentioned only one incident rather than an ongoing issue) and the May 4th email. By the time the Landlord received the upper tenants' acknowledgement, in May 2021, of turning down the heat at night the problem had largely disappeared with the warmer weather. The Landlords could, at that point, have either instructed the Upper Tenants to leave the heat on at night or provided the Tenant with a space heater. The Landlords failed to take any such action.
- 6. I find that the Tenant is entitled to a nominal rebate of rent for the Landlord's failure to address the heat issue during the month of May. The Tenant is entitled to a rebate \$50.00, being roughly 5% of the rent for the month of May.

Pests

- 7. The Tenant's evidence about pests was:
 - a) Rats made a paper nest outside the door of his unit (Refer Exhibit 18 at pages 56 and 57 of Tenant Brief, photos of torn paper and droppings). They did not enter the unit but the Tenant was concerned that their presence was unhealthy.
 - b) The Tenant produced a photo of two single cockroaches photographed on different occasions and a photo of an ant (Refer Exhibits 19 and 20 at pages 54, 55 and 70 of the Tenant Brief); and
 - c) The Tenant testified that he complained a number of times by text (and the February 7th email) about the presence of ants and cockroaches in the unit. He did not produce copies of the text messages. On cross examination he acknowledged that the Landlord had addressed issues about rats and raccoons outside in the backyard but testified that he had been more concerned about the evidence of rats outside the door of his unit.

8. The Landlord testified that when he investigated the area outside the door of the Tenant's unit he saw no sign of rats. Neither of the tenants who occupied the Tenant's unit for the 3 years prior and 4 years after the Tenant's occupancy raised any issue with the Landlord about pests.
9. I find that the Tenant's evidence of cockroaches and other pests in and outside the unit, and about his notifications to the Landlords, were vague. I find that he has failed to establish that the Landlords failed to respond reasonably to his complaints or that the Landlords' response in that regard amounted to a failure to meet their maintenance obligations.

Oven

10. The Tenant testified that the Landlord JJ acknowledged, when the Tenant moved into the unit, that the oven only worked on broil. The Tenant reminded the Landlord in his February 7th email that the oven was to be fixed. The Landlord did not repair or replace the oven, saying only that COVID lockdowns prevented him from addressing the problem.
11. The Landlord JJ testified that he considered the stove and oven to be "99%" operational as the stove and broiler portions of the oven worked. He acknowledged that the oven was not repaired or replaced during the Tenant's occupancy, pointing to supply and installation challenges during COVID. He acknowledged, however, that the stove/oven was replaced on June 1, 2021, the day after the Tenant vacated the unit and the first day of JJ's cousin's occupancy.
- 12.. I do not accept JJ's testimony that COVID precluded him from addressing the oven/stove issue during the Tenant's occupancy, particularly in light of the matter being addressed immediately following the Tenant's departure.
13. The Tenant did not testify about the impact of his inability to bake but I consider that a \$50.00 rent rebate for the period mid-April 2021 to May 31, 2021 is warranted.

Involvement of Housing Worker FF

14. The Tenant alleged that the Landlords violated his privacy rights by contacting his housing caseworker, F. Faveri ('FF') after the Tenant gave his notice of termination. The Tenant alleged that the Landlord JJ went behind the Tenant's back in contacting FF with allegations against the Tenant.
15. It was undisputed that the Landlord JJ contacted FF about the Tenant's decision to terminate the tenancy, that FF subsequently contacted the Tenant about JJ's call, that the Tenant told FF that FF was no longer the Tenant's housing worker and that the Tenant refused to speak further with FF. It is also undisputed that JJ told FF of the Tenant's complaints and that FF indicated to the Tenant that he thought the Tenant was acting unfairly.

16. The Landlord JJ and FF testified that the Tenant had taken occupancy of the unit through the assistance of a government program to house individuals who had spent considerable time in the shelter system. The program involved the Tenant receiving assistance from FF in connecting the Tenant with the Landlords and the unit and receiving assistance in the form of funding to cover the Tenant's rent.
17. The Landlord JJ understood that the administrators of the program were to be contacted in the event that the tenancy were to terminate and it was for this reason that he contacted FF.
18. Notwithstanding the fact that FF did not support the Tenant in his complaints, I find nothing in the Landlords' behaviour in contacting FF to have substantially interfered with the Tenant's reasonable enjoyment of the unit or to have constituted harassment. I consider the Landlords' reaching out to FF with respect to the Tenant's notice of termination to have been reasonable in the circumstances.

Upper Tenants and May 31st Incident

19. The Tenant testified that on the day he left the unit, one of the Upper Tenants moved his car up the driveway to next to the window of the Tenant's unit and sounded the horn for 5 minutes. The person yelled at the Tenant to leave the property.
20. The Tenant does not hold the Landlord directly responsible for this incident but submits that the Upper Tenants should properly be deemed to be agents for the Landlord, such that the Landlord should be held liable for the Upper Tenants' behaviour.
21. The Tenant based his submission about agency on the fact that the Landlords suggested that he leave his key with the Upper Tenants on his departure and on the fact that he believed the Landlords could control the noise from the Upper Tenants. The Tenant believed that the Landlord wanted the Tenant to leave the unit and that the Landlords encouraged the Upper Tenants to make noise to force the Tenant to leave. The Tenant also submitted that the reason the incident occurred was that the Upper Tenant felt empowered by the Landlords' preferential behaviour to the Upper Tenants over that of the Tenant.
22. I find that the Tenant has failed to establish facts which could render the Landlords responsible for the May 31st event, even if I were to determine that the event occurred as described by the Tenant. The mere fact that the Landlords asked the Tenant to leave the key with the Upper Tenants is not determinative of any such responsibility and, as set out above with respect to the noise issue, the Tenant has not established that the Landlords influenced the noise level from the upper unit.

Out of Pocket Expenses

23. The Tenant claimed a total of \$74.37 in out of pocket expenses associated with his move out of the unit.
24. I find that the Landlords' shortcomings in their response to the noise were not sufficiently egregious to support a finding that the Tenant's decision to vacate the unit was a direct result of their behaviour. The Tenant's request for out of pocket expenses is denied.

It is ordered that:

1. The total amount the Landlords shall pay the Tenant is \$246.25, representing \$146.25 in rent rebate for the noise issue and \$50.00 for the oven issue and \$50.00 for the heat issue.
2. The Landlords shall pay the Tenant the full amount owing by January 16, 2026.
3. If the Landlords do not pay the Tenant the full amount owing by January 16, 2026, the Landlords will owe interest. This will be simple interest calculated from January 17, 2026 at 4.00% annually on the balance outstanding.

January 5, 2026
Date Issued

Lynn Mitchell
Member, Landlord and Tenant Board

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