



Order under Sections 30, 31, 89, and 135 Residential Tenancies Act, 2006

Citation: Rudge v Desimini, 2025 ONLTB 61486

Date: 2026-01-09

File Numbers: LTB-T-069839-22

LTB-L-081270-23

In the matter of: 1, 58 WADE AVE
TORONTO ON M6H1P6

Between: John Rudge Tenant

And

Nick Desimini Landlords
Joe Di Geso

John Rudge (the 'Tenant') applied for an order determining that Nick Desimini and Joe Di Geso (the 'Landlords')

- collected or retained money illegally
- entered the rental unit illegally.
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.
- withheld or interfered with their vital services or care services and meals in a care home.
- failed to meet the Landlords' maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards.

The Landlords applied for an order requiring the Tenant to pay the Landlords' reasonable out-of-pocket costs that the Landlords incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

These applications were heard by videoconference on September 20, 2023, November 4, 2024, and April 16, 2025.

The Tenant, the Tenant's representative with respect to the Tenant's application, Dan McIntyre, and the Landlords' representative, Kevin Kok, attended the hearing on September 20, 2023.

The Tenant, the Tenant's representative with respect to the Tenant's application, Dan McIntyre, Nick Desimini (the 'Landlord'), and the Landlords' representative, Ben Charlebois, attended the hearing on November 4, 2024.

The Tenant, the Tenant's representative with respect to the Tenant's application, Dan McIntyre, the Landlord, the Landlords' witness, Edward Chong, and the Landlords' representative, Kevin Kok, attended the hearing on April 16, 2025.

Determinations:

Background

1. The Tenant's applications were filed on February 21, 2020 when the Tenant was still residing in the rental unit.
2. The tenancy terminated on September 30, 2023.
3. The Landlords' application was filed October 21, 2023.

Tenant's Applications

T1 Application

4. As explained below, the Tenant did not prove the allegation that the Landlords collected or retained money illegally. Therefore, this portion of the application is dismissed.
5. The Tenant claims that the Landlords charged the Tenant an illegal rent.
6. The Tenant claims that the Landlords increased the rent from \$1,300.00 per month to \$1,325.00 per month on June 1, 2015 and then to \$1,350.00 per month on May 1, 2018 and that both increases were not in accordance with section 116 of the Act.
7. Section 135.1 of the Act states:

Rent increase deemed not void

135.1 (1) An increase in rent that would otherwise be void under subsection 116 (4) is deemed not to be void if the tenant has paid the increased rent in respect of each rental period for at least 12 consecutive months. 2020, c. 16, Sched. 4, s. 24.

Non-application

(2) Subsection (1) does not apply with respect to an increase in rent if the tenant has, within one year after the date the increase was first charged, made an application in which the validity of the rent increase is in issue. 2020, c. 16, Sched. 4, s. 24.

Deemed compliance with s. 116

(3) For greater certainty, if subsection (1) applies with respect to an increase in rent, section 116 is deemed to have been complied with. 2020, c. 16, Sched. 4, s. 24.

Application of s. 136

(4) For greater certainty, nothing in this section limits the application of section 136. 2020, c. 16, Sched. 4, s. 24.

Transition

(5) This section applies with respect to an increase in rent even if it was first charged before the day the Protecting Tenants and Strengthening Community Housing Act, 2020 receives Royal

Assent, provided the validity of the rent increase was not finally determined by the Board before that day. 2020, c. 16, Sched. 4, s. 24.

8. Since the Tenant paid the increased rents for 12 consecutive months and no applications were filed contesting the validity of the increases within one year of the increases, the increases are deemed not to be void pursuant to subsection 135.1(1).
9. While the Tenant argued that section 135.1 of the Act should not apply to this case as the Tenant's application was filed before that section of the Act came into force, subsection 135.1(5) clearly states that section 135.1 is to apply regardless of filing date. The only restriction on the applicability of section 135.1 is if the validity of a rent increase was finally determined before section 135.1 came into force. That did not occur in this case.
10. The Tenant argued that *TST-14833-20 et al* stood for the proposition that the Tenant's application should be determined based on the legislation as written at the time the application was filed but I am not persuaded by this argument. In that case, the Board found that a final determination with respect to the validity of the rent increase occurred prior to the date section 135.1 came into force. As a result, it has no application to the case at hand.

T2 Application

Illegal Entry

11. As explained below, the Tenant did not prove the allegations contained in the application regarding illegal entry on a balance of probabilities. Therefore, this portion of the application is dismissed.
12. The Tenant testified that the Landlords gave written notice of entry on October 8, 2019 to enter the rental unit on October 10, 2019 for insurance purposes. The Tenant also supplied a copy of the written notice.
13. Subsection 27(1) of the Act states:

27 (1) A landlord may enter a rental unit in accordance with written notice given to the tenant at least 24 hours before the time of entry under the following circumstances:

 1. To carry out a repair or replacement or do work in the rental unit.
 2. To allow a potential mortgagee or insurer of the residential complex to view the rental unit.
14. The Tenant argued that the entry was unlawful because entry for insurance purposes had occurred the month prior. I find no merit to this argument. Subsection 27(1) permits entry with notice for insurance purposes and there is no evidence to suggest that the entry on October 10, 2019 was not for this purpose. The fact that an inspection for insurance purposes occurred the month prior does not mean that the second inspection was not also for insurance purposes.

Substantial Interference

15. As explained below, the Tenant did not prove the allegations contained in the application with respect to substantial interference with reasonable enjoyment on a balance of probabilities. Therefore, this portion of the application is dismissed
16. The Tenant alleges that the Landlords substantially interfered with the Tenant's reasonable enjoyment with respect to a notice of entry dated July 26, 2019 for entry on July 30, 2019 because the Landlords did not show up on July 30, 2019. While I can appreciate that this may have been somewhat annoying, I am not persuaded that the Landlords' failure to show up reaches the threshold of substantial. As a result, I am not persuaded that the Landlords substantially interfered with the Tenant's reasonable enjoyment with respect to this notice.
17. The Tenant also alleges that the Landlords substantially interfered with the Tenant's reasonable enjoyment with respect to a notice of entry posted to the door of the rental unit dated August 9, 2019 for entry August 12, 2019. The Tenant states that because the notice did not indicate a reason for entry, the Tenant wrote in big bold letters on the notice "NO ACCESS ACCEPTABLE WITHOUT COMMUNICATION OF REASON FOR ENTERING!" and left it posted on the door to the rental unit. The Tenant testified that the Landlords did not attempt to enter the rental unit on August 12, 2019. Again, while it might be slightly annoying to receive a notice of entry that does not specify the reason for entry, I am not persuaded that this rises to the threshold of substantial interference. Also, given what the Tenant wrote on the notice, I cannot find the Landlords at fault for not attempting to enter on that date. As a result, I am not satisfied that the Landlords substantially interfered with the Tenant's reasonable enjoyment with respect to this notice.
18. The Tenant also alleges that the Landlords substantially interfered with the Tenant's reasonable enjoyment with respect to a notice of entry dated August 19, 2019 for entry on August 20, 2019. The Tenant said that the Landlords knocked on the door on August 20, 2019, that the Tenant did not answer the door, and that the Landlords did not attempt to enter the unit at that time. The Tenant argued on the one hand that the notice was unlawful because it did not provide 24 hours notice because he found it on his door at 11 AM on August 20, 2019. The Tenant argued on the other hand that the Landlords interfered with their reasonable enjoyment by serving the notice and then not attempting to enter. If the Tenant is correct on their first argument, the Landlords ought not to have attempted entry and did not substantially interfere by not attempting to enter. I do not accept the Tenant's second argument because the Landlords did come to the unit and did attempt entry by knocking on the door. It does not seem rational to me for the Tenant to pretend to not to be home and then claim compensation for being inconvenienced by the Landlords not entering the unit. Had the Tenant answered the door, they would not have been inconvenienced. The contrary positions put forth with respect to this notice suggests to me that the grievance is trivial rather than substantial in nature. As a result, I am not satisfied that the Landlords substantially interfered with the Tenant's reasonable enjoyment with respect to this notice.
19. The Tenant also alleged the Landlords substantially interfered with their reasonable enjoyment by failing to address problems of smoking in the common areas.

20. The Tenant testified that the neighbouring tenant would leave the door to their rental unit open allowing smoke to emanate from the neighbouring unit into the common areas of the building. The Tenant submitted into evidence email correspondence to the Landlords dated November 19, 2019 wherein the Tenant notified the Landlords about this problem. The Tenant testified that the neighbouring tenant stopped leaving the door to their rental unit open sometime after this November 19, 2019 email, but did not specify when this occurred. Given the uncertainty between the time period the Landlords were notified about the behaviour and when the behaviour ceased, I am not satisfied that the Tenant has established that the Landlords breached their obligations under the Act with respect to this item.
21. While the Tenant also testified to cigarette smoke coming into his rental unit from an adjoining wall with another unit and from a bench outside a window to his rental unit, these items were not identified in the Tenant's application so I did not consider them.
22. The Tenant also alleged that the Landlords substantially interfered with their reasonable enjoyment in August 2019 when Edward Chong told the Tenant that the rental unit would make a nice office for himself. Edward Chong denied making this statement. I did not find either witness to be more credible than the other with respect to this item. As a result, I am not persuaded that the Tenant has proven on a balance of probabilities that Edward Chong made the statement. I am mindful that Edward Chong did admit in cross examination that he did not want the Tenant as a tenant anymore, which he attributed to the Tenant's bad behaviour, I do not find this information sufficient to tip the scales in favour of the Tenant on this issue. As a result, I am not satisfied that the Landlords substantially interfered with the Tenant's reasonable enjoyment with respect to this item.

Vital Services

23. The Tenant's T2 application also alleged the Landlords withheld or interfered with a vital service, however, this appears to be a replication of the maintenance issues in the T6 application regarding heat. No evidence was led that the Landlords intentionally interfered or withheld a vital service. As a result, this portion of the application is dismissed.

T6 Application

24. As explained below, the Tenant proved some of the allegations contained in the application with respect to maintenance on a balance of probabilities. Therefore, the Landlords shall pay the Tenant \$250.00.
25. The Tenant testified that the heating system for the rental unit was unreliable. He said the heat was at times too high, too low, or completely off. The Tenant also testified that the heating system made loud banging noises. The Tenant submitted into evidence a log detailing issues with the heat. The Tenant also submitted into evidence a log of text communications between himself and the Landlords' agent, Chris, regarding heating issues. Since the Tenant filed the application on February 21, 2020 and because of the one year limitation period, only the portions of the logs relating to the period after February 21, 2019 have been considered. The Tenant testified that the irregular heat and heating noises caused him discomfort and disturbed his sleep. He also testified that his electricity

expense increased because he used portable heaters and was responsible for the electricity usage in the rental unit.

26. The Landlord acknowledged that there was a problem with the heating system in February 2019 however he testified that the heating system could not be replaced during the cold months so he had technicians regularly attending to the heating system in the winter/spring of 2019 to keep it going, and that the system, after some difficulty getting the necessary parts, was ultimately replaced in the fall of 2019. The Landlords did not provide any documentation relating to this issue.
27. 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.
28. Having considered all of the issues raised with respect to this item, I find a global abatement of \$250.00 to be appropriate. While I am satisfied that there was a problem with the heating system from the Tenant's testimony, documentary evidence, and the Landlord's admission that there was a problem with the heat in the rental unit, the Tenant's evidence was not sufficiently clear or detailed to warrant a higher abatement. Similarly, while I am satisfied from the Landlord's testimony that the Landlords took some steps to address the heating issue, the Landlord's testimony was not sufficiently clear or detailed, or supported by documentary evidence, to determine how reasonable the Landlords' response to the heating issue was. I find the amount of \$250.00 to be an appropriate amount as it acknowledges the proven/admitted existence of the problem in the context of the vagaries of the parties' evidence
29. The Tenant also testified that the fridge leaked. The Tenant submitted into evidence an email to the Landlords dated February 14, 2020 wherein he described this problem stating that the fridge had a tendency "to leak water in the warm months of summer". The Tenant testified that he obtained another refrigerator from another rental unit in the residential complex sometime after February 2020, but did not specify when this occurred.
30. I do not find it appropriate to award any remedies with respect to this item. While it is clear that the Landlords were notified about this problem on February 14, 2020 by the aforementioned email, there is no evidence that the Landlords were notified about this problem prior to this date. As a result, and in accordance with subsection 30(2) of the Act, I do not find it appropriate to order any remedies for the time prior to February 14, 2020.
31. I also do not find it appropriate to order any remedies for the time period after February 14, 2020 because the Tenant has not presented sufficiently cogent evidence to support any remedies. More specifically, since the Tenant could not identify when the fridge was replaced, and since the leaking only occurred in the warm summer months, it is not clear if there was any fridge leaking after February 14, 2020. As a result, this portion of the application is dismissed.

32. Although the Tenant also mentioned leaks from the ceiling in his testimony, the Tenant did not provide sufficient information to warrant a remedy. More specifically, the Tenant did not testify as to when the leaking began or when he notified the Landlords about the problem.

Landlord's Application

33. As explained below, the Landlords proved some of the allegations contained in the application on a balance of probabilities. Therefore, the Tenant shall pay the Landlords \$500.00.
34. The Tenant vacated the rental unit on September 30, 2023 and the Landlords filed the application within one year of the Tenant vacating the rental unit.
35. The Landlords applied under section 89 of the Act which states:
- 89** (1) A landlord may apply to the Board for an order requiring a tenant or former tenant to pay reasonable costs that the landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of damaged property if,
- (a) while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant or former tenant wilfully or negligently causes or caused undue damage to the rental unit or the residential complex; and
- (b) in the case of a tenant or former tenant no longer in possession of the rental unit, the tenant or former tenant ceased to be in possession on or after the day subsection 21 (1) of Schedule 4 to the *Protecting Tenants and Strengthening Community Housing Act*, 2020 comes into force. 2020, c. 16, Sched. 4, s. 21 (1).
36. Much of the Landlords' claim related to pest-control costs. The Landlord testified that these costs were incurred to exterminate rodents which were attracted by the pigeon feed the Tenant's kept in the rental unit. I am not persuaded that pest-control costs relate to the repair or replacement of damaged property. As a result, the Landlords' request for compensation for pest-control costs is denied.
37. The parties agreed that the Tenant permitted pigeons into the rental unit. The Landlords alleged that this caused damage to the rental unit and the Tenant denied any damage.
38. The Landlord testified that they completely gutted and renovated the rental unit after the Tenant vacated and sought compensation for the expense of the gutting/renovation. I am not satisfied, based on the evidence presented on a balance of probabilities, that the Tenant damaged the rental unit to such an extent that they are responsible for all the expenses claimed by the Landlords. The Landlords' damage claim arises from the Tenant permitting pigeons into the rental unit and the resulting excrement. This damage was primarily to the hardwood floor. The Landlords refinished the hardwood floor after the Tenant vacated. There is no evidence that the Tenant otherwise damaged the rental unit. As a result, I find that the Landlords' damage claim should be limited to damage to the floor.

39. Assessing the quantum of the damage is difficult for two reasons. Firstly, the Tenant moved into the rental unit in 2004 and it is not clear what state the floor was in when the Tenant moved in. In addition, significant wear and tear is likely to have occurred between the date the Tenant moved in and when they vacated in 2023. Secondly, the Landlords' evidence does not separately identify the cost of refinishing the floor. While these factors speak in favour of denying the Landlords' request for compensation, I am persuaded that permitting pigeons to excrete on the floor of the rental unit damaged the flooring to some extent and contributed to the need to refinish the floor.
40. Given these difficulties, I find that a damage award of \$500.00 is appropriate in the circumstances of this case.

Costs

41. The Landlords incurred costs of \$186.00 for filing the application and are entitled to reimbursement of those costs.
42. The Tenant incurred costs of \$50.00 for filing the application and is entitled to reimbursement of those costs.
43. I am persuaded that the Landlords should pay the Tenant's costs for the appearance on November 4, 2024. The Landlords' representative on that date was not aware that the proceeding had already commenced and that they were to cross-examine the Tenant on the hearing date. As a result, they were not prepared to proceed and the hearing was adjourned. I find \$300.00 to be an appropriate costs amount for this appearance.

It is ordered that:

1. The total amount the Landlords owe the Tenant is \$600.00 representing:
 - \$250.00 for an abatement of rent,
 - \$300.00 for costs relating to the November 2024 appearance, and
 - \$50.00 for the cost of filing the application.
2. The total amount the Tenant owes the Landlords is \$686.00:
 - \$500.00 for an abatement of rent, and
 - \$186.00 for the cost of filing the application.
3. The total amount the Tenant must pay the Landlord is \$86.00.
4. If the Tenant does not pay the Landlord the full amount owing on or before January 31, 2026, the Tenant will start to owe interest. This will be simple interest calculated from February 1, 2026 at 4.00% annually on the balance outstanding.

January 9, 2026
Date Issued

Richard Ferriss
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.