



Order under Section 30 Residential Tenancies Act, 2006

File Number: LTB-T-058065-22

In the matter of: 1, 14 KING STREET EAST
COBOURG ON K9A1K7

Between: JERI-LYNN CLEMENCE Tenant

And

THE MACDANE GROUP OF COMPANIES Landlord

JERI-LYNN CLEMENCE (the 'Tenant') applied for an order determining that THE MACDANE GROUP OF COMPANIES (the 'Landlord') failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards.

This application was heard by videoconference on November 21, 2024.

The Landlord's Legal Representative, Luisa Gonsalves, and the Tenant attended the hearing. The Landlord's witness, Max Messiha ('MM'), also testified at the hearing.

I have considered all of the evidence presented at the hearing and all of the oral testimony, and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.

Determinations:

Preliminary Issue: Amending the Application

1. At the hearing, the application was amended to include the Tenant's maintenance claim regarding an ant infestation in the rental unit as well as updated remedy claims for insufficient heat in the unit. The Landlord's Legal Representative confirmed they were aware of the amendments and had disclosed their reply evidence prior to the hearing. The application was thus appropriately amended.

T6 Application:

2. As explained below, the Tenant proved on a balance of probabilities some of the allegations contained in the application. Therefore, the Landlord must pay the Tenant **\$2,509.71**, inclusive of the cost of filing the application.

3. The tenancy commenced on June 11, 2021, and the application was filed on July 11, 2022.
4. The Tenant was still in possession of the unit as of the day of the hearing.
5. The Tenant's application is centralized around two issues: Insufficient heating and an ant infestation.
6. Section 20(1) of the Act sets out a landlord's maintenance obligations. It provides that, "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."
7. 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.
8. The Board's Interpretation Guideline 5: Breach of Maintenance Obligations, clarifies that a landlord may choose how to repair or address a problem. The Tenant cannot insist that specific actions are undertaken, and the Tenant does not have a right to insist on a standard of perfection regarding repairs. Although the Interpretation Guidelines are not binding upon me, I find this principle to be persuasive and I have applied it to my analysis, below.

HEATING:

Tenant's Evidence:

9. The Tenant testified that she texted the Superintendent on January 17, 2022 regarding the low temperature in her unit, including pictures of the unit thermometer reading 60 degrees Fahrenheit (15.55 degrees Celsius). The Tenant received no reply and texted again on January 21, 2022. The Superintendent replied via text the same day that other tenants in the building were experiencing similar heat issues, and the Tenant should use a space heater. One was offered to the Tenant, but she had already purchased a space heater by that point. The Tenant confirmed on cross-examination that she did not communicate further with the Landlord between January 21, 2022 to July 7, 2022 regarding the lack of heat in the unit.
10. On further cross-examination, the Landlord's Legal Representative noted that the Tenant's receipt for the space heater showed it was purchased on January 22, 2022, after she was offered a space heater from the Landlord. The Tenant explained that they had purchased two space heaters and ended up returning one. The Tenant did not submit a receipt for the other space heater.
11. On July 6, 2022, the Tenant contacted bylaw enforcement, and a Municipal Law Enforcement Officer ('Officer') attended the unit on October 19, 2022. The Tenant

submitted the Officer's property standards report dated October 21, 2022 as evidence which found insufficient heating in the unit when the heating system was turned to the maximum setting.

12. The Landlord then attended the unit on November 16, 2022, and had two heaters installed in the unit. The Tenant only noticed a slight increase in temperature when the heaters were used, and only when they were set at 30 degrees Celsius but did not submit any supporting documentary evidence to substantiate the heater setting or temperature readings from that day. The Tenant submitted an email chain between herself and the Officer dated from November 14, 2022 to November 17, 2022 updating the Officer on the new heaters and that they might still not be sufficient for the colder months ahead. The Officer instructs the Tenant on November 17, 2022 to inform him should the heat become insufficient again so he can look into the matter further.
13. The Tenant testified that the 2022/2023 winter was fairly mild, and she did not feel insufficient heat in the unit again until February 2023. The Tenant contacted the Superintendent on February 4, 2023 via text message about the issue, and the Superintendent came to the unit the same day and saw the thermometer inside read 18 degrees Celsius. The Tenant submitted a picture of the thermometer reading taken that day as evidence. The Tenant testified the Superintendent informed her they would tell the Landlord about the issue and get back to her. The Tenant contacted bylaw enforcement again on February 4, 2023 as well as on February 9, 2023, but did not receive a reply. The Tenant continued reaching out to bylaw enforcement throughout February and March 2023 but got no reply. The Tenant did not submit any supporting documentation regarding this communication period with bylaw enforcement. The Tenant then confirmed she did not follow up with the Landlord during this time as she was relying on bylaw enforcement staff who told her they would look into the matter.
14. The issue remained unresolved, and the Tenant emailed both the Landlord and bylaw enforcement on January 22, 2024 stating that the heat in her unit was below 20 degrees Celsius for the past few days. The Tenant submitted a copy of the email as well as text messages she sent to the Landlord from January 16, 17, and 21, 2024 as evidence. The Tenant testified that the Landlord and bylaw enforcement responded, with the Landlord asking the Tenant the same day to fill out a work order for the issue, and the Tenant complied with the request. January 24, 2024, the Superintendent attended the unit with contractors to fix the heater. The Tenant testified the heat was working that day, but the thermostat was still problematic, and the parties would not know if the problem would persist until the next winter.
15. The Tenant testified the insufficient heat had a significant impact on her. She ended up paying for her own space heater and had to stay enclosed in her bedroom to keep warm on severely cold days to avoid paying high utility costs. The Tenant noted the worst months were from October 2021 to April 2022. There were also persistent heat deficiencies in February 2023 and January 2024.

Landlord's Evidence:

16. The Landlord's witness, Max Messiha ('MM'), has been the Regional Site Manager for the Landlord since August 2023. MM oversees 20 buildings of all sizes that include a mix of

commercial and residential. Each building has a Superintendent and a specific protocol for complaints that must be followed to ensure the Landlord is aware of any issues given the number of properties it owns and manages.

17. The Landlord's Legal Representative submitted a copy of the lease agreement which provides for a specific email address the Tenant is to use when contacting the Landlord. The Tenant did not use that email address to communicate their maintenance issues. The lease includes a condition that the Tenant agrees to contact the Landlord and submit a formal written work order if repairs are required. Thus, the Tenant knew, or ought to have reasonably known, about the Landlord's maintenance procedure. The Landlord submitted work orders completed by the Tenant dated January 22 & 24, 2024 regarding heat issues and maintains no prior work orders related to heat insufficiency were received. Any delay in rectifying the maintenance issue should therefore take this into account.
18. However, in the Tenant's October 13, 2022 email to the Landlord's Legal Representative, the Tenant specifically notes that she has brought up several issues to the Landlord since moving into the unit on June 11, 2021 that have been addressed/resolved without having to fill out a work order, and she had not been told before to submit a work order for any issue until October 2022.
19. A copy of an electrical contractor invoice sent to the Landlord dated February 3, 2022 was submitted as evidence to show that the Landlord was taking steps to address the heat issue in the residential complex by examining the circuit breaker on January 19 and 31, 2022. However, the details on the invoice for the service rendered on January 31, 2022 was for another building, not the Tenant's residential complex.
20. The Landlord's Legal Representative submitted emails from the Tenant dated September 19, 2022 and October 6, 2022 making no mention of insufficient heat in the unit. A Notice of Entry ('NOE') for the Tenant's unit dated for October 17, 2022 was also submitted into evidence showing the Landlord would attend for an ant treatment and heat testing. A follow up NOE was submitted for November 16, 2022 to investigate the heat issue. The latter notice was also in response to a City Work Order regarding the insufficient heat to the Tenant's unit received by the Landlord around October 25, 2022. A copy of a letter from the Landlord's contractor was submitted verifying that they conducted an inspection of the heating system in the Tenant's unit on November 16, 2022 and found all heaters were in proper working order.
21. MM testified he was aware of the heat issue with the Tenant's unit in January 2024, and the problem, including the thermostat, was resolved on January 24, 2024. The Landlord's Legal Representative then submitted email correspondence between a Landlord Agent and the Officer handling the complaint dated January 26, 2024 confirming that the issue, including the replacement of the thermostat, was resolved to the satisfaction of the City and the Officer would be closing the file.

Analysis:

22. The issues before me are whether/when the Landlord was made aware of the heating issue with the unit and if they took reasonable steps to remedy the issue once known. The Landlord did not dispute that the Tenant contacted the Superintendent on January 17 &

21, 2022 about insufficient heat in her unit, or that there was a heating issue in the residential complex at that time. That Landlord also did not present supporting documentary evidence to show that the issue was fixed during the 2021/2022 winter season. The Landlord's evidence for this time period was a contractor invoice dated February 3, 2022 demonstrating that the Landlord had begun to investigate the issue, but not that it was resolved or any effort was made after that date until October 2022 to repair the problem.

23. The Landlord attributes the delay in fixing the issue to the Tenant's failure to use the proper process of a work order to address her maintenance issues. I find otherwise; the Tenant contacted and informed the Landlord about the heat issue; just not the way the Landlord wanted. There is no set provision in the Act or regulations that states how the Tenant must contact the Landlord regarding maintenance issues. There is also no requirement that the Tenant repeatedly follow up with the Landlord to ensure the issue is investigated and repaired. The premise is that the Landlord cannot fix a problem they are not aware of. In this instance, the Landlord was made aware and began taking steps to repair the problem, but they did not show they resolved it within a reasonable time frame. Consequently, I find there was a breach of the Landlord's maintenance obligations under the Act for the period from January 17, 2022 to April 30, 2022, which is the end period of impact the Tenant claimed in her application and in her testimony.
24. The Tenant testified she had to pay for her own space heater and was often limited to one room in the unit to keep her utility costs down. The Tenant seeks an abatement of rent and the cost of her space heater. I am satisfied that the Tenant incurred some disruption to her ability to normally reside in the unit from January 17, 2022 to April 30, 2022, and therefore a 15% rent abatement is reasonable in the circumstances. The abatement is calculated as follows: $(\$1,425.00 \text{ rent charged} \times 12 \text{ months}/365 \text{ days}) \times 103 \text{ days} \times 15\% = \textbf{\$723.82}$. With respect to the cost of the Tenant's space heater, I am not satisfied the Tenant showed she mitigated that cost. The Landlord offered her a space heater, which she declined. The receipt for the heater she purchased was dated after the Superintendent offered her a space heater, and the Tenant did not provide a sufficient reason to justify incurring that cost.
25. There is no dispute that the Tenant did not inform the Landlord of any insufficient heat in October 2022. However, the Landlord confirmed receipt of the Officer's property standards report during that month showing insufficient heat in the unit. The Landlord conducted an inspection of the unit on October 17, 2022, then the Officer inspected the unit on October 19, 2022 and found a problem with heat in the unit after which his report is sent out after October 21, 2022. I find the Tenant's evidence more credible for this time period given that a government authority inspects the unit two days after the Landlord and documents there was a breach, and the Tenant provided supporting oral testimony that the problem was ongoing. The Landlord also did not submit any evidence that the issue had been remedied prior to October 2022. Therefore, I am satisfied on the balance of probabilities that the Landlord continued to breach their obligation in the autumn months until the matter was resolved on November 16, 2022.
26. The Tenant seeks a rent abatement from October 1, 2022 to November 16, 2022 as claimed in her application and testimony. As the Landlord's breach at that point in time was

ongoing, I find the period requested reasonable, and a rent abatement of 15% appropriate in the circumstances. The abatement is calculated as follows: $(\$1,442.10 \times 12 \text{ months}/365 \text{ days}) \times 46 \text{ days} \times 15\% = \mathbf{\$327.14}$.

27. The issue then resurfaces in February 2023. The Tenant contacted the Superintendent on February 4, 2023. The Landlord did not dispute that the Superintendent attended the unit that day and did not submit any evidence regarding efforts made to address the issue once contacted. Consequently, I find that Landlord breached their maintenance obligations under the Act regarding insufficient heat to the unit from February 4, 2023 to the end of the winter season.
28. The Tenant, however, only seeks an abatement of rent for the month of February 2023. Given that the issue was no longer ongoing at that point, and the Tenant did not inform the Landlord of the maintenance issue until later that month, I find it reasonable to grant a 15% rent abatement from February 4, 2023 to February 28, 2023. The abatement is calculated as follows: $(\$1,442.10 \times 12 \text{ months}/365 \text{ days}) \times 24 \text{ days} \times 15\% = \mathbf{\$170.68}$.
29. I am not satisfied the Landlord breached their maintenance obligations under the Act in January 2024. The parties do not dispute that the Tenant contacted the Landlord and completed a work order on January 22, 2024. The Landlord then had contractors attend the unit on January 24, 2024 who resolved the problem. I find the Landlord's response to the issue to be reasonable and timely, and therefore an abatement of rent is not reasonable.
30. The Landlord must therefore pay the Tenant a total rent abatement of **\$1,221.64** (\$723.82 + \$327.14 + \$170.68).

ANTS:

31. The Tenant testified she noticed an ant problem with the unit around July/August 2022 but did not reach out to the Landlord until the problem worsened. The Tenant submitted videos of ants in what appears to be the kitchen dated August 30, 2022 and October 19, 2022 as evidence.
32. The Tenant emailed the Superintendent and Regional Manager on September 19, 2022 about the issue including videos of the ants. When the Tenant received no reply, she then emailed the Landlord's Legal Representative and Building Manager on October 6, 2022. The Tenant submitted an email chain between her and the Landlord's Legal Representative dated from October 6, 2022 to October 15, 2022 regarding attempts to bring the ant issue to the Landlord's attention as evidence. The Tenant was advised by the Landlord's Legal Representative in the email chain to fill out a work order for the ant issue and attached a copy of a blank work order in her October 10, 2022 email for the Tenant's convenience.
33. The Tenant submitted a work order for the ant infestation on October 13, 2022, and a Notice of Entry ('NOE') for October 17, 2022 was given to the Tenant. The Tenant testified that the Regional Manager attended the unit on October 17, 2022 with a can of bug spray to spray the effected areas of the unit. The Tenant further testified that the NOE did not

state that the unit would undergo pest treatment for ants, however, the NOE submitted by the Landlord specifically states “Ant Treatment” in the Repair section.

34. The Tenant testified she was told the spray was the initial step in addressing the ant problem, and she would be contacted regarding next steps. The Tenant then emailed the Regional Manager and Landlord’s Legal Representative on October 19, 2022 with a video of ants still in her kitchen. The Tenant stated she did not receive a response or any follow up regarding the issue until February 22, 2024 when the Superintendent came to the unit and laid ant traps in the kitchen, bathroom, and second bedroom. The Tenant maintained on cross-examination that it was the Landlord’s responsibility to address the issue, and she should not have been required to follow up constantly until the issue was resolved.
35. On March 5 & 26, 2024 and April 16, 2024 Orkin treatments were done in the unit. The Tenant noticed some improvement; however, the issue began to worsen again by June 19, 2024 when the Tenant notified the Superintendent, who then attended the unit that same day to lay more ant traps. The Tenant acknowledged there was ongoing communication and efforts to resolve the ant issue in July and August 2024, and the problem appears to have been resolved since September 2024.
36. MM reiterated that the procedure for all maintenance issues is for the Tenant to complete and submit a work order in accordance with the Landlord’s maintenance processes. MM was only made aware of the ant issue in the Tenant’s unit by the local building office and not through a proper maintenance request. Once MM was made aware in late February 2024, three pest control treatments were done in the unit within one month. When the issue resurfaced again in June 2024, additional remedial action was taken in July and August 2024 with the problem being resolved shortly thereafter.

Analysis:

37. The Landlord did not contest that the Tenant contacted the Landlord about ants in the unit on September 19, 2022. No action was taken to investigate or treat the issue until after the Tenant filed a work order on October 13, 2022. As mentioned in the heat issue analysis above, there is no legislative requirement the Tenant must communicate the maintenance issue to the Landlord in a specific manner. To delay acting on a disclosed issue until the Tenant fills out a work order is, on its face, an unreasonable response by the Landlord.
38. The Tenant, however, cannot dictate what course of treatment the Landlord must use to address a maintenance issue. A Landlord Agent attended the unit on October 17, 2022 and began a course of treatment (bug spray) to address the situation. The issue here is that the Tenant followed up with the Landlord two days after the initial treatment stating that the problem persisted and received no reply. The Landlord demonstrated that they have the capacity to respond to inquiries, but only when contacted via their preferred method (work order). Given that the Landlord did not even begin an initial investigation on the maintenance issue until over three weeks after they were first informed, and no evidence of a reply or follow up treatment was submitted after the Tenant reached out again on October 19, 2022, I am satisfied on the balance of probabilities that the Landlord failed to meet their maintenance obligations under the Act.

39. The issue was not revisited again until February 22, 2024, when the Landlord confirmed they were made aware of the issue, and the Superintendent came to the unit and laid out ant traps. Three courses of treatment were then carried out over a period of 54 days, which I find to be a reasonable response by the Landlord. The parties also do not dispute that there was ongoing communication between them in late June 2024 through August 2024, with the Landlord again taking steps to remedy the issue during this time until it was fully resolved in September 2024. Based on the evidence and submissions before me, I am not satisfied that the Tenant proved, on the balance of probabilities, that the Landlord's attempts to remedy the ant issue were unreasonable in the circumstances after February 22, 2024.
40. The Tenant seeks a rent abatement as a remedy. The Tenant testified that she went to great lengths to keep the unit clean, as any exposed food would be covered in ants within 20 minutes. She also could not leave any food waste in her garbage, having instead to keep it in the fridge until she could dispose of it outside the unit. The Tenant mentioned having to deal with this issue daily and it being a constant source of stress and aggravation; however, the Tenant did not produce any evidence to show she contacted the Landlord about the extent of the problem between October 19, 2022 and February 22, 2024. Thus, while the problem may have been ongoing, I am not satisfied that the Tenant's evidence demonstrates the extent of the issue went beyond some disruption to her ability to reside normally in the unit. Nevertheless, a 5% abatement is reasonable given the pest problem that was ignored from September 19, 2022 when it was first reported, and takes into consideration the first spray on October 17, 2022 and two days later when the Tenant informed the Superintendent that the problem continued which was ignored. The Landlord let it continue without taking reasonable action and the problem became an infestation which required three treatments from a professional pest control company in February 2024. The abatement is calculated as follows: $(\$1,442.10 \times 12\text{months}/365\text{ days}) \times 521\text{ days} \times 5\% = \$1,235.07$.
41. The Tenant also raised the issue that when the Regional Manager used bug spray in the unit on October 17, 2022, the Tenant could have been harmed by the chemicals in the spray and should not have been present when it was used in the unit. However, the Tenant confirmed on cross-examination that she has not displayed any health issues as a result of the ant treatments, and she did not produce any evidence of the likelihood of any long-term side effects. Consequently, I am not satisfied on the balance of probabilities that the Tenant has proven her health was detrimentally impacted by the Landlord's course of ant treatment in the unit.

It is ordered that:

1. The Landlord shall pay the Tenant is **\$2,509.71** This amount represents:
 - \$2,456.71 for a total rent abatement.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by March 16, 2026.

3. If the Landlord does not pay the Tenant the full amount owing by March 16, 2026, the Landlord will owe interest. This will be simple interest calculated from March 17, 2026 at 4.00% annually on the balance outstanding.
4. If the Landlord does not pay the Tenant the full amount owing by March 16, 2026, the Tenant may recover this amount by deducting \$418.28 from the monthly rent over the course of five months and \$418.31 for the sixth month until there is no longer any money owing.
5. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

March 5, 2026
Date Issued

Fotoula Hatzantonis
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.