



Order under Section 31 Residential Tenancies Act, 2006

File Number: LTB-T-000849-24

In the matter of: 5, 77 PEMBROKE ST
TORONTO ON M5A2N9

Between: Mark Koftinow Tenant

And

Metcap Living Management Landlord

Mark Koftinow (the 'Tenant') applied for an order determining that Metcap Living Management (the 'Landlord'):

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.
- withheld or interfered with their vital services.

The hearing of the application commenced by video conference on March 27, 2025. The Landlord's Property Manager, M. Rajbhandari ('MR'), the Landlord's representative, M. Forrester, and the Tenant attended the hearing. The Landlord's on-call Superintendent, R. Bisalmos ('RB') signed in as a witness for the Landlord and was assigned to a breakout room. After hearing the testimony of the Tenant and MR, I mistakenly invited closing submissions, without hearing from RB. Just as the Landlord's representative alerted me to the oversight, the Tenant signed out of the hearing. By Interim Order LTB-T-000849-24-IN dated April 4, 2025 I ordered that the hearing be adjourned to allow for the hearing of the additional evidence.

The hearing continued to completion by video conference on December 22, 2025. The Landlord's Property Manager, MR, the Landlord's representative, L. Volney, the Landlord's on-call Superintendent, RB, and the Tenant attended the hearing.

Determinations:

1. The Tenant's application was filed on December 20, 2023, setting out 13 issues for determination. The only requested remedies were return of the last month's rent deposit and return of a \$50.00 key deposit. On February 18, 2025 the Tenant requested that the application be amended to include 15 additional issues and that the requested remedies include a rent rebate, an administrative fine and an award of punitive damages.
2. At the outset of the hearing on March 27, 2025 I reviewed each of the Tenant's issues and narrowed them to those properly before me, as follows.

From the Tenant's Initial Application:

1. Multiple L1 applications filed – Denied as Landlord is entitled to bring multiple applications;
2. Tenant was not notified of the hearing for his T2 application – Denied as this complaint was not properly before me. The Tenant's avenue for relief would have been to request a review of the order from that application, which he did not pursue;
3. Tenant was not credited for, or receive back, his last month's rent deposit – This issue was properly before me;
4. Key deposit was not refunded – This issue was properly before me;
5. No heat in the building from September 1, 2023 to October 27, 2023, when the Tenant vacated – This issue was properly before me;
6. Septic problem in the building first reported in August 2023 and not rectified by the time the Tenant vacated on October 27, 2023 – This issue was properly before me;
7. Rotting garbage outside the Tenant's window first reported in July 2023 and not rectified until early October 2023 – This issue was properly before me;
8. Multiple N4 notices whose amounts did not correspond to the amounts in non-N4 notices – Refer item 9;
9. Multiple non-N4 notices whose amounts did not correspond to the amounts in N4 notices served for the same period – I accepted that this issue should be heard;
10. Rent receipts not provided on request – This issue was properly before me;
11. Access to unit denied from April 20, 2023 to April 24, 2023 due to fire damage – This issue was properly before me;
12. No hot water from July 4, 2023 to July 19, 2023 – This issue was properly before me; and

13. Complaints about the tenants in unit 16 of the residential complex were not adequately addressed by the Landlord – This issue was properly before me subject to a question about sufficient particularity.

From the Tenant's Proposed Amended Application

14. Items 1 through 5 and issue 12 were, in substance, challenges to earlier orders issued by the LTB further to various applications brought by both the Landlord and the Tenant. None of these issues were properly before me in the context of the Tenant's present T2 application, as they amounted to requests for review of orders through the 'back door' of a T2 application.
 15. Items 5 and 7 did not constitute new issues;
 16. Item 8 was subsumed in issues raised in the initial application and did not constitute new issues;
 17. Items 9, 14 and 15 were requests for rent rebate, administrative fine and general damages – Submissions on these requests will be considered;
 18. Item 10 pertained to a contract dispute between the Tenant and the Landlord and was not properly before me;
 19. Item 11, regarding the Landlord's enforcement of earlier orders, was not within my jurisdiction and not properly before me; and
 20. Item 13 pertaining to filing of materials for a hearing, was already covered in the LTB's Rules and not an issue for determination.
3. So the issues identified for determination were the following:
- a) Last Month's Rent Deposit;
 - b) Return of Key Deposit;
 - c) Lack of Heat September 1 to Oct 27, 2023;
 - d) Septic Problem August 2023 to October 27, 2023;
 - e) Rotting Garbage;
 - f) Multiple Non-N4 Notices;
 - g) Rent Receipts;
 - h) Access to Unit April 20 to 24, 2023;
 - i) Hot Water July 4 to 19, 2023; and
 - j) Problems with Tenants in Unit 16, subject to my finding about lack of particularity.

Issue a) Last Month's Rent Deposit

4. It was undisputed that the Tenant paid a last month's rent deposit at the outset of his tenancy and that he vacated the unit further to Order LTB-L-054435-22, granting the Landlord's L1 application. That order stated, further to information provided in the Landlord's application, that no last month's rent deposit had been paid by the Tenant. As a result, the order gave the Tenant no credit for that deposit or for any interest that may have been owing on it.
5. Rent at the time of the tenancy's termination was \$1,011.23. The Tenant took possession of the unit in 2009. The Tenant vacated on October 27, 2023.
6. The Tenant claimed that he had never received any interest payment from the Landlord for the deposit. The Landlord's Property Manager, MR, explained that the Landlord's practice was to effect a payment of interest on last month's rent deposits by increasing each tenant's last month's rent deposit amount by a credit equal to the amount of the annual rent increase – an amount which corresponded to the interest payable annually by the Landlord for those deposits.
7. The Landlord's representative pointed me to a credit applied to the Tenant's ledger in November 2023, after the Tenant had vacated, in the amount of \$974.88. That amount was identified as a credit of the last month's rent deposit.
8. There were two problems with the Landlord's reliance on this entry. First, it corresponded with the Tenant's rent prior to two subsequent rent increases. Had the last month's rent deposit credit been properly increased, to account for the interest in the manner described by MR, the credit should have amounted to \$1,011.23. Second, the Tenant did not receive that credit. It was not reflected in the L1 order on which the Tenant's termination was based.
9. I find that the Tenant is entitled to recovery of \$1,011.23, representing the initial last month's rent deposit, increased to reflect credit for interest over the course of his tenancy.

Issue b) Return of Key Deposit

10. The Landlord did not dispute the Tenant's assertion that he had provided a \$50.00 key deposit. The Landlord's representative indicated that the Landlord did not object to returning that deposit to the Tenant.

Issue c) Lack of Heat September 1 to October 27, 2023

11. The Tenant testified that the heat in his unit was not activated in the fall before he vacated the unit. His unit was cold from September 1, 2023 through to the time he vacated at the end of October. He understood that the Landlord was legally required to activate the heat as of September 15th and so sought a rent rebate for the period September 15, 2023 through the end of October 2023.
12. The Tenant had no objective evidence to substantiate his claim of coldness in the unit. There was no thermostat in the unit and he had no way to measure the temperature. He

testified that he emailed MR at the time to complain about the heat. MR had responded that the heat had been turned on.

13. MR testified that the building in which the unit is located is a 5-storey, 16 unit building. In early September 2023 the Landlord discovered that there was a problem with the domestic hot water in the building. She was told that the heat exchanger needed to be replaced as soon as possible. MR referred, during the hearing, to a Purchase Order dated September 5, 2023 (not filed with the LTB) setting out the nature of the problem and the need for it to be repaired. Arrangements were made to have all the necessary work done and the work was completed by September 12, 2023. The heat was fully operational by September 15th, as required by municipal By-Law.
14. The Tenant did not dispute MR's assertion that repair work was done, but maintained that the heat problem in his unit persisted. He understood that other tenants had been offered in-unit heaters around this time. He was not given that offer. He did not follow up on his initial complaints to MR about the heat as, by October, he was getting ready to vacate the unit.
15. MR testified that no other units had complained about lack of heat during the September/October 2023 period and, contrary to the Tenant's understanding, no heaters had been provided to other tenants.
16. MR's testimony was supported by that of the Landlord's on-call Superintendent, RB. He testified that work had been done on the building's boiler in fall of 2023 but that there had not been any complaints about lack of heat. He had no recollection of any other tenant being provided with a space heater around that time.
17. I find that the Tenant has failed to establish that the Landlord failed to respond reasonably to any complaint of lack of heat. The Tenant presented no objective evidence of the actual temperature in his unit – particularly after September 15, 2023 – and acknowledged that he did not follow up with any complaint subsequent to his initial complaint, which I understood to be in early September. There was no evidence of any other tenant complaining about lack of heat and the Tenant's allegation about other tenants having been provided with heaters was unsubstantiated and denied by both MR and RB.

Issue d) Septic Problem August 2023 to October 27, 2023

18. The Tenant testified that his unit was located directly above the area where the building's septic system is located. He complained of two incidents of ongoing septic stench in his unit: first, in April 2023 and second, in August 2023.
19. The smell in April 2023 was addressed by the Landlord. None of the Tenant, the Property Manager MR or the Superintendent RB were aware of what steps were taken at that time to address the problem but it was undisputed that the problem was fixed.
20. The problem resurfaced in August 2023. The Tenant testified that he complained to MR on August 11, 2023. He did not produce, and could not locate during the hearing, a copy of

the August 11th email to MR. The Landlord did not respond until October 2023, when a plumber was sent to the Tenant's unit to investigate.

21. MR testified that she did not hear from the Tenant about the problem until October 6, 2023. The October 6, 2023 email from the Tenant was not produced but MR read its contents into the record. The Tenant complained, in that email, about not having had a response to his complaints about the septic smell, garbage or noise from other tenants (the latter two issues being issues addressed in this order).
22. Arrangements were made for a plumber to investigate the issue on October 11, 2023. As set out in the plumber's invoice dated October 18, 2023, the plumber acknowledged a smell coming from the sinks in the bathroom and kitchen of the Tenant's unit. He attributed the problem to the lack of a vent, which prevented proper water drainage when the toilet was flushed. This led to a break in the trap seal, allowing sewer gases to escape into the unit. He proposed a fix involving installation of a cheater vent or having the tenant refill the traps when the smell is present by running the faucets (Refer Exhibit 3 at TOP -Doc-4422708).
23. There was no indication that this diagnosis or solution were communicated to the Tenant prior to his departure at the end of October. The problem was fixed after the termination of his tenancy (Refer Exhibit 12 at page 11 of TOP Doc-5280442 [Additional LL Doc's], being a work estimate from the plumber dated October 26, 2023).
24. In the absence of any early August 2023 email from the Tenant supporting his testimony about a complaint in August 2023, and in the face of MR's reference to a written complaint on October 6, 2023, I find that the Landlord first received notice of the renewed smell in early October 2023.
25. That said, the plumber acknowledged the smell as of October 11, 2023 and proposed both a fix and a temporary work-around, neither of which were communicated to the Tenant. I find it likely that the smell would have been, as the Tenant described it, a 'stench' which would have a clear impact on his enjoyment of the unit. I find the Landlord's delay in effecting the fix until after the Tenant vacated was unreasonable in the circumstances and resulted in a substantial interference with the Tenant's reasonable enjoyment of the unit for at least half of the last month of his tenancy.
26. I find that the Tenant is entitled to a 10% rent rebate for this issue for the last half-month of his tenancy, amounting to \$50.56.

Issue e) Rotting Garbage

27. The Tenant's unit was on the second floor of the residential complex, with his living room window facing out over the rear of the building. A large bin, previously used for recycling, was located below that window. Garbage for the building was collected in the front of the building but tenants in a unit on the ground floor had been consistently using the rear bin for garbage for months, allowing the garbage to accumulate unattended and create a strong smell. He knew that the tenants in unit 16 were responsible as he saw them putting items in the bin.

28. It was uncontested that the Tenant initially complained about the problem to MR on April 21, 202. MR wrote to the unit 16 tenants on April 24, 2023 to pass on the Tenant's complaint about the garbage (Refer Exhibit 6 at page 6 of TOP Doc-5289442). MR testified that she sent a letter to the unit 16 tenants each time she received a complaint about them from the Tenant.
29. The problem persisted (Refer Exhibits 4 and 5, being photos of the bins at TOP Doc-2880522 and 2880529, taken around August or September 2023). The Tenant received no response from the Landlord or MR about any steps taken by the Landlord to address the problem.
30. The Tenant testified that he complained at least twice to MR about the unit 16 tenants' misuse of the bin following his April 2023 complaint.. The situation got so bad that he arranged on September 9, 2023 for a By-Law officer to investigate. The By-Law officer attended the complex on September 28, 2023. He told the Tenant that he would be giving the Landlord a time limit, which the Tenant understood to be 10 days, to remove the garbage, failing which the City would remove it at the Landlord's cost.
31. MR testified that the Landlord had a cleaner attend at the residential complex on Wednesday and Friday of each week to address garbage at the complex. She acknowledged that the Landlord had had issues with the tenants in unit 16 and that she had written them multiple letters about complaints received from the Tenant.
32. RB confirmed MR's testimony about having a cleaner attend at the complex on Wednesday and Friday of each week. He testified that he and MR had both instructed the cleaner to address the items in the rear bin and that sometimes he helped the cleaner remove the items from that bin. Each time they removed items from the bin, the unit 16 tenants kept putting garbage into it. MR responded to the unit 16 tenants' actions by writing letters to them and speaking to them. There was no indication that any legal action was taken further to these communications.
33. The Tenant disputed RB's testimony about regular removal of material from the rear bin. He observed the bin accumulating garbage without the garbage being removed. His testimony in that regard is supported by the quantity of items in the bin shown in the Exhibit 4 and 5 photos. I concur with the Tenant's conclusion that the quantity is consistent with accumulation over a much longer period than a week.
34. MR received an email from the City on September 28, 2023, notifying the Landlord that the rear area of the building was to be cleaned and freed of waste and litter. The City specifically referred to cleaning the subject bin.
35. MR testified that the Landlord had already taken steps to terminate the tenancy of the unit 16 tenants at the time MR received the Tenant's first complaint in April 2023, having filed an L1 application for termination back in 2022. The Landlord had determined that the most expeditious way to deal with the unit 16 tenant problems was to rely on that L1 application as it was already in the LTB pipeline to be heard. In fact the LTB issued an order on May 4, 2023, terminating the tenancy of the unit 16 tenants as of May 15, 2023, but it took until early October 2023 for the eviction to be enforced. Once the unit 16 tenants had vacated,

the Landlord arranged for a full cleanout of that unit and of the rear of the building, including cleanout of the subject bin. That cleanout was effected on October 17, 2023 and the problem did not recur following the eviction of the unit 16 tenants.

36. I find that the Landlord failed to take timely steps to adequately address the continuing problem of accumulated garbage in the bin below the Tenant's window. It was clear that the communications with the unit 16 tenants were ineffective in addressing the problem. The fact that the Landlord had already taken steps to terminate their tenancy did not address the impact on the Tenant of the continued garbage under his window from April through to mid-October 2023, shortly before he vacated the unit. I find that the Landlord's failure in this regard resulted in a substantial interference of the Tenant's enjoyment of his unit over that period.
37. I find that the Tenant is entitled to a 5% rent rebate for the 6 ½ month period from April through mid-October 2023, amounting to \$657.30.

Issue f) Multiple Non-N4 Notices

38. The Tenant testified that he received multiple non-N4 notices about rental arrears in addition to multiple N4 notices of termination. The non-N4 notices showed amounts which differed from the amounts in the N4 notices issued for the same periods, causing him stress and confusion.
39. There was no question that the Landlord issued multiple notices to the Tenant in addition to, and concurrent with, multiple N4 notices. It was undisputed that the non-N4 notices contained amounts which were significantly higher than the N4 amounts for the same period. For example, a non-N4 notice issued on September 16, 2022 showed rent arrears amounting to \$3,382.22, whereas the N4 notice for that same timeframe showed rent arrears amounting to \$2,166.68 (Refer Exhibit 11, begin notices at LTB Doc-2833679 and 4402053).
40. The Landlord's representative explained that the non-N4 notices referenced the rental arrears set out in the Tenant's ledger and that the N4 notices referenced only the amount which the Landlord could legally pursue with the LTB in light of the Landlord's decisions to delay in pursuing enforcement of earlier LTB rental arrears orders. In other words, the Landlord either failed to enforce termination within the required 6 month period following an order or failed to make a section 78 application within 30 days following a breach of an order and effectively wrote off those amounts for purposes of the more recent N4 notices. Details about the specific orders pertaining to the Tenant were not provided but the effect of this 'write off' was to effect a waiver of a significant portion of the Tenant's outstanding rent, to the benefit of the Tenant.
41. It is unclear to me why, in the face of the Landlord's 'write off' policy, the non-N4 notices still referenced the higher ledger amount and I can see how the discrepancies would have confused the Tenant. However, I do not accept that the discrepancy should reasonably have impacted the Tenant's enjoyment of his unit and recognize that the effective waiver benefitted the Tenant.

42. I find that the Tenant is not entitled to any rental rebate for this item.

Issue g) Rent Receipts

43. The Tenant testified that the Landlord had failed to provide him with requested rent receipts. MR testified that rent receipts had been given on request but confirmed that the Landlord would re-issue receipts to the Tenant.

44. The Tenant indicated during the hearing that the receipts were no longer of use to him and that he was dropping this claim.

Issue h) Access to the Unit April 20 to 24, 2023

45. The Tenant indicated during the hearing that he was dropping this claim.

Issue i) Hot Water July 4 to 19, 2023

46. The Tenant indicated during the hearing that he was dropping this claim.

Issue j) Problems with Tenants in Unit 16

47. During the hearing, the Tenant raised a number of specific complaints about the behaviour of the unit 16 tenants. He complained, specifically, about having been threatened by both visitors to unit 16 and one of the tenants in that unit. He had written to MR on multiple occasions about some of these complaints.

48. The difficulty with these allegations, as noted by the Landlord's representative, was that neither the Tenant's initial application nor his proposed amendment provided any particularity whatsoever about these complaints in the context of his application. Item 13 in the Tenant's initial application stated only "Complaints about occupants of #16, 77 Pembroke Street throughout 2022 until October 2023". The issue was not mentioned in the proposed amendment.

49. I indicated during the hearing that I would reserve on the question of whether this issue was properly before me on the basis of lack of particularity. I proceeded to hear testimony from the Tenant and MR on the allegations raised during the hearing, for consideration in the event that I ruled in favour of the Tenant on the question of adequate particularity.

50. I considered whether the Landlord may have had sufficient notice of the issues of concern to the Tenant by virtue of his various complaints to MR about the unit 16 tenants. I find that the Landlord had notice of the Tenant's concerns about those tenants by virtue of the Tenant's email complaints but also find that this notice does not translate into notice about which of those complaints were the subject of his application. It was clear that some of the complaints raised during the hearing pre-dated one year prior to the filing date for the Tenant's application. It was also clear that the Landlord was in the process of taking steps to terminate the tenancy of the unit 16 tenants during the year leading up to the Tenant's filing date. While these steps were not communicated to the Tenant I find that it was reasonable for the Landlord to conclude that the complaints raised during the hearing would not in fact be within the scope of the Tenant's application.

51. I find, in the result, that the Tenant's description of his complaints about the unit 16 tenants during the year leading up to the filing of his application lacked sufficient particularity to be included in this application and his request for rental rebate further to those allegations is denied.

Remedies

52. I find that the Tenant is entitled to the following remedies:

- a) Refund of the last month's rent deposit in the amount of \$1,011.23, representing the initial deposit plus accumulated interest;
- b) Refund of the \$50.00 key deposit;
- c) Rental rebate in the amount of \$50.56 for the Landlord's delay in addressing the sewage smell;
- d) Rental rebate in the amount of \$657.30 for the Landlord's failure to adequately address the garbage in the rear bin of the complex; and
- e) \$69.15 for the Tenant's application filing fees.

53. The Tenant also requested that the Landlord be ordered to pay an administrative fine and that the Tenant be awarded general, punitive and special damages.

54. As set out in the LTB's Interpretation Guideline 16, administrative fines are not paid to a party but to the Minister of Finance and are ordered only where a party's conduct in the proceeding before the LTB was unreasonable. The Tenant's sole stated basis for requesting this fine was that the Landlord had violated LTB rules. The Tenant gave no indication as to what rule, if any, was violated during the course of the present proceeding and I saw no evidence of any such violation on the part of the Landlord. To the extent that the Tenant may have alleged any wrongdoing on the part of the Landlord in the context of other applications before the Board, no such allegations would be properly before me.

55. The Tenant made no submissions during the hearing with respect to his request for general, punitive and special damages. He referred to this remedy in the proposed amendment to his application but the basis set out in that proposed amendment amounted to complaints about the impact on him of various prior orders and applications and of the the LTB's own processes. I find that the allegations do not support any finding of wrongdoing on the part of the Landlord in the context of the application before me and find that this request must be denied.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$1,838.24. This amount represents:
 - \$1,011.23 for last month's rent deposit;
 - \$50.00 for refund of key deposit;
 - \$50.56 for delay in addressing sewage smell;
 - \$657.30 for failure to adequately address rear garbage; and
 - \$69.15 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by March 24, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by March 24 2026, the Landlord will owe interest. This will be simple interest calculated from March 25, 2026 at 4.00% annually on the balance outstanding.

March 13, 2026
Date Issued

Lynn Mitchell
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.