



Order under Section 31 Residential Tenancies Act, 2006

Citation: Porter v Kluwak, 2026 ONLTB 22505

Date: 2026-03-20

File Number: LTB-T-085950-25

In the matter of: Unit 103, 103 AMHERST DR
AMHERSTVIEW ON K7N1V4

Between: Evan Porter Tenant

And

Todd Kluwak Landlord

Evan Porter (the 'Tenant') applied for an order determining that Todd Kluwak (the 'Landlord'):

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household (*T2 Application*).
- 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 (*T6 Application*).

This application was heard by videoconference on March 11, 2026. Only the Tenant attended the hearing.

As of 1:55 p.m., the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenant's evidence.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenant \$1,045.93.
2. By way of background, the rental unit is a multi-unit low-rise building. The Tenant's rental unit is located on the basement level. He resides in the rental unit with his young child.
3. For the sake of clarity, the Tenant's application is a T2/T6 application. However, the only request made in the Tenant's T6 application is for mold and asbestos testing due to exposure. The T6 portion of the application does not specify any allegations. However, I find that a reasonable landlord could infer the allegations from the statements made in the T2 portion of the application. The Tenant clearly refers to maintenance allegations.

Although the Tenant seeks compensation for the exposure to mold and/or asbestos in the T6 application, the claim does not state how much compensation the Tenant is seeking or why.

4. In the case of *Beaugé v. Metcap Living Management Inc.*, 2012 ONSC 1160, the Divisional Court states that it is an error in law to award damages where none is claimed. In other words, the Board may not assess a monetary claim when one is not stated within the claim.
5. Therefore, I am unable to assess any monetary compensation. However, I have considered the Tenant's request for mold and asbestos testing in the remedies found below.
6. For the following reasons, I find that the Tenant has proven, on a balance of probabilities, some of the allegations contained in the Tenant's application. Therefore, the Landlord shall pay to the Tenant \$1,046.23.
7. The Tenant's T2 application alleges that the Landlord:
 - i. Failed to provide timely, effective, and appropriate repairs to the rental unit, specifically the bathroom ceiling, the flooring, and the heat;
 - ii. Failed to provide the rental unit to the Tenant on the date it was promised; and,
 - iii. Misled the Tenant as to the quality of the finishings in the rental unit.

Disrepair

Bathroom Ceiling

8. The Tenant states that in April 2025, the Superintendent attended the rental unit because of a leak. The Superintendent proceeded to cut holes in the ceiling above the shower and above the toilet. The repairs were left unattended for a month. The area was moldy and the area above the shower dripped water on the Tenant daily while he was showering. The Superintendent reattend about four weeks later to patch the ceiling. However, the sanding and painting remains incomplete. During this period of repair, the Superintendent also dripped sealant into the tub which was not cleaned up and has left an unsightly mark.
9. The Tenant states that the impact of the ceiling repair is that it is unsightly. He also says it was "gross" to have dirty water dripping on him during his shower, and that his child is afraid of spiders.

Flooring

10. The Tenant also states that the flooring in the rental unit is in poor condition. The flooring is laminate or vinyl planks, and the planks have separated. In the bathroom, two planks have between 3 – 4 inches between them, and the other two bedrooms and living room have spaces of at least one inch between them in spots.

11. The Tenant states that the impact is that walking on the flooring is uncomfortable.

Heat

12. The Tenant says the heat in his rental unit does not function correctly. First, the rental unit is uncomfortably warm throughout the winter, and the Tenant needs to have windows open at all times. Second, the heat does not turn off during the summer months. He told the Superintendent around March 5, 2025, and once a week for three additional weeks after that. However, the Superintendent did not attend the rental unit to look into the issue.
13. The Tenant states that in the peak of winter and summer, he estimates the rental unit was about 25 degrees. He explains that because he is in the basement unit, it was not so hot as to cause distress, but his child had suffered from symptoms of heat exhaustion.
14. On any application before the Board, the person who alleges any particular incident or event occurred has the burden of leading sufficient evidence to establish that it is more likely than not that their version of events is true. Given the Tenant's uncontested evidence, I am satisfied that the Tenant has met his onus of proof. I further find that the Landlord has substantially interfered with the Tenant's reasonable enjoyment for all usual purposes by failing to address the disrepair in the rental unit. In my view, a reasonable landlord knows, or ought to know, that these items should have been addressed as part of their normal maintenance protocols in the building particularly when turning the rental unit over to a new tenant. Further, the Landlord ought to have responded to the Tenant's repeated request for maintenance to the heating system. At the very least, the Landlord ought to have been aware of these allegations after receiving a copy of the Tenant's application.

Failed to Provide Rental Unit on Time

15. The Tenant signed a lease and was to begin his tenancy on December 1, 2024. As the Tenant was driving to the rental unit on December 1, 2024, he called ahead to the Superintendent to let him know of his impending arrival. The Superintendent then advised him that the tenant living in Unit 103 had failed to leave the rental unit. The Tenant testified the Landlord did not make another rental unit available to him.
16. As a result, the Tenant had to call around to find somewhere for him and his child to stay. He was fortunate enough to find temporary accommodations with a family member. However, these accommodations were a considerable distance from the rental unit and his child's school. The Tenant had to drive about 1.5 hours each way going back and forth from the family member's home to his child's school, and to his job. He also had to secure storage for his belongings while he waited for the rental unit to become available and re-rent a U-Haul on December 4, 2024.
17. The rental unit became available on December 4, 2024, and the Tenant was able to move in that day.
18. In my view, the Landlord's failure to provide the rental unit on the day promised substantially interfered with the Tenant's reasonable enjoyment. He was forced to

scramble to find alternate accommodations and storage while he waited for the unit to be made available. No effort to assist the Tenant was forthcoming.

Misled Tenant

19. In November 2024, the Tenant went to the residential complex to look at the rental unit. He was met by someone named Lakshya, who showed him around a rental unit which had been freshly renovated. It had a kitchen island, brand new countertops and cabinetry, and brand-new flooring. He was told that the rental unit he would be renting would be the same as the one he was viewing.
20. However, when the Tenant moved in on December 4, 2024, he found the rental unit was not in the same condition as the one he had seen. The cabinetry and countertops were old; there was no kitchen island, and the flooring, as described earlier, was in a state of some disrepair.
21. The Tenant states he felt that he was disappointed and a little angry. He was not given a rent reduction for this unit, which was clearly not the same quality or condition as the one he had been promised.
22. I find that the Landlord has substantially interfered with the Tenant's reasonable enjoyment of the rental unit by effectively engaging in what is colloquially known as a "bait and switch." The Tenant was shown a pristine unit, told the unit he would be renting was in the same condition, and received a rental unit whose fixtures and finishings fell far below that standard. Further, the Landlord is responsible for representations made by their agents.

Remedies

23. The Tenant claims, by way of remedies:

- \$1,700.00 for one month's rent abatement
- \$400.00 for moving and storage expenses
- \$40,000.00 for other out-of-pocket expenses

24. In *Biltmore Terrace Apartments v. Nazareth*, [1997] O.J. No. 1881, a decision rendered under the *Landlord and Tenant Act*, the Court remarked:

It is always difficult to arrive at a proper amount or percentage by way of abatement. There is no magic formula. What is appropriate in each case will depend on the circumstances, including the amount of rent, the age and general condition of the premises, the nature and degree of the non-repair, and its duration, the efforts of the Landlord to inspect, the co-operation or otherwise of the Tenant in that regard, and the efforts made by the Landlord to rectify the defect.

25. An abatement of rent is a contractual remedy based on the principle that if you are paying 100% of the rent then you should be getting 100% of what you are paying for and if a tenant is not receiving the full value of what they are paying for, then they should be entitled to abatement equal to the difference in value.

26. There is no question that the Tenant is entitled to three days' reimbursement at 100% of the rent paid for the three days he was unable to access the rental unit. He was told his tenancy was to begin on December 1, 2024, but could not move until December 4, 2024. During this period, the Tenant received no value for the money that was paid.
27. I find this amount to be \$179.67 ($\$1,700.00 \times 12/365 = \$55.89/\text{day} \times 3 \text{ days}$).
28. When I consider the disrepair and the effect this had on the Tenant, I am of the view that a 15% abatement is appropriate. The disrepair is predominantly unsightly rather than having a significant daily impact on the Tenant. However, having dirty shower water drip on you, stepping on an uncomfortable floor would, and heat that cannot be turned off, in my view, substantially interfered with the Tenant's reasonable enjoyment of the rental unit for all usual purposes.
29. As the Tenant was already compensated for 100% abatement for the period between December 1 and 3, 2024, the period that the 15% abatement for the disrepair will be applied to is between December 3 and 31, 2024, a period of 27 days. I calculate this to be \$226.26 ($\$1,700.00 \times 12/365 = (\$55.89/\text{day} \times .15\%) \times 27 \text{ days}$).
30. With regard to the rental unit being priced at market value, despite it having lesser quality of fixtures and finishes, I find that the Tenant is entitled to an abatement of rent. The Tenant has effectively paid 100% for a rental unit he believed he would be getting but received an inferior quality. The rental unit he received does not have an island, has poorly maintained flooring, old cabinetry and countertops.
31. I am of the view that the Tenant is entitled to an abatement of \$150.00, based on my experience and knowledge of market rent values of similar units.
32. The Tenant also requests the costs for the U-Haul for the second trip made on December 4, 2024, and storage costs for \$400.00. He explains he would not have incurred this expense had the Landlord provided the rental unit to him on the agreed upon date in his lease. I agree that but for the Landlord's failure to provide the rental unit on the date promised, the Tenant had out-of-pocket and moving and storage expenses he would not have otherwise incurred.
33. I am of the view the Tenant is entitled to his reasonable out-of-pocket expenses as claimed for the moving truck, storage, and gas. I find the costs are reasonable, as U-Haul is typically about \$200.00 when gas is added in for the one-hour distance between the Tenant's temporary accommodations and the rental unit. This would attribute \$200.00 to the Tenant's storage, and again I find this to be a reasonable amount and consistent with other rental storage costs. Finally, I find \$30.00 of gas each day to travel back and forth is reasonable given the added distance he travelled as reflected by the travel time of 3 hours daily.
34. Therefore, I find the Tenant is entitled to \$400.00 for moving and storage costs, and \$90.00 for out-of-pocket expenses.
35. The Tenant also seeks \$40,000.00 for out-of-pocket expenses. The Tenant submits that he had a car accident which damaged his vehicle costing him \$28,000.00 and subsequently had to purchase another vehicle for \$10,000.00. The Tenant states that he

was stressed because of the Landlord's actions on or about December 1, 2024, and this is what led to the accident.

36. I am not of the view that the Tenant can be compensated for the loss of his vehicle or the cost to purchase another vehicle, as there is no connection between the Landlord's failing to provide the rental unit to the Tenant and the Tenant subsequently having a car accident. I say this because the standard for anyone driving in Ontario is that they are responsible for operating their vehicle safely. It is unfortunate the Tenant was distracted or otherwise under emotional strain during this period; however, ultimately, it is up to the Tenant to operate a vehicle safely.
37. Lastly, the Tenant's T6 application requests mold and asbestos testing. The Tenant says that because the ceiling was open for a period of four weeks, and there was evidence of mold in the hole, he and his child may have been exposed. Further, his evidence is that buildings of this age often have asbestos which is why he requests asbestos testing.
38. In my view, it is not superfluous to request testing of this nature, because the Tenant has a young child and both mold and asbestos carry a risk of serious, long-term health problems, particularly to children. I find this to be a reasonable request in the circumstances. As such, an order shall issue.
39. The total the Landlord owes the Tenant is \$1,045.23.
40. This order contains all of the reasons within it. No further reasons shall issue.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$1,093.93. This amount represents:
 - \$555.93 for a rent abatement.
 - \$400.00 for the moving, storage or other like expenses that the Tenant has incurred
 - \$90.00 for the reasonable out-of-pocket expenses the Tenant has incurred
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by March 31, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by March 31, 2026, the Landlord will owe interest. This will be simple interest calculated from April 1, 2026, at 4.00% annually on the balance outstanding.
4. If the Landlord does not pay the Tenant the full amount owing by April 1, 2026, the Tenant may recover this amount by deducting \$1,094.23 from the rent due and owing for the month of April 2026.
5. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.
6. On or before April 30, 2026, the Landlord shall arrange for mold and asbestos testing with a qualified technician. Results of the testing shall be provided to the Tenant within 10 business days of their receipt and shall be provided to the Tenant no later than July 31, 2026, failing which the Tenant may make another application to the Board.

March 20, 2026
Date Issued

Jane Dean
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

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