



Order under Section 31 Residential Tenancies Act, 2006

Citation: Preece v Noormohamed, 2026 ONLTB 20252

Date: 2026-03-16

File Number: LTB-T-074036-24

In the matter of: Room 1 Basement, 389 Vaughan Road
Toronto ON M6C2N8

Between: David Preece Tenant

And

Azad Noormohamed Landlord

David Preece (the 'Tenant') applied for an order determining that Azad Noormohamed (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.

This application was heard by videoconference on November 13, 2025.

The Landlord, the Landlord's Representative, Mehria Qqrizadha, and the Tenant attended the hearing.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must return the rental unit to a habitable state as soon as possible and provide the Tenant.
2. 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.

Facts and Submissions

3. It is undisputed that there was a fire at the residential complex on June 18, 2024, which caused substantial damage to the residential complex and rental unit. It was also undisputed that the fire was caused by another tenant storing an e-bike in the residential complex and was not the fault of the Tenant nor the Landlord.

4. The Landlord's position was that the tenancy agreement was frustrated by the fire on June 18, 2024, and therefore the tenancy terminated as of that date. As such, the Landlord believes he is no longer required to provide the Tenant with the rental unit.
5. The Tenant testified that the rental unit was declared uninhabitable on June 18, 2024, due to the fire damage and he was only permitted back in to collect what personal possessions he could retrieve. The Tenant has not been living in the unit since June 18, 2024, and has not been provided with access to the unit by the Landlord.
6. The Tenant's position was that the Landlord has substantially interfered with his reasonable enjoyment of the rental unit by failing to have the rental unit repaired and restored so that the Tenant could return to the rental unit. The Tenant's only requested remedy is that he be allowed to resume his tenancy in the rental unit at the same rent he was paying at the time of the fire.
7. The Landlord testified that the Tenant was told multiple times to get insurance. The Landlord testified that other tenants had insurance, and they were covered by their insurance. The Tenant testified he did not have tenant's insurance. The Tenant testified that he was not asked multiple times to obtain tenant's insurance, but it was brought up at least once.
8. The Landlord's testified there was an insurance payout in December of 2024 which was approximately \$170,000.00 short of the estimate to repair and restore the residential complex, so no steps to restore the residential complex have been taken. The Landlord testified that he has not taken any steps to secure the additional funds needed and does not know when he will be able to repair and restore the residential complex and rental unit.

Law and Analysis

9. With respect to the Landlord's claim that the tenancy agreement was frustrated because of the fire, section 19 of *the Residential Tenancies Act, 2006* (Act) states that doctrine of frustration of contract and the *Frustrated Contracts Act* apply with respect to tenancy agreements.
10. The Divisional Court held in *Barnaby v. Salamander Opportunities et al*, 2018 ONSC 5749, that the Board correctly identified the test for frustration as follows:
 - a) An unexpected event that was not foreseeable or contemplated in the contract;
 - b) That is not the fault of either party; and
 - c) That drastically changes the nature of the contract so that it is impossible (not just difficult or expensive) to perform the obligations under the contract. The impossibility of performance must be of a long-term nature and not temporary or transient.
11. In this case, the first part of the test for frustration has not been met. Both parties testified there were discussions regarding insurance, suggesting that it was contemplated by the parties that insurance may be needed in the event the residential complex sustains significant damage. The Landlord's testimony was that the Landlord had insurance and all, but two tenants had their own insurance. Furthermore, the Tenant admitted he had been told at least once to obtain his own insurance. As such, the possibility of fire was

foreseen and contemplated by the tenancy and therefore the first part of the frustration test has not been met.

12. In addition, the third part of the test for frustration has not been met. Although the unit has not yet been restored, I am not satisfied that it is because it is impossible to do so. The Landlord received an estimate for the necessary repairs, which indicates that it is likely possible to restore the unit to a habitable condition. The Landlord's failure to perform the necessary work to restore the unit was not due to the impossibility of that task but rather because there was a financial shortfall in the insurance payout. The fact Landlord has not taken any steps whatsoever to attempt to cover the financial shortfall does not mean the tenancy was frustrated.
13. Further, the Landlord's own testimony was that it would not be impossible to restore or repair the residential complex, just expensive. That is exactly what the third part of the test for frustration contemplates and what the Landlord admitted that it would simply be expensive.
14. As to whether the impossibility of performance is of a long-term nature, the Landlord offered no evidence of how long the repairs would take. However, the repairs to the neighbouring building, which had only smoke damage, took approximately 5 weeks. I cannot find that the impossibility of performance is of a long-term nature as there was no evidence presented as to how long it would take to restore the residential complex.
15. As all three parts of the test must be met to establish frustration, the test has clearly not been met in this case, and the tenancy was not terminated due to frustration.
16. For the sake of completeness, I should also note that the tenancy has not been terminated by any other means. Neither the Landlord nor the Tenant have served notices of termination and there has been no agreement to terminate the tenancy. The Tenant has been very clear that he wants to reinhabit the rental unit as soon as possible and the only reason he has not is because the parties were informed the rental unit and residential complex are uninhabitable until restored. I am satisfied that the Tenant has not abandoned the rental unit.
17. Since the tenancy was not frustrated, or terminated by notice/agreement, and the Landlord was not permitted to recover possession on the grounds that the unit was vacated or abandoned, I find that the tenancy has not terminated and that it continues to be in place.
18. As the tenancy is ongoing, the Landlord has an ongoing obligation under section 20(1) of the Act to provide the Tenant with a rental unit that is in a good state of repair.
19. The undisputed evidence is that that unit has not been habitable since June 18, 2024. I am satisfied that the Tenant has proven on a balance of probabilities that the Landlord has intentionally delayed completion of the repairs. The repairs have not been commenced, and the Landlord has not provided a sufficient explanation for that failure other than the financial shortfall in the insurance payout. The Landlord has not done anything to attempt to cover the financial shortfall. The Landlord did not provide other repair quotes to see if the repairs could be done for less. I am not satisfied that the Landlord has taken reasonable steps to attempt to repair the residential complex and rental unit and instead,

the Landlord simply relied on the fact that there was a financial shortfall and chose not to take any further action.

20. Therefore, I find that the Landlord has substantially interfered with the Tenant's reasonable enjoyment of the rental unit and residential complex by failing to address the repairs required as a result of the fire in a timely manner.

Remedies

21. The only remedies being sought by the Tenant were as follows:

- a) That the Tenant be allowed to resume occupation of the rental unit at the rate he was paying at the time of the fire.
- b) An interim order be issued preventing the Landlord from renting the rental unit to any other party until repairs are completed.
- c) Updates from the Landlord about the repair process.

22. Since the tenancy has not been terminated, the Tenant continues to have the right of possession once the rental unit is habitable. Furthermore, since the tenancy has not been terminated, it continues on the terms and conditions existing at the time of the fire once the Tenant is able to resume occupation of the rental unit.

23. An interim order was issued on October 10, 2024, directing the Landlord not re-rent the rental unit and to preserve and keep safe any of the Tenant's property. That order remains in effect. As such, this remedy sought by the Tenant has already been provided.

24. Section 31(1)(f) of the Act authorizes the Board to make orders it considers appropriate. Here, the unit is not currently inhabitable and therefore, I cannot order that the Tenant be put back into possession at this time.

25. However, since the tenancy has not terminated, the Landlord continues to have obligations under section 20(1) of the Act, and I find that ordering the repair as soon as possible to be an appropriate remedy. Therefore, the Landlord will be ordered to complete repairs as soon as possible and then permit the Tenant to resume their occupation of the rental unit at the same rent as when the fire occurred.

26. The remainder of the relief being sought by the Tenant seeks to constraint the Landlord's choice of actions in dealing with a tenancy. I do not find it appropriate to direct the Landlord take certain actions. Other than complying with their obligation under section 20(1) of the Act, the Landlord is permitted to exercise any other options available under the Act.

27. As such, no further relief shall be granted to the Tenant.

It is ordered that:

- 1. The tenancy continues on the terms and conditions existing as of June 18, 2024.
- 2. The Landlord shall:

- a) Immediately commence all repairs necessary to return the rental unit to a state fit for habitation and to comply with health, safety, housing and maintenance standards. The repairs must be completed as soon as possible;
- b) Starting on April 15, 2026, and on the 15th day of each month thereafter the Landlord shall provide the Tenant with a written status update on the repairs; and
- c) Allow the Tenant to resume occupancy of the rental unit as soon all repairs necessary to return the rental unit to a state fit for habitation and to comply with health, safety, housing and maintenance standards have been completed,

28. If the Landlord has not completed the repairs necessary to return the rental unit to a state fit for habitation and to comply with health, safety, housing and maintenance standards and allowed the Tenant to return to the rental unit by March 31, 2027, the Tenant may file a new application with the Board.

March 16, 2026
Date Issued

Nicole Pedron
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.