



Order under Section 30 Residential Tenancies Act, 2006

Citation: Simpson v Woolery, 2026 ONLTB 22717

Date: 2026-03-19

File Number: LTB-T-094378-24

In the matter of: Basement, 5161 Stamford
Niagara Falls ON L2E1M8

Between: James Stewart Simpson Tenant

And

Kenroy Woolery Landlords
Amy Paquin

James Stewart Simpson (the 'Tenant') applied for an order determining that Kenroy Woolery and Amy Paquin (the 'Landlords') 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.

This application was heard by videoconference on December 10, 2025.

The Landlords, the Landlords' legal representative, C. Pena, and the Tenant attended the hearing.

Determinations:

Preliminary Issues – Request to Amend Application – T1

1. The Tenant requests to amend the application to include remedies pursuant to a T1 application. In this case, a rent deposit of \$1,450.00 and \$1,450.00 for an alleged illegal rent charge.
2. The Landlords were not opposed to the amendment and stated that they were prepared to address the additional claims.
3. Section 200(1) of the *Residential Tenancies Act, 2006*, the ("Act"), provides that an applicant may amend an application to the Board in accordance with the Rules.
4. Rule 15.4 of the Board's Rules of Procedure provide that, the LTB may exercise its discretion to grant a request to amend made at the hearing if satisfied the

amendment is appropriate, would not prejudice any party and is consistent with a fair and expeditious proceeding.

5. This is a T6 application. A T1 application is for a rebate of money that the Landlord owes. The T6 application requests remedies consistent with those available under a T1 application. The Landlords are not opposed to the amendment and state that they are prepared to proceed with the claims alleged in the T1 application.
6. In the circumstances, I find that Landlords would not suffer prejudice as a result of the amendment. Pursuant to subsection 200(1) of the Act and Rule 15.4, I consented to amend the application to include a claim for illegal charges in the amount of \$1,450.00 and for the return of the last months rent deposit in the amount of \$1,450.00.

Determinations:

T6 Application

7. The Tenant requests a rent abatement for \$2,900.00 because the Landlord failed to maintain the rental unit in a good state of repair and fit for habitation with respect to mold, a sewage backup and failing to maintain a toilet.
8. The Tenant moved into the rental unit on June 15, 2024 and moved out of the unit on November 15, 2024.

Mold

9. There is no dispute that the parties agreed for the Tenant to bring his own washer and dryer into the rental unit. The Tenant testified that on the date of move in, he observed black mold under the black rubber mats the machines were placed on. The Tenant testified that the Landlord advised them to scrub the mats with bleach which was completed by the Tenant's mother in early July 2024.
10. The Tenant testified that the mold came back a few times between August and September 2024. When he raised the issue with the Landlord again, the Tenant testified that the Landlord advised him to spray the mats. The Tenant submitted a photo taken on or around November 15, 2024 and testified that the photo is the brick wall beside the washer and dryer. The Tenant testified that the wall was not damp, but mold could be observed. On review of the photo, there appears to be black spots extending approximately one foot from the base of the concrete wall.
11. The Tenant testified that the Landlord attended the property to check for mold in November 2024 and thanked his mother for cleaning the mold off the wall. The Tenant submitted a copy of text communication between him and the Landlord and testified that the Landlord knew and agreed it was mold and therefore provided the Tenant with the option to break the lease. In the text communication between the parties, the Landlord discusses using bleach to remove the mold and to monitor it. The Tenant responds and states, in part, "So I've discussed it with my mother, and she's very concerned about the probability of mold as well." The Text communication further suggests that the Landlord

offered to end the lease early which is accepted by the Tenant. An exact date to vacate the unit is not identified in the text communication.

12. In cross examination, the Tenant testified that he was not aware he could conduct his own mold inspection. He and his mother believed it was mold, but it was not guaranteed. The Tenant maintains that the Landlord knew it was mold.
13. The Landlord, Kenroy Woolery (KW), does not dispute that the Tenant raised the issue of mold when he moved in. KW takes the position that the dark spot on the base of the wall area is a result of the black mats that were placed on the floor and not related to mold. KW testified that he was going to clean the wall, but the Tenant's mother insisted that she would do it herself, so he let her.
14. There is no dispute that the Tenant raised the issue again in November 2024, KW testified that he attended the unit, and that he did not observe mold. KW further testified that he was able to vacuum the residue from the mats and has not had any further concerns.
15. Based on the evidence and testimony before me, I am not satisfied that the Tenant has proven, on a balance of probabilities, that mold was present in the rental unit. The Tenant testified that mold existed in the unit and that the Landlord was aware of the issue however, this was denied by the Landlord.
16. On review of the text communications submitted by the Tenant, the Tenant referred to the "probability" of mold rather than confirming its presence. The Tenant also did not produce any documentary evidence, such as a mold inspection report or an air quality test, to support a finding that mold was present in the unit.
17. During cross-examination, the Tenant testified that he believed the substance to be mold but was unable to confirm it was mold. In the absence of sufficient evidence to establish the presence of mold in the unit, this claim is denied.

Sewage Back-up/Toilet Issues

18. There is no dispute that the shower backed up on October 2, 2024, and that the toilet became clogged on October 6, 2024, and November 1, 2024.
19. There is no dispute that the Landlord snaked the toilet on October 6, 2024, and retained the services of Prince Plumbing to address the issue. It is also not disputed, that Prince Plumbing advised the Landlord that, in order to repair the sewage backup issue and the clogged toilet, the wall would need to be opened and the area dug down to access and repair broken or leaking pipes.
20. The Tenant testified that between October 6, 2024, and November 11, 2024, the pipes were not repaired and that the toilet continued to clog and therefore only worked intermittently. The Tenant testified that the toilet stopped flushing on November 1, 2024, and that he immediately advised the Landlord. The Tenant further testified that the plumber advised him to stop using the toilet until the pipe issue was repaired. However, written documentation confirming the plumber's recommendation was not submitted into evidence.

21. The Tenant testified that on November 11, 2024, he followed up with the plumber, who advised him that the Landlord had cancelled the work required. The Tenant testified that he immediately contacted the Landlord, who advised that he did not want further delays but was looking for the best estimate. The Tenant testified that the Landlord, Amy Paquin (AP), attended the unit and offered to terminate the lease early. The Tenant accepted her offer as he did not have the ability to use the toilet.
22. KW testified that he was unable to find a contractor willing to complete the digging required to repair the pipe. The Landlord asserts that he contacted over ten plumbers to address the concern, but they either provided expensive quotes to complete the digging or refused to undertake the work. The Landlord did not submit any documentary evidence, such as inspection reports or quotes, with respect to the plumbers contacted.
23. KW testified that he retained the services of a plumber to complete the work on November 13, 2024; however, the plumber cancelled and did not attend. Documentary evidence such as a copy of the quote or communications confirming the cancellation was not submitted into evidence. The Landlord submitted text communication with the Tenant confirming that as of November 13, 2024, he was still "waiting on the last few estimates to come in."
24. KW subsequently submitted a quote from Prince Plumbing dated November 13, 2024, in the amount of \$4,520.00 to complete the digging and repair of the pipe.
25. As a result of the high cost associated with the digging, KW testified that he completed the digging himself on November 16, 2024, after which the plumber only charged \$500.00 to repair the pipe. A copy of the repair invoice dated November 17, 2024, was submitted into evidence.
26. KW testified that the toilet issues were addressed immediately, but that it was agreed that the concern would ultimately be repaired by Prince Plumbing upon their return to town, as the plumber was out of town at the time. This is denied by the Tenant.
27. The Landlords testified that they were not aware the Tenant could not use the bathroom. KW asserts that after the toilet was repaired on October 6, 2024, no further concerns were raised until November 1, 2024, at which time he again contacted Prince Plumbing. KW further testified that the Tenant verbally advised him that there were no issues with the toilet. This is denied by the Tenant.
28. AP testified that several plumbers were contacted, and all advised that the wall would need to be opened, and the area dug to repair the pipe. However, the digging required was extremely expensive. AP testified that they wanted to repair the issue as soon as possible, but the cost of digging would cause financial hardship.
29. AP submitted an e-mail dated November 12, 2024, sent to the Tenant, in which she suggested that the Tenant could terminate the lease early provided that 60 days' notice was given. AP testified that an official termination date was never discussed with the Tenant and that the Tenant simply abandoned the unit on November 15, 2024. In cross-examination, the Landlord testified that the Tenant responded to her e-mail on November 15, 2024, advising that he would be leaving the unit as of that date, due to the smell in the unit, but would return to collect his belongings. AP maintains that she accepted this to

mean the Tenant abandoned the unit. On review of the e-mail response from the Tenant, paragraph two of the e-mail states, in part:

30. AP testified that after the repairs were completed, a new Tenant moved into the property on July 1, 2025, and no mold or plumbing issues have been raised to date.

Analysis

31. This application is filed pursuant to section 20 of the Act, which states 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.
32. The issue to be determined is whether the Landlords responded to the sewage and toilet issues within a reasonable time as required under section 20 of the Act.
33. 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.
34. Based on the evidence before me, I find that the Tenant did not establish, on a balance of probabilities, that the Landlord failed to maintain the toilet. There was no dispute that the toilet clogged on October 6, 2024 and November 1, 2024, and that on both occasions the Landlord retained the services of Prince Plumbing to address the issue. Although the Tenant testified, that the toilet continued to clog between October 6, 2024, and November 11, 2024, the Tenant did not submit any documentary evidence, such as text messages or e-mails sent to the Landlords, to support ongoing complaints during this period. The Tenant also testified that the plumber advised him not to use the toilet; however, no documentary evidence was submitted to substantiate this allegation.
35. The Landlords denied being made aware of the additional toilet concerns. Considering that the Landlords addressed the toilet issues immediately after they were raised, I accept the Landlords testimony that they were unaware of any further concerns. On a balance of probabilities, I find it more likely than not that the toilet only clogged on two occasions, October 6, 2024 and November 1, 2024, and that on both occasions the issue was promptly addressed by the Landlord.

36. With respect to the pipe issue, I find that the Landlords failed to meet the Landlords' obligations under subsection 20(1) of the Act to repair and maintain the rental unit in a good state of repair and to comply with health and maintenance standards.
37. There is no dispute that a pipe issue was discovered on October 6, 2024, which required digging into a wall in the rental unit to complete the repair. There is also no dispute that the repair was completed on November 17, 2024. The Tenant vacated the unit on November 15, 2024. As a result, the pipe remained unrepaired for 41 days.
38. KW testified that he obtained approximately ten quotes for the digging portion of the work, but that contractors refused to complete the work, leaving him with no choice but to complete the digging himself. KW did not submit any documentary evidence with respect to the alleged multiple quotes sought.
39. The Landlords both testified that the cost of digging was too expensive and AP testified that it would cause a financial burden to retain someone to complete the digging. KW eventually submitted a quote from Prince Plumbing dated November 13, 2024, quoting a cost of \$4,000.00 to complete the digging.
40. Based on the evidence before me, on a balance of probabilities, I find that the Landlords failed to address the pipe concern within a reasonable time after becoming aware of the issue. While the Landlords testified that they contacted approximately ten plumbers, no documentary evidence was submitted to support this assertion. I find it more likely than not that the Landlords did not obtain a quote for the pipe repair until November 13, 2024, approximately 39 days after the maintenance issue was first identified. While I accept that Landlords testimony that the cost of repair was high, there is insufficient evidence before me to support a finding that reasonable efforts were made to address the issue sooner.
41. As I have found that the Landlords failed to meet their obligations under section 20(1) of the Act, the next issue to be determine is the appropriate abatement.
42. The Tenant testified that the sewage leak caused by the broken pipe resulted in a foul odour within the rental unit which clung to him and to his clothing and personal belongings. The Tenant testified that he was forced to have dinner in his bedroom due to the foul smell and was told by children that he smelled of sewage.
43. The Tenant testified that he spent significant time at his mother's home due to the foul smell in the unit. He further testified that between October 11, 2024, and October 14, 2024, he remained out of the unit because the Landlords advised the pipe would be repaired but failed to do so. The Tenant testified that his bedroom was the only part of the unit he could reasonably use, as the remaining areas of the unit were affected by the odour. The Tenant testified that he ultimately decided to vacate the unit on November 15, 2024.
44. The Landlords testified that they did not notice any foul odours within the unit and submitted that the claim should be dismissed. However, on review of the e-mail communication from AP to the Tenant dated November 12, 2024, the e-mail states, in part:

"As you have mentioned, you can stay with your parents until this issue has resolved due to you being uncomfortable and the smell this broken pipe is giving off."

45. Based on the evidence before me, on a balance of probabilities, I find it more likely than not that the broken pipe resulted in a foul odour in the rental unit that made the Tenant's living conditions uncomfortable and that the Landlords were aware of the issue.
46. As the Tenant was completely out of his unit from October 11, 2024 to October 14, 2024, I find that a 100% rent abatement is reasonable for that time period. I further find that a 10% abatement is reasonable for the remaining 37 days during which the Tenant had to endure the foul odour in the unit.
47. In this case, the lawful rent was \$1,450.00 per month. In the circumstances, I find that a rent abatement of \$176.37 is appropriate for the 37 days during which the Tenant endured the odour. I also find that a rent abatement of \$190.68 to be appropriate for the four days the Tenant was completely out of the unit between October 11, 2024, and October 14, 2024. I am satisfied that the Landlords were aware of the breach before the application was filed in accordance with subsection 30(2) of the Act.
48. In determining the appropriate abatement, I have considered the severity and duration of the interference with the Tenant's use and enjoyment of the rental unit, including the period during which the Tenant was unable to use the unit and the period during which the odour continued to affect the unit.

T1 Application

Illegal Rent Charge

49. There is no dispute that the Tenant vacated the rental unit on November 15, 2024. The Tenant testified that he and the Landlords agreed to terminate the tenancy early as a result of the maintenance issues raised in the T6 application.
50. The Tenant testified that when he vacated the unit on November 15, 2024, he advised the Landlords that he would be returning to the unit periodically until December 15, 2024 to remove his personal belongings, as the last month's rent deposit would have covered rent to December 15, 2024.
51. The Tenant testified that he attempted to return to the unit on December 7, 2024 to remove some of his personal belongings; however the Landlord had changed the locks, alleging that the Tenant had abandoned the unit and refusing to provide access to the unit until the Tenant paid for December rent.
52. The Landlord argues that there was never an agreement to terminate the tenancy on November 14, 2024. There is no dispute that the Landlords agreed to allow the Tenant to terminate his lease prior to the end of the fixed lease term; however, the Landlords maintain that the Tenant was still required to provide 60 days' written notice to vacate.
53. AP acknowledged that the locks to the unit were changed three to four days after the Tenant vacated on November 15, 2024 because the Tenant stated in his November 15, 2024 e-mail that he was abandoning the unit, as addressed in paragraph 29 of this order.
54. The Board's Interpretation Guideline 4, *Abandonment of a Rental Unit*, states that:

Abandonment is a unilateral act by the tenant to relinquish their tenancy and give up possession of the rental unit without properly giving notice of the termination to the landlord. If the landlord is not sure whether or not a rental unit has been abandoned, they may file an application for determination of this issue with the Board; however, it should be noted the Board has no jurisdiction to issue an order for rent or compensation if a tenant is no longer in possession of the rental unit (see section 87). In this case, the landlord may seek a remedy by applying to Court.

55. Section 87(1) of the Act provides that a Landlord may apply to the Board for an order requiring a tenant or former tenant to pay arrears of rent if,
 - (a) the tenant or former tenant did not pay rent lawfully required under the tenancy agreement; 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 18 (1) of Schedule 4 to the *Protecting Tenants and Strengthening Community Housing Act, 2020* comes into force.
56. In this case, the Landlord has not filed an L1 application for arrears or an L10 application for arrears after the Tenant vacated the unit.
57. On a balance of probabilities, I am not satisfied that the Tenant abandoned the rental unit on November 15, 2024. The Tenant's e-mail dated November 15, 2024 clearly states that he would be returning to collect his belongings until December 15, 2024, which he believed to be the end of the rental period covered by his last months rent deposit.
58. The issue before the Board is whether the parties agreed to terminate the tenancy early.
59. The rental period is from the 15th day of the month to the 14th day of the following month.
60. There is no dispute that the parties had discussions about terminating the lease early. I accept the Tenant's testimony that the Landlords were aware he was vacating November 15, 2024 but would be returning to the unit until December 15, 2024 to remove his belongings, as stated in his November 15, 2024 e-mail. The Tenant submits that rent should only be owing to November 15, 2024, as the last month's rent deposit covered the period between November 15, 2024 to December 14, 2024.
61. The Tenant takes the position that the Landlords agreed to terminate the tenancy on December 15, 2024. I do not accept the Tenant's position. There is no evidence before me to suggest that the parties reached an agreement with respect to the date of move-out. I accept AP's testimony that she requested 60-days' notice to vacate and provided the Tenant with written details of what was required. Although parties may agree to terminate a tenancy at any time, there is nothing before me to suggest that the parties agreed to terminate the tenancy on December 15, 2024. Accordingly, I am not satisfied that such an agreement existed. Rent for the period November 15, 2024 to December 14, 2024 therefore remained owing.
62. As I have found that rent remained lawfully owing for the period November 15, 2024 to December 14, 2024, I am satisfied that the Landlords did not collect an illegal rent charge within the meaning of the Act.

63. The Tenant's claim for an illegal rent charge in the amount of \$1,450.00 is denied.
64. I note that the Landlord changed the locks to the rental unit without providing the Tenant with replacement keys, which is contrary to section 24 of the Act. However, this issue was not raised in the Tenant's application and is therefore not properly before the Board. Accordingly, the issue was not considered in my determination.

Rent Deposit

65. There is no dispute that the Tenant moved out of the rental unit on November 15, 2024, but intended to return to the unit until December 15, 2024 to remove his belongings. There is no dispute that the Tenant paid rent to the Landlord for the period November 15, 2024 to December 14, 2024 and the Landlord did not return the last months rent deposit.
66. Section 106(10) of the Act provides that, a landlord shall apply a rent deposit that a tenant has paid to the landlord or to a former landlord in payment of the rent for the last rent period before the tenancy terminates.
67. Section 88(1) of the Act provides that, If a tenant abandons or vacates a rental unit without giving notice of termination in accordance with this Act and no agreement to terminate has been made or the landlord has not given notice to terminate the tenancy, a determination of the amount of arrears of rent owing by the tenant shall be made in accordance with the following rules:
1. If the tenant vacated the rental unit after giving notice that was not in accordance with this Act, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in the notice, had the notice been given in accordance with section 47, 96 or 145, as the case may be.
 2. If the tenant abandoned or vacated the rental unit without giving any notice, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in a notice of termination had the tenant, on the date that the landlord knew or ought to have known that the tenant had abandoned or vacated the rental unit, given notice of termination in accordance with section 47, 96 or 145, as the case may be.

...

New tenancy

(3) Despite subsections (1) and (2), if the landlord enters into a new tenancy agreement with a new tenant with respect to the rental unit, the tenant who abandoned or vacated the rental unit is not liable to pay an amount of arrears of rent that exceeds the lesser of the following amounts:

1. The amount of arrears of rent determined under subsection (1) or (2).
2. The amount of arrears of rent owing for the period that ends on the date the new tenant is entitled to occupy the rental unit.

Minimization of losses

(4) In determining the amount of arrears of rent owing under subsections (1), (2) and (3), consideration shall be given to whether or not the landlord has taken reasonable steps to minimize losses in accordance with section 16.

68. Section 16 of the Act provides that, when a landlord or a tenant becomes liable to pay any amount as a result of a breach of a tenancy agreement, the person entitled to claim the amount has a duty to take reasonable steps to minimize the person's losses.

69. In the case before me, no evidence or testimony was submitted by the Landlords with respect to the steps they took to minimize their losses. As I am not satisfied that the Landlords made attempts to minimize their losses, I find that the Tenant is responsible for rent only up to December 14, 2024.

70. As the Tenant paid the Landlord \$1,450.00 for rent to December 14, 2024, I find that the Tenant is entitled to the return of his last month's rent deposit of \$1,450.00. The Landlord shall be ordered to return the last months rent deposit to the Tenant.

71. I have considered all of the evidence and submissions presented by the parties. Where I have not referred to specific evidence or submissions in these reasons, it is because I did not find them relevant to the issues to be determined or necessary to address in order to reach my conclusions.

72. This order includes all of my reasons within it no further reasons shall be issued.

It is ordered that:

1. The Landlords shall pay the Tenant is \$1,865.05 This amount represents:
 - \$367.05 for a rent abatement for the period ending November 15, 2024.
 - \$1,450.00 for the last months rent deposit.
 - \$48.00 for the cost of filing the application.
2. The Landlords shall pay the Tenant the full amount owing by March 30, 2026.
3. If the Landlords do not pay the Tenant the full amount owing by March 30, 2026, the Landlords will owe interest. This will be simple interest calculated from March 31, 2026 at 4.00% annually on the balance outstanding.
4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

March 19, 2026
Date Issued

Mayra Sawicki
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.