



**Order under Section 30
Residential Tenancies Act, 2006**

File Number: LTB-T-042155-24

In the matter of: 1157 Brasseur Crescent
Orleans ON K4A4Y5

Between: Lara Bokovay Tenants
Melody Johnson

And

Portobello Partnerships Landlord

Lara Bokovay and Melody Johnson (the 'Tenants') applied for an order determining that Portobello Partnerships (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 April 23, 2025.

The Landlord's Agents, Jean Lacroix and Debbie Pickup, the Landlord's Legal Representative, Marc-Roger Gagné, and the Tenants attended 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 Application

1. At the hearing, the application was amended to include the Tenants' updated remedy claims that were disclosed in accordance with the Board's Rules of Procedure. The Landlord's Legal Representative confirmed they were aware of the amendments and did not object to the request to amend. Taking into consideration the parties' submissions and Rule 15 of the Board's Rules of Procedure, the request was granted, and the application was appropriately amended.

T6 Application:

2. As explained below, the Tenants proved on a balance of probabilities some of the allegations contained in the application. Therefore, the Landlord must pay the Tenants \$1,514.83, inclusive of the cost of filing the application.
3. The tenancy commenced on December 19, 2023, and the application was filed on May 27, 2024. The Tenants were still in possession of the unit as of the day of the hearing.
4. The rental unit is described as a three-bedroom townhome. Submissions at the hearing centred around two main issues from the application: maintenance of the refrigerator/freezer and the oven/stove.
5. 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."
6. 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.
7. 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.

REFRIGERATOR/FREEZER:

8. The Tenants testified that the problems with the refrigerator/freezer began in late December 2023. The refrigerator was too cold and freezing their food, while the freezer was not cold enough and thawing their frozen foods. Though the Tenants had difficulty deciphering the settings for both the refrigerator/freezer, they could see that it was set to the recommended setting. The Tenants would check the temperature of the refrigerator every night to ensure any glass in the refrigerator would not explode and none of the food would spoil.
9. The Tenants first informed the Landlord of the issue via email on January 4, 2024, and the Landlord's Agent responded on January 5, 2024 stating that they would forward the Tenants' appliance concerns to Dufresne Furniture and Appliances ('DFA'), the appliance store who would in turn contact the manufacturer, Whirlpool Canada, for warranty and service. The Tenants emailed the Landlord's Agent again on February 12, 2024 stating that a technician had come to the unit the week of January 7, 2024, assessed the refrigerator, and ordered a new thermostat, however, no repairs had been completed. The

Landlord's Agent replied the next day stating that they would follow up on the Tenants' concerns. The Tenants again followed up with the Landlord's Agent on March 19, 2024 after not receiving any updates. The Landlord's Agent replied the same day that they would look into the cause for the delay and sent another work order to DFA who would be in contact with the Tenants soon to set up an appointment. A copy of the email exchanges was submitted as evidence.

10. The Tenants testified that the Landlord provided temporary replacement refrigerators on April 4, 2024 and May 6, 2024, however, there were similar issues with those refrigerators/freezers that would arise within four weeks of installation; likely because they were the same model as the Tenants' original malfunctioning refrigerator. There were also numerous technician visits throughout 2024 in order to remedy the issue. The problem was not resolved until the Landlord sent a new working refrigerator on March 2, 2025, over 14 months later.
11. The Landlord's Agent testified that the Tenants were made aware that the appliances in the unit were in new/like new condition when the tenancy started.
12. The Landlord's Agent emphasized that they responded to all communication from the Tenants regarding maintenance concerns within a reasonable time. They also followed up with DFA regarding the status of work orders for the appliances when asked. Though there would be delays at times from Whirlpool in locating and installing any new parts, that was not something that the Landlord could control. Temporary refrigerators were provided to the Tenants from other units and then replaced with a new refrigerator soon after. The Landlord also had to go through the warranty process for any issue with appliances which would inevitably cause delays, and the Tenants needed to understand that the Landlord does not have a warehouse of appliances ready to give to the Tenants.
13. Having considered the parties' evidence and submissions, I am satisfied on the balance of probabilities that the Landlord failed to meet their obligations under s. 20 of the Act. While the Landlord would respond to the Tenants' communications regarding their refrigerator issues in a timely manner, there were significant gaps in the maintenance period from January 11, 2024, when the Tenants testified the technician attended the unit to assess/repair the refrigerator, to March 2, 2025, when the Tenants received a properly functioning refrigerator that resolved the issue.
14. The Tenants did not receive their first temporary refrigerator until almost four months after their initial complaint to the Landlord. While there may likely be delays in ordering and installing new appliance parts and processing warranty claims, those did not prohibit the Landlord from supplying a loaner/temporary refrigerator in the unit within a reasonable time. Although the Landlord's Agent manages 70 units in the residential complex, it took almost four months to locate a temporary/loaner refrigerator for the Tenants' unit, which I find to be an unreasonable delay.
15. While the Tenants claim that the matter was not fully resolved until 14 months later, I take into account the Landlord's efforts during this period. The Landlord provided the Tenants with temporary refrigerators from April 4, 2024 onwards to meet their food storage needs, however the replacement refrigerators also had problems which in turn led the Landlord to keep replacing them until a new refrigerator was installed in the unit on March 2, 2025.

16. The issue here is that I am not satisfied the Tenants demonstrated that the Landlord was aware that the replacement refrigerators were defective when they were brought to the unit for the period from April 4, 2024 to March 2, 2025. In absence of such a finding, I am satisfied that the Landlord reasonably carried out ongoing attempts to mitigate and resolve the Tenants' maintenance issue for this period. Therefore, the Tenants are entitled to a remedy for the Landlord's breach of their maintenance obligation under the Act regarding the refrigerator/freezer for the period from January 12, 2024 to April 3, 2024.
17. The Tenants seek a rent abatement, compensation for the cost to replace their spoiled food, and general compensation for the stress, frustration, and lost wages of dealing with numerous service appointments and malfunctioning refrigerators/freezers and stoves/ovens until the issues were resolved.
18. As stated above, the period for which a remedy will be considered for the refrigerator/freezer is from January 12, 2024 to April 3, 2024. The Tenants did not provide sufficient supporting documentary evidence to adequately quantify how much or how often food in the refrigerator/freezer would spoil. The grocery receipts the Tenants submitted were also not for the period under which the Tenants can claim a remedy and were therefore not considered. Consequently, the Tenants' request for costs and out-of-pocket expenses because of the Landlord's breach is denied.
19. I am satisfied, however, by the Tenants' testimony and documentary evidence that they endured some disruption to their ability to normally reside in the unit during this period by having to check the temperature of the refrigerator each day to ensure food did not spoil. I also do not doubt that there were some limitations in their ability to use the appliance as they were still able to store the food in the refrigerator but items in freezer would thaw. The refrigerator is an important appliance in the unit, and the lack of adequate temperature in either the freezer or refrigerator impacted the normal daily use of the appliance. As such, I find an abatement of rent of 12% totaling **\$841.12** is reasonable for the period from January 12, 2024 to April 3, 2024 (82 days). The abatement is calculated as follows:

$$(\$2,600.00 \times 12 \text{ months} / 365 \text{ days}) \times 82 \text{ days} \times 12\% = \$841.12.$$
20. General compensation to address stress, frustration, and lost wages under the circumstances has not been established outside what has been considered and implemented under a rent abatement for both the stove and refrigerator; the Tenants' claim for lost wages is too remote in relation to the lost use of the refrigerator/freezer and some of the stove elements. Therefore, the Tenants' request for an additional remedy under s. 30(1) of the Act is denied.

OVEN/STOVE:

21. The Tenants testified they noticed the right front element on the stove was not working properly and there was a smell coming from the oven in early December 2023. The Tenants informed the Landlord of the issue on January 4, 2024. The Landlord forwarded their complaint to DFA and emailed the Tenants on January 5, 2024 asking them to confirm if there was any smoke coming from the oven or if there was anything in the oven that would burn causing the smell. The Tenants responded on January 5, 2024 that they had removed all plastic wrapping from the stove/oven, and the smoke only occurred the first time they used the oven.

22. The Tenants testified a technician examined the oven/stove on January 11, 2024 and ordered a new element and switches for the stove after finding melted wires on the back of the stove/oven. However, the Job Information form filled out by the service provider on January 12, 2024, submitted in both the Landlord's and Tenants' evidence, states that there was nothing wrong with the oven, and it just needed a good cleaning.
23. Though the Landlord would reply to the Tenants' follow up emails asking for repairs and updates, no repair attempts came until March 29, 2024, when a technician attended the unit and replaced a different element on the stove which resulted in two non-functioning elements instead of one, and did not address the chemical smell coming from the oven when used.
24. The Tenants were then given a temporary used oven/stove on May 30, 2024 while theirs was being repaired. The Tenants maintained that there was smoke/smells coming from that oven as well and informed the Landlord via email on May 31, 2024 of the problem. The Tenants then emailed the Landlord's Agent on July 15, 2024 to complain that some of the elements on that stove were also not working properly. The Landlord does not dispute that there were issues with the elements on the loaner stove, but they were not aware of the problem until the Tenants informed them. The Tenants maintain the oven/stove issue was not remedied until the Tenants were provided with a new one on March 2, 2025.
25. The Landlord maintains that the oven was new when the tenancy started, and the chemical smell likely came from the assembly oils that were being burned off when the oven was used. On cross-examination, the Tenants confirmed that it was recommended by the Landlord that they run the self-clean cycle for the oven to help with any chemical smell. The Landlord's Legal Representative submitted an email from the Landlord's Agent to the Tenants on September 17, 2024, that contained specific instructions from the manufacturer, Whirlpool Canada, on how to run the cycle safely to help alleviate the smell from a new oven. The email further states that Whirlpool informed the Landlord's Agent that the Tenants were previously instructed by them on how to clear the oven odours on a new stove, and the Tenants were not receptive to their instructions. The Tenants confirmed that they did not run the cycle because they did not feel safe doing so. The Landlord thus argued that the Tenants did not try to mitigate or assist in solving the issue by running the recommended self-clean cycle and opening the window or turning on the fan if the smell bothered them. The Tenants also did not try the remedy on the loaner oven when they complained of the same problem.
26. Based on the evidence before me, I am satisfied on the balance of probabilities that the Landlord failed to meet their obligations under s. 20 of the Act with respect to only the stove, but not the oven. The Tenants were provided with a possible solution to the chemical smell from the oven by both the Landlord and the manufacturer of the appliance, but they specifically chose not to follow the recommendation. Though the Tenants argued it was because they felt unsafe doing so, there was insufficient evidence to show that there was a serious risk to their health and safety by implementing the recommended cleaning cycle. The Tenants could have also mitigated any perceived risk by opening windows, turning on fans and increasing the ventilation in the unit when running the cycle. The Tenants also refused to try the self-clean cycle on the loaner oven. Though the loaner oven was not new, there was a possibility the same recommendation could remedy or mitigate the issue. As the Tenants elected not to follow the Landlord's and manufacturer's

recommendation, I am not satisfied the Tenants proved the Landlord was in breach of their obligations under s. 20 of the Act with respect to the oven.

27. In regard to the non-functioning stove elements, the Landlord was made aware of the issue on January 4, 2024, yet did not provide a temporary/loaner stove until May 30, 2024 while the original stove was being repaired, which I find to be an unreasonable amount of time. The Landlord's Agent's email to the Tenants on July 19, 2024 confirms that the element issue was not resolved for either the loaner or original stove by that time, and there was no evidence to suggest that the element issue was remedied or mitigated by the time the functioning stove was provided to the Tenants on March 2, 2025. However, the Landlord was not made aware of the non-functioning elements on the loaner stove until July 15, 2024. Therefore, I find the Landlord was in breach of their obligations under s. 20 of the Act with respect to the stove for the period from January 12, 2024 to May 29, 2024 (138 days) and July 16, 2024 to March 1, 2025 (228 days).
28. The Tenants did not dispute that they still had use of at least one of the burners to do their cooking, though for the most part they still had use of two of the stove elements during the breach period. The Tenants also did not provide sufficient evidence to show that the reduction of usable stove elements effected their ability to reside normally in the unit beyond a minimal disruption. Therefore, I find a small abatement of 2% of rent for 366 days (138 days + 228 days) totaling **\$625.71** reasonable in the circumstances. The abatement is calculated as follows: $(\$2,600.00 \times 12 \text{ months}/365 \text{ days}) \times 366 \text{ days} \times 2\% = \625.71 .

It is ordered that:

1. The Landlord shall pay the Tenants is \$1,514.83. This amount represents:
 - \$1,466.83 for a rent abatement.
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenants the full amount owing by May 8, 2026.
3. If the Landlord does not pay the Tenants the full amount owing by May 8, 2026, the Landlord will owe interest. This will be simple interest calculated from May 9, 2026 at 4.00% annually on the balance outstanding.
4. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

April 27, 2026

Date Issued

Fotoula Hatzantonis

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.