



Order under Sections 30 & 31 Residential Tenancies Act, 2006

Citation: McMillan v Baquer, 2026 ONLTB 30542

Date: 2026-05-01

File Number: LTB-T-032201-23

In the matter of: 254 CEDARVALE AVE
EAST YORK ON M4C4K2

Between: Kathleen McMillan
Jeremy Schaulin-Rioux Tenants

And

Khursheed Baquer
Syed Naqvi Landlords

Kathleen McMillan and Jeremy Schaulin-Rioux (the 'Tenants') applied for an order determining that Khursheed Baquer, Syed Naqvi and Mansoor Brothers Enterprises Inc. (the 'Landlords'):

- altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenants replacement keys;
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household; and
- did not give the Tenants 72 hours to remove their property from the rental unit or from some place close to the rental unit after the Sheriff evicted the Tenants (the 'T2 Application').

The Tenants also applied for an order determining that 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 (the 'T6 Application').

These applications was heard by videoconference on November 7, 2024 and on March 27, 2026.

The Tenants, the Tenants' Legal Representative, Christopher Karas, the Landlord, Syed Naqvi ('SN'), the Landlords' witness, Jolly Sam ('JS'), and the Landlords' Legal Representative, Daniel Greanya, attended the hearing.

Determinations:

Interim Order / Jurisdictional Issue

1. The matter was previously adjourned to permit the parties to provide written submissions regarding a potential jurisdictional issue that arose during the first hearing, namely whether the sale of the property affected the Board's jurisdiction to order against the named Landlords and if the purchaser of the property should be added as a party to the application. An interim order was issued, and the parties were given deadlines by which to complete their submissions.
2. Having reviewed the submissions provided, I was satisfied that the Board had jurisdiction to hear the application as pleaded. In this regard, the submissions and documents provided established that the tenancy ended prior to the sale of the property. This means that the tenancy or 'covenant' could not run with the land when purchased, as contemplated by section 18 of the Act because the tenancy had terminated. In light of this, I was satisfied that the purchaser was not a proper party to the proceedings. For these reasons, the application proceeded to be scheduled for a second hearing date with the same parties.

Preliminary Issue – Who is Landlord?

3. SN's evidence as to who was the landlord was as follows:
 - Khursheed Baquer ('KB') is the Landlord as he was the owner of the property during the tenancy;
 - KB is SN's cousin and SN acted as a property manager for KB during the tenancy;
 - Mansoor Brothers Enterprises Inc. ('MBEI') is SN's company and is not a landlord;
 - MBEI is not a property management company and had no connection with the rental property or the tenancy.
4. The Landlord's Legal Representative requested that MBEI be removed as a party to the application as it did not meet the definition of landlord under the Act.
5. The Tenants' Legal Representative was opposed to having MBEI removed as a party to the application.
6. This issue was not decided on a preliminary basis as the definition of Landlord is somewhat broad and should be determined based on the evidence presented. Accordingly, the Tenants and their representative were given the opportunity to present evidence on this issue throughout the hearing.
7. That said, based on the totality of the evidence and submissions provided, I find there is insufficient evidence to establish MBEI as a landlord.
8. Under section 2 of the Act, "landlord" includes,

(a) the owner of a rental unit or any other person who permits occupancy of a rental unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit,

(b) the heirs, assigns, personal representatives and successors in title of a person referred to in clause (a), and

(c) a person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent

9. Notably, MBEI was not named as a landlord in the lease agreement and was not named as an owner in any of the sale documents provided. In addition, there was no evidence that MBEI had the ability or authority to permit occupancy of the rental unit.

10. For these reasons, I find MBEI is not a landlord and MBEI has been removed as a party to the application. The style of cause has been amended accordingly.

The Applications

11. As referenced above, the Tenants filed a T2 Application and a T6 Application (collectively referred to as the Applications).

12. With respect to the allegation in the T2 Application that the Landlords did not give the Tenants 72 hours to remove their property from the rental unit after the Sheriff evicted the Tenants, the Tenants' Legal Representative confirmed that there was no eviction by sheriff. In light of this, this allegation is dismissed.

13. The issues in the Applications stem from a fire that took place in the rental unit, which is a detached two-storey home.

14. It was undisputed that: i) the tenancy was for a one-year fixed term tenancy commencing September 1, 2022; ii) there was a fire in the rental unit that took place in or around December 24, 2022, which caused serious damage to the back room area and also caused smoke and soot to infiltrate the other areas of the rental unit; and iii) the Landlords cashed the Tenants' rent cheques for January and February 2023.

Tenants' Evidence

15. The Tenant, Kathleen McMillan ('KM'), testified that the Tenants received a call on December 24, 2022 from their cat sitter that the rental unit was on fire. The Tenants were away at the time with their 18-month-old son. After that, they received a call from SN, who advised them that the rental unit was not habitable due to the fire.

16. The Tenants attended the rental unit on or about December 29, 2022 and found the unit to be in bad shape and smelling very strongly of smoke. In this regard, KM described the property as being devastated, the backroom in the property as being destroyed, and the walls and windows were dripping with water and soot.

17. The Tenants had retained their own restorations company to assist them in determining what belongings of theirs were salvageable. KM stated the Tenants were told by the restoration company that, based on the damage, they could not keep any of their belongings that were located on the first floor and could not keep most of their belongings located on the second floor.
18. On January 26, 2023, KM emailed the Landlords and requested the Landlords to hire a fire restoration company to post fire assessment testing and provide a report confirming that the property was safe for the Tenants to move back into. The email response from the Landlords was that they would not be doing a separate inspection and that they received approvals from the municipality to do the work and referred to an ESSA report and an engineer's report, which were attached to the email. In this same email, the Tenants were asked if they wanted to continue the lease. KM responded the next day that the Tenants wanted to continue the lease. A copy of the aforesaid email correspondence was tendered as evidence.
19. KM stated that on January 29, 2023 she had a telephone call with SN. During the call, he stated that the work to the rental unit was done, that the rental unit was being deep cleaned on January 30, 2023, and that the smell in the property was ninety-nine percent gone. SN also told KM that the rental unit was livable and ready for the Tenants.
20. However, when the Tenants attended the property on February 1, 2023, there were still contractors working in the unit and the house still smelled of smoke and chemicals. KM emailed the Landlords regarding this and requested: i) an updated timeline for the work; ii) that the kitchen be properly repaired, including replacement of all damaged cabinets; and iii) a final inspection be completed by a fire restoration company to evaluate the state of the house, including an air quality inspection. A copy of the email was tendered as evidence.
21. On February 5, 2023, the Tenants attended the rental unit with a technician from the restoration company they hired. KM stated that the technician told the Tenants that the unit was not livable based on the smell alone and that the floors and cabinets in the kitchen should have been replaced. KM sent the Landlords an email regarding this. In the email, KM stated that the restoration technician showed her various places in the kitchen where there was still soot and told her regular cleaning was not adequate and should be done by a restoration company that knows how to deal with fire damage. KM also wrote that the restoration technician told her that the whole kitchen should have been replaced. A copy of the email was tendered as evidence.
22. KM stated that during the visit to the property on February 5, 2023 she asked the restoration technician if they could provide the Tenants with documentation regarding the condition of the property. The restoration technician said that the Tenants could get an air quality test but that it was quite expensive, and that the cost should be covered by the landlord not the tenant.
23. On February 7, 2023, KM received a call from SN who told her that he had a restoration company go into the property and they found that the top of the kitchen cabinets had not been cleaned and that this was causing the lingering smoke odor. SN stated they had the top of the cabinets cleaned and that the smell was ninety-nine percent gone. He also said

that if they were not going to move back in that he needed to know so that he could take steps to rent out the property.

24. KM testified that the Tenants attended the rental unit again on February 8, 2023 and found little to no change with respect to the smell and could still see fire residue on one of the cupboard doors in the kitchen.
25. On February 11, 2023, KM emailed the Landlords and advised that the Tenants would be filing an application with the Board because the Landlords were refusing to provide the Tenants with an evaluation of the house by a fire restoration company and to conduct an air quality test. The email stated that, although the Tenants wanted to return to the rental unit they felt that they could not do so, especially since they have a small child. The Landlords were given a deadline of February 14, 2023 to respond whether they would do the evaluation and testing requested. If not, the Tenants would cancel their rent cheque for March 2023 and proceed with their application. KM stated that no response was received so she wrote to the Landlords on February 14, 2023 and stated that the rent cheque for March 2023 would be canceled. A copy of the aforesaid email correspondence was tendered as evidence.
26. KM testified that the Tenant, Jeremy Schaulin-Rioux ('JSR'), attended the property on February 21, 2023 to pick up their mail and collect some of their belongings. At that time, it was noted that the locks had been changed. KM stated that they still planned to move back in as soon as it was safe to do so and so she emailed the Landlords that same day and stated that the locks had been changed, which is against the law and that JSR would be calling to get replacement keys. In response, KM was told that the Tenants had breached the lease by not providing proof of insurance and that if the Tenants wanted to see the property they would have to schedule a time and provide proof of insurance before the visit. A copy of the aforesaid email correspondence was tendered as evidence.
27. JSR called SN's office to try and get a copy of the keys. KM stated that JSR was told that since the Tenants were taking the Landlords to court, the Landlords were taking the Tenants to court. JSR requested access to the Tenants' belongings and it was agreed that someone would meet him at the rental unit at 4:00 p.m. This meeting went ahead as scheduled and JSR was able to enter the property and got most of the Tenants' belongings out. The Tenants were not given a copy of the keys to the new lock.
28. KM stated that they never told the Landlord that they weren't moving back in. It was KM's position that they could not move back in because the Landlords changed the locks.
29. However, during cross examination KM stated that the Tenants moved into their new place on March 16, 2023, which is a place that they purchased on February 16, 2023. KM acknowledged that when JSR attended the property on February 21, 2023 that they did intend to move out as the Landlords did not respond by the deadline given of February 14, 2023 and so they purchased a home on February 16, 2023.
30. KM explained that the biggest concern for the Tenants since the fire occurred was whether the unit was safe to live in with their child and so they repeatedly asked the Landlords for some form of assurance like an air quality report or a report from a fire restoration company stating that the unit was safe for habitation but they never got it.

31. KM acknowledged receiving some reports from the Landlords such as an ESA report, an HVAC report and an engineer's report but was of the view that these reports only addressed whether the property was structurally sound and did not adequately address whether the unit was livable.
32. The Landlords did not provide any alternative accommodations for the Tenants. KM stated that SN took the position that, since the Tenants did not have tenant insurance, which was a condition of the lease, the Landlords did not have any obligations to the Tenants and the Landlords were still entitled to cash their rent cheques. This was despite the unit not being habitable.
33. It was KM's evidence that the Tenants stayed with KM's aunt for approximately 2 months, being January to February 2023, and her aunt did not charge the Tenants rent during this period. However, the Tenants continued to incur charges for rent and utilities for the rental unit.
34. In this last regard, KM testified that the Tenants incurred \$707.65 in hydro and gas charges for the period of January 2, 2023 to February 16, 2023. Copies of the utility bills were tendered as evidence.

Landlords' Evidence

35. SN testified that the Tenants signed a one-year lease and moved in on September 1, 2022. Pursuant to the lease, they were required to have tenant's insurance. The Landlords found out that the Tenants did not have insurance the date of the fire.
36. It was SN's evidence that the fire started in the addition located at the back of the property near the kitchen area. This addition was already there when KB purchased the property. SN stated that the fire report said there was a spark on the kitchen side but did not state the exact cause of the fire.
37. SN acknowledged that the property was affected by smoke but stated the area that received the majority of the damage was the area beside the kitchen. A few of the kitchen cabinets were affected by smoke residue. SN also acknowledged that the Tenants could not live in the rental unit during the repair period. In this regard, it was his view that all the necessary repairs were completed within 35 to 45 days from the date of the fire, being sometime in early February 2023.
38. SN stated that the rental unit was inspected by the municipality, the fire department and the insurance company as well as thoroughly cleaned before advising the Tenants that they could move back in. An ESA inspection report and two letters from an engineering company to the Chief Building Official for the City of Toronto were tendered as evidence in support of SN's testimony.
39. SN believed the Tenants were told they could move back in on February 2, 2023 and that a key was placed in a lock box so that they could enter the unit. SN stated that the Tenants used the key to enter several times after that and put some of their belongings in the unit.
40. SN recalled being advised about ten days later that the Tenants were saying that they could not get in and he told them they had a key in the lock box that they could use. SN

stated he did not know why the door was not opening and sent someone over to give them a key. SN denied that the Landlords changed the locks and stated that the Tenants advised that they were moving out because they felt the property was not safe. The Landlords were not agreeable to the Tenants vacating as they had a one-year lease.

41. It was SN's evidence that the Tenants did complain about the smell in the property and that the Landlords had the unit professionally cleaned on at least 2 occasions by companies that had experience cleaning smoke debris. SN did not have any documentary evidence with respect to the cleaning company such as a contract or invoices. He stated that his assistant, JS selected the cleaning company and it was paid for by the insurance company.
42. SN stated that he personally attended the rental unit on a few occasions since the fire and he denied that the rental unit still smelled strongly of smoke after the final cleaning was completed.
43. SN believed that the Tenants were making excuses to not to move back in as they had already decided that they wanted to live elsewhere. SN also believed that the Tenants vacated on February 24, 2023 based on email correspondence between KM and JS. In the email correspondence, the subject line says 'unlocking 254 Cedarvale'. In the correspondence, KM wrote on February 23, 2023 that they were booking a truck to pick up their belongings and asks for someone to confirm that they would be at the property for 12:00 p.m. the next day to unlock the doors. JS responded that someone would be there to unlock the doors. Thereafter, on February 24, 2023, KM emailed that they would be at the property in 10 minutes. A copy of the aforesaid correspondence was tendered as evidence.
44. JS also testified briefly at the hearing. It was her evidence that she did correspondence with the Tenants regarding the cleaning but stated that her emails were based on dictations from SN. JS denied having anything to do with selecting the cleaners and stated that those types of decisions went through SN.

Analysis

Altered locks

45. Section 24 of the *Residential Tenancies Act, 2006* (the 'Act') states that a landlord shall not alter the locking system on a door giving entry to a rental unit or residential complex or cause the locking system to be altered during the tenant's occupancy of the rental unit without giving the tenant replacement keys.
46. Based on the evidence and submissions provided, I find on a balance of probabilities that the Landlords altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenants replacement keys. As of February 21, 2023, the date the Tenants discovered the locks were changed, the Tenants had paid the rent for February 2023 and there was no evidence provided to suggest that the Tenants had given the Landlords notice that they had vacated prior to that date. It was SN's evidence that he had a staff member attend the unit that day to give JSR a key but, if this were the case, why would the Tenants still need someone to come and unlock the door on February 24,

2023? Moreover, the email response sent to KM's on February 21, 2023 regarding the lock change did not deny changing the locks. Rather, the email response attempted to justify the behaviour, stating it was because the Tenants breached the lease by not having insurance. The email also indicated that the Tenants needed to make an appointment to see the rental unit and provide proof of insurance prior to the visit.

Substantial interference & Failure to Maintain and Repair

47. It was not disputed that the rental unit was not habitable for a period of time after the fire. There was no conclusive evidence as to what started the fire and there was insufficient evidence to conclude that the actions of the Landlords caused or contributed to the fire.
48. 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.
49. The Landlords' position was that the rental unit was ready for habitation in early February 2023 and the Tenants' position was that the rental unit was never habitable after the fire because of the strong smell of smoke and signs of smoke residue that remained in the unit. Moreover, it was the Tenants' position that it was reasonable and necessary in the circumstances for the Landlord to have the rental unit evaluated by a professional fire restoration company and have air quality testing conducted, given their repeated complaints about the smoke smell and their requests for evaluation and testing.
50. On an application to the Board, the person who alleges a particular event occurred has the burden of proof to establish that it is more likely than not that their version of events is true. In this case, the burden falls on the Tenants to establish that the Landlords have failed to meet their obligation to maintain the rental unit and/or residential complex in a good state of repair, fit for habitation and in compliance with health, safety, housing and maintenance standards.
51. The evidence provided by both parties suggests that the necessary repairs and structural evaluations had been completed by the Landlords on or about February 2, 2023. What remained, and was the main issue for the Tenants, was whether the smoke debris had been remediated properly and whether the air quality was safe.
52. The Tenants did not dispute that the Landlords had cleaners attend the unit and KM mentioned seeing them in passing in the rental unit during her testimony. However, the Tenants doubted their expertise and/or ability to remediate the smoke debris.
53. The Tenants relied on the opinions of their own restoration technician that the rental unit was not ready to move into and was unsafe. However, there was no documentation provided by the restoration technician with respect to his opinions or findings on the status of the rental unit and he did not attend the hearing to testify.

54. I am unaware of any specific regulation, by-law or law that would require the landlord to specifically hire a fire restoration company or conduct air quality testing in these circumstances, and no such regulation, by-law or law was presented at the hearing.
55. Accordingly, I find that there is insufficient evidence to conclude that the Landlords breached their obligations to maintain and repair under section 20 of the Act and so the T6 application is dismissed.
56. It was not disputed by the Landlords that the rental unit was not habitable during the period that the repairs and cleaning took place. The evidence suggests that the rental unit had received its final cleaning on or about February 7, 2023. As such, the Tenants could have returned the rental unit on February 8, 2023. That said, despite the rental unit not being habitable from December 25, 2022 to February 7, 2023, the Landlords still cashed the rent cheques for January and February 2023 and continued to hold the Tenants responsible for the payment of the utilities.
57. As the Landlords could not provide the Tenants with a habitable rental unit for the aforesaid period, they were not in a position to collect the rent or hold the Tenants responsible for paying the utilities. The payment of rent is in exchange for the right to occupy the unit. Similarly, utilities are paid on the basis that the charges are for utilities consumed or used during a tenant's occupancy. Accordingly, I find that the Landlords substantially interfered with the Tenants' reasonable enjoyment by collecting the rent and failing to pay the utility charges for the period of December 25, 2022 to February 7, 2023.

Remedies

58. The Tenants requested a total rent abatement of \$35,000.00, the majority of which was based on a 100% rent abatement for 12 months. There was insufficient evidence provided to substantiate or warrant such a rent abatement.
59. The Tenants also requested a rent abatement for the period of December 25, 2022 to February 28, 2023. Based on the evidence provided, I find that the Tenants vacated the rental unit on February 24, 2023 as the email correspondence between the parties on February 23 and 24, 2023 indicates that the Tenants were attending the rental unit with a truck to collect their belongings and there was no evidence to suggest that the Tenants returned to the rental unit after February 24, 2023. Accordingly, an abatement shall only be awarded up until this date.
60. The evidence suggests that the rental unit had received its final cleaning on or about February 7, 2023. As such, the Tenants could have returned the rental unit on February 8, 2023. However, the Landlords changed the locks some time thereafter, which was discovered by the Tenants on or about February 21, 2023 and they were not given a replacement key.
61. As the Tenants were deprived of the use of the rental unit either due to repairs or due to the Landlords changing the locks, I find that the Tenants are entitled to a 100% rent abatement for a total of 47 days, being \$3,861.52. This is for the period of December 25, 2022 to February 7, 2023 and the period of February 21, to February 24, 2023, which is calculated as follows: $(\$2,499.00 \times 12 / 365 = 82.16 \text{ per day} \times 47 \text{ days} = \$3,861.52)$.

62. The Tenants also requested what they described as a 'rent abatement for the last month's Rent deposit' of \$2,499.00. Essentially, what the Tenant's are seeking is an order pursuant to section 135 of the Act. Specifically, an order that the Landlords pay to the Tenants money collected or retained in contravention of the Act. In this case, the Tenants have applied for orders pursuant to sections 30 and 31 of the Act, which sections do not include an order for the return of the last month's rent deposit as a remedy. In other words, the remedy sought by the Tenants is properly dealt with under another type of application. In light of this, the return of the last month's rent deposit shall not be ordered.
63. The Tenants sought reimbursement for utility charges incurred, in the amount of \$707.65, that the Tenants were required to pay for the period of January 2, 2023 to February 16, 2023. This is approximately \$15.73 per day for 45 days. However, I find that the Tenants are only entitled to reimbursement of utility costs up to February 7, 2023, being the date that the final cleaning was completed, which is \$566.28 for 36 days.
64. The Tenants requested the Landlords be ordered to pay an administrative fine. An administrative fine is a remedy to be used by the Board to encourage compliance with the Act, and to deter landlords from engaging in similar activity in the future. This remedy is not normally imposed unless a landlord has shown a blatant disregard for the Act and other remedies will not provide adequate deterrence and compliance. Based on the evidence provided, I am not satisfied that the Landlords have shown a blatant disregard for the Act and I am satisfied that the Landlords will be adequately deterred by the other remedies ordered. Accordingly, no fine shall be ordered.
65. The Tenants requested the Landlords be ordered to pay \$4,000.00 for the difference in rent between the Tenants' old rent and the Tenants' new rent. I do not find the remedy to be appropriate in the circumstances. Firstly, because there was insufficient evidence that the Tenants had to move out of the rental unit because of the Landlords' actions or inactions. Secondly, because it was KM' evidence that the Tenants purchased a property on February 16, 2023. As such, the Tenants do not have a new rent as they now own their own home. Accordingly, this remedy shall not be ordered
66. The Tenants requested the Landlords be ordered to return all of the Tenants' property in the Landlords possession, or that the Landlords can get back from other people. Only vague evidence was provided during the hearing regarding what items were left in the rental unit and a list of items to be returned was provided. As such, this remedy shall not be ordered.
67. The Tenants incurred costs of \$48.00 to file the Applications and is entitled to reimbursement of these costs.

It is ordered that:

1. The total amount the Landlords shall pay the Tenants is \$4,475.80. This amount represents:
 - \$3,861.52 for a rent abatement.
 - \$566.28 for utility costs incurred.
 - \$48.00 for the costs of the filing the Applications.

2. The Landlords shall pay the Tenants the full amount owing by May 1, 2026.
3. If the Landlords do not pay the Tenants the full amount owing by May 1, 2026, the Landlords will owe interest. This will be simple interest calculated from May 2, 2026 at 4.00% annually on the balance outstanding.

May 1, 2026
Date Issued

Rachel Gibbons
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.