



Order under Section 30 Residential Tenancies Act, 2006

File Number: LTB-T-084263-23

In the matter of: 285 STONE CHURCH RD E
HAMILTON ON L9B1B1

Between: Yatin Marwaha Tenant
Ankita Aggarwal

And

Seyar Khairzad Landlord

Yatin Marwaha and Ankita Aggarwal (the 'Tenant') applied for an order determining that Seyar Khairzad (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.

Yatin Marwaha and Ankita Aggarwal (the 'Tenant') applied for an order determining that Seyar Khairzad (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.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.

This application was first before the Board on October 31, 2024. The matter was heard on an uncontested basis, as only the Tenants were present. Once the matter concluded, the Landlord signed in. The matter was adjourned to provide an opportunity for the Landlord to participate in the hearing.

This application was heard by videoconference on May 13, 2026.

The Landlord and the Tenants attended the hearing.

Determinations:

1. As explained below, the Tenant proved some of their claims on a balance of probabilities the following allegations contained in the application.

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.
3. The Tenant testified that he moved into the rental unit on August 27, 2023, and vacated on September 7, 2023.

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4. The Tenant testified that when they first viewed the rental unit on or about August 24, 2026, it was under renovations. The Landlord advised them that the renovations would be completed by the end of the week, which was August 27, 2023. The Tenant stated that upon moving in, they realized that there a no kitchen countertops, no microwave, no working sink, no access to laundry, and no door to the bathroom. The only toilet that was working in the rental unit was not usable on a daily basis from 9:30am to around 5:00pm commencing August 31, 2023. On the morning of September 4, 2023 the Tenant was notified that there is no working shower in the rental unit, and the Landlord instructed the Tenants to shower at the gym nearby. Despite the Landlord agreeing to pay for the gym membership, the Tenants state that this is not a reasonable alternative.
5. On September 5, 2023 the Tenants expressed their concerns with the rental unit to the Landlord, specifically that the Landlord stated the renovations would be completed by the time the Tenants will be moving in. The Tenants therefore vacated from the rental unit on September 7, 2023.
6. The Tenant testified that there was no air conditioning provided in the rental unit despite it being very hot outside. The Tenant advised the Landlord on August 28, 2023 via text message at 9:01pm. The Landlord advised the Tenants to refer to the outdoor temperature and that the air conditioning will not turn on as it is on a factory setting. The Tenants stated that there was a heat warning in effect that lasted 3 to 4 days. The Tenant brought this issue back up to the Landlord on September 5, 2023. The Landlord responded that it has to be calibrated to every part of the house and due to him making new rooms, it is interfering with the thermostat. The Tenants stated that the Landlord turned on the air conditioning on September 6, 2023, which leads them to believe that the Landlord was withholding this service.
7. The Tenant stated that during an argument, the Landlord stated he will return half the amount of money he collected from the Tenant if they leave. The Tenant stated that staying in the rental unit given its state is not an option and therefore vacated on September 7, 2023. The Landlord did not return any money to the Tenant.
8. The Landlord testified that there was running water, they had access to a shower, the toilet was working and there was a sink to wash dishes in. The Tenants knew that the house was under construction and therefore should have been prepared and been respectful to the renovation process. He communicated the condition of the rental unit to the Tenant prior to them moving in, so they were aware of its current state and therefore is not responsible for the issues.

9. The Landlord stated that he cannot control the air conditioning. He states that part of the house may have been warmed than the other rooms, however they knew that the house was under construction. The air conditioner was working the entire time.
10. The Landlord stated that the Tenants can use the lower bathroom and shower, and he offered to pay for a taxi for them to go to the gym to shower. He reiterated that the Tenants knew about the stated of the rental unit and still decided to move in. He disagrees with all of the Tenant's claims.
11. Upon cross examination, the Landlord stated that he advised the Tenants prior to them moving in that he rents it out as an Air Bnb.

Legal Analysis

12. Section 20(1) of the Act provides:

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.

13. 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. In this case that burden falls on the Tenant. The standard of proof in proceedings before this Board is "proof on a balance of probabilities." By that standard, the party bearing the burden of proof must show with evidence that, "more likely than not", their assertions are true.
14. In *Onyskiw v. CJM Property Management Ltd.*, [2016 ONCA 477](#), ("*Onyskiw*") 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.
15. Based on the evidence before me and on a balance of probabilities, I find that the Landlord failed to meet the Landlord's obligations under subsection 20(1) of the act to repair and maintain the rental unit. The Landlord agrees that the rental unit was under construction, and although I note that the Landlord's position is that the Tenant was aware of the state of the rental unit, I do not find that it absolves the Landlord of their obligations under the Act. I found the testimony of the Tenant credible and reliable, and it was support by documentation. The Landlord did not offer sufficient evidence to contradict that of the Tenants.

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16. The Tenant testified that the Landlord had a camera in the kitchen that was recording. The Tenant stated that the Landlord did not advise them that there is a camera, and the Tenants were unaware that there was one, or that it was recording. This is a significant

invasion of privacy. The Tenant submitted a photograph of the camera as evidence to the Board. The Tenant stated that this interfered with the Tenant's reasonable enjoyment of the rental unit. The Tenant testified that the Landlord threatened the Tenant with immigration and permanent residency issues.

17. In addition, the Tenants were receiving communications from a new individual who was acting as the Landlord; however, the Landlord did not inform the Tenants of anyone else communicating with the Tenants. The Tenant received a communicate from this individual who stated that the Landlord was able to see what they are doing due to the camera that was in the kitchen. A copy of this text message was submitted as evidence to the Board.
18. The Tenant stated that the maintenance issues and the issues with the camera cause serious stress. It affected his sleep and therefore his ability to work resulting in his earnings going down. He had to look for a place overnight as the Landlord advised him to move out.
19. The Landlord testified that the camera was not recording and was there as a "dummy camera" to control the contractors going in and out of the rental unit. The camera was placed by the window, away from the washroom. The Landlord stated that the other individual the Tenants are referring to is his brother, who has shares in the rental property and he cannot comment to the text message that was sent to the Tenants.

Legal Analysis

20. Section 22 of the Act provides that a landlord shall not at any time during a tenant's occupancy of a rental unit and before the day on which an order evicting the tenant is executed substantially interfere with the reasonable enjoyment of the rental unit or the residential complex in which it is located for all usual purposes by a tenant or members of his or her household.
21. Section 23 of the Act provides that a landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.
22. Based on the evidence of the Tenant, and on a balance of probabilities, I find that the Landlord breached section 22 and 23 of the Act as a result of the camera that was in the rental unit and by making the comments about immigration to the Tenant. Although the Landlord stated that the camera was not on, I find the Tenant's evidence credible that they believed the camera was on, which was further supported by the text message sent by the Landlord's brother to the Tenant. I do not find that the Landlord provided sufficient evidence to disprove that of the Tenant's that the camera was on. Furthermore, I find that the comments the Landlord made about the Tenant's immigration status falls under the category of harassment, as it is conduct that the Landlord ought to have known to be unwanted. The Landlord did not offer sufficient evidence to contradict the Tenant's statements about these allegations, and I note that the Landlord made comments about this subject during the hearing.

Remedies

Rent Abatement

23. Abatement of rent is a contractual remedy on the principal that if a tenant is paying 100% of the rent, then the tenant should be getting 100% of what they are paying for, and if they are not getting that, then a tenant should be entitled to an abatement equal to the difference in value.
24. The Tenant is requesting a rent abatement in the amount of \$1,484.00. The monthly rent is \$1,290.00. The Tenant calculated the daily rent and is requesting full compensation from August 27, 2023 to September 7, 2023, in addition to the amount paid to the Landlord before moving which is \$2,000.00 making the difference \$1,484.00.
25. The Landlord opposed this remedy as he stated that the Tenant saw the condition of the rental unit and decided to stay in it.
26. As I found that the Landlord breached sections 20, 22, and 23 of the Act, and based on my knowledge of similar cases before the Board, I find that a 20% rent abatement is appropriate to award in this circumstance. I heard the Tenant's evidence of the impact that these issues have had on them, and I further considered the documentary evidence to support the Tenant's testimony. I heard that Tenants evidence that the maintenance issues began from when they moved into the rental unit which was on August 27, 2023 and therefore find it appropriate to award a rent abatement for the period of August 27, 2023 to September 7, 2023. A rent abatement totalling to totaling to $\$50.82(\$1,290.00 \times 12/365 = 42.41. \$42.41 \times 12 = 508.92 \times 20\% = \$101.78)$ will be awarded.

Moving Expenses

27. The Tenant is requesting \$49.75 that represents U-Haul charges they incurred for having to move out of the property due to the issues in the rental unit.
28. The Landlord opposed this remedy as he does not agree with what the Tenant is claiming.
29. I do not find that the Tenant offered sufficient evidence to demonstrate that this charge was incurred by them, and therefore I am not satisfied on a balance of probabilities the Tenant proved this amount, and therefore will be denied.

Out-of-pocket expenses

30. The Tenant is claiming \$281.80 for out-of-pocket expenses incurred for having to buy take out food due to there not be a kitchen that works. The Tenant submitted credit card statements to demonstrate these amounts.
31. The Landlord opposed this remedy as he does not agree with the Tenant's claims.
32. Upon considering the parties submissions, I find it appropriate to award the Tenant this remedy. The Tenant's supported this amount by credit card statements, and I do not find it an unreasonable amount to order food over the course of twelve days.

Other Remedies

33. The Tenant stated that they are requesting \$5,000.00 due to the Landlord threatening the Tenant with immigration, and this is a level of harassment. He does not know what content was recorded on the video that the Landlord is still in possession of, as the Landlord was recording the Tenant without consent.
34. The Landlord does not understand what the Tenant wants this money for.
35. Upon hearing the submissions of both parties, and based on similar cases before the Board, I find an amount of \$200.00 appropriate to award the Tenants for the twelve days there were in the rental unit.

It is ordered that:

1. The Landlord shall pay the Tenant is \$631.58. This amount represents:
 - \$101.78 for a rent abatement
 - \$281.80 for out-of-pocket expenses
 - \$200.00 as general compensation
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by July 31, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by July 31, 2026, the Landlord will owe interest. This will be simple interest calculated from August 1, 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.

June 12, 2026
Date Issued

Nathalia Debski
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.