



Order under Sections 78(11), 30, 31
Residential Tenancies Act, 2006

File Numbers: TEL-19301-21-SA
TET-20714-21

In the matter of: 2, 537 LORRAINE STREET
OSHAWA ON L1J4C9

Between:	Brent Foley		Landlord
	and	I hereby certify this is a true copy of an Order dated OCT 12 2022 Landlord and Tenant Board	
	Feisal Sachedina		Former Landlord
	and		
	Lonnie May Wach		Tenant

Feisal Sachedina (the 'Former Landlord') applied for an order to terminate the tenancy and evict Lonnie May Wach (the 'Tenant') because the Tenant failed to meet a condition specified in the order issued by the Board on May 26, 2021 with respect to application TEL-16183-21.

The Former Landlord's application was resolved by ex parte order TEL-19301-21, issued on September 17, 2021. The Tenant filed a motion to set aside order TEL-19301-21.

The Tenant also applied for an order determining that the Former Landlord failed to meet the Former Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards; and that the Former Landlord, or the Former Landlord's agent, harassed, obstructed, coerced, threatened or interfered with the Tenant and substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant.

The Tenant's motion and application were heard in video conference room 144 on March 29, 2022, video conference room 126 on May 3, 2022 and video conference room 126 on August 30, 2022.

The Tenant, the Former Landlord and the Former Landlord's legal representative Wazchma Afzaly attended the hearing on March 29, 2022. The Tenant and the Landlord attended the hearing on May 3, 2022 and August 30, 2022.

Determinations:

The Motion to Set Aside the September 17, 2021 Ex Parte Eviction Order

1. The Tenant denied breaching the May 26, 2021 consent conditional Board order TEL-16183-21. The Tenant denied yelling and making excessive noise on August 11 and 26, 2021 and September 1 and 2, 2021. Instead, the Tenant adduced reliable evidence at the hearing to prove, on a balance of probabilities, that she had in fact complained to the Former Landlord about excessive noise from the former basement tenant during that period.
2. The Former Landlord did not participate in the May 3, 2022 and August 30, 2022 proceedings to dispute or otherwise challenge the Tenant's motion-evidence. The Landlord, who purchased the property and assumed title on March 29, 2022, did not have knowledge of the alleged events in August and September 2021.
3. I find from the Tenant's evidence that the Tenant did not breach the May 26, 2021 consent Board order. The Tenant did not yell and make excessive noise at the rental property in August and September 2021. The September 17, 2021 ex parte eviction order TEL-19301-21 will accordingly be set aside.

The Application About Maintenance and Repairs

4. The Tenant submitted reliable documentary evidence to prove that she informed the Former Landlord of maintenance and repair issues at the residential complex in a March 19, 2021 letter. The Tenant also submitted photographs confirming that the baseboard quarter-round had come loose in the living room; the front screen door was torn; the kitchen/living room ceiling had a water stain; and that there may have been minor mould growth in the cold cellar. The Tenant testified that the Former Landlord did not repair these issues.
5. The Landlord, however, led reliable evidence proving that he repaired the baseboard/quarter round and cold cellar between May 18, 2022 and June 1, 2022. The Landlord submitted an invoice from a contractor showing that work had been done at the property to address those matters during that period.
6. The Landlord did not have evidence to show that he repaired the torn front screen door or the kitchen/living room ceiling. The Landlord testified that he was unaware of the torn screen door until the hearing. The Landlord explained that the contractor who performed the work between May 18, 2022 and June 1, 2022 had not mentioned the screen door. The Landlord did not deny knowledge of the kitchen/living room ceiling. The Landlord instead testified that he offered to provide the Tenant with paint to cover the water stain. This solution, however, is inadequate and does not meet the Landlord's obligation under subsection 20(1) of the Act.
7. Based on the evidence, I find that the Former Landlord did not meet his maintenance obligations with respect to the living room baseboard/quarter round, cold cellar, front screen door and kitchen/living room ceiling. The Landlord, upon purchasing the property and assuming title on March 29, 2022, addressed and repaired the baseboard/quarter round and cold cellar by June 1, 2022. The Landlord, however, did not repair the screen door and kitchen/living room ceiling. At the hearing, the Landlord expressed that he

would have his contractor return to the property to identify and address any remaining maintenance and repair problems.

8. The Tenant also introduced evidence that the basement neighbours failed to properly dispose of garbage. The Tenant testified that dirty diapers, dog waste and other garbage was allowed to accumulate near the Tenant's child's bedroom window. The Tenant informed the Former Landlord of the issue in the March 19, 2021 letter. The Tenant testified that the Former Landlord did not act on the Tenant's complaint.
9. I find that the Former Landlord substantially interfered with the Tenant's and her household's reasonable enjoyment of the rental unit by failing to address the Tenant's March 19, 2021 complaint of improper garbage disposal at the property. The Tenant testified that the problem persisted from September 2020 to April 2022, when the basement tenant vacated the rental unit. The Tenant testified that she was required to collect and dispose of the garbage "multiple times", but was not able to provide a reasonably accurate estimate of how often she did so. The Tenant described the garbage as "an eye sore", and submitted that her child, from time to time, was unable to open the bedroom window.
10. Having determined that the Former Landlord failed to maintain and repair the rental unit and substantially interfered with the Tenant's and her household's reasonable enjoyment of the property, I find that it is appropriate to order the Landlord to pay an abatement of rent. At the August 30, 2022 hearing, the Landlord opposed an order requiring that he pay an amount to the Tenant because of, largely, the Former Landlord's omissions. Section 18 of the Act, however, expressly states that "Covenants concerning things related to a rental unit or the residential complex in which it is located run with the land".
11. The Tenant requested an order requiring the Landlord to pay between \$7,000 and \$10,000.00. I find that the amount the Tenant requested is not reasonable in the circumstances. The Former Landlord's failure to repair the baseboard/quarter round in the living room and address possible surface mould on walls in the cold cellar, and the current Landlord's failure to repair the torn screen door and water stain in the kitchen/living room ceiling, did not interfere with the Tenant's ability to use the rental unit for all usual purposes. The Tenant described the impact of these issues as being cosmetic in nature. The Tenant did not have reliable evidence of any health impact from the possible presence of mould in the cold cellar.
12. With respect to the torn window screen, I find that the Tenant's request for an abatement of rent is disproportionate to the maintenance defect. Similarly, the Tenant's vague evidence of the number of times she was required to collect and dispose of garbage at the residential complex – which the Tenant again described as an eye sore – is not commensurate with her claim for a rent abatement; nor is the Tenant's vague description that her child was unable to open the bedroom window.
13. I also note that the Tenant did not introduce reliable evidence to prove, on a balance of probabilities, that the front door sticks in the doorframe, that the bedroom ceiling requires repair, or that the front stairs have deteriorated. The Tenant did not submit photographs

of these alleged issues to determine whether a maintenance issue exists. The Tenant accordingly did not prove these issues, as pled in the Tenant's application.

14. I also find that the Tenant's testimony, that the Former Landlord's legal representative asked the Tenant about cannabis consumption at the residential complex, did not describe what may reasonably be considered harassment or a substantial interference with the Tenant's reasonable enjoyment of the rental unit or residential complex. The moral injury resulting from the representative's question is negligible.
15. In the circumstances, I find it is appropriate to order the Landlord to pay the Tenant an abatement of rent equal to one month's rent, or \$1,745.00. This amount is appropriate because it holds the Landlord and Former Landlord responsible for breaches of the Act. The amount also reflects the largely cosmetic, or otherwise minor, nature of the Former Landlord's and Landlord's omissions. The Landlord shall also be ordered to repair or replace the torn screen in the front screen door and paint the kitchen/living room ceiling.
16. All the reasons for this order are contained herein. No further reasons shall be issued.

It is ordered that:

1. Board ex parte eviction order TEL-19301-21, issued on September 17, 2021, is set aside.
2. The Landlord's application under section 78 of the Act is dismissed.
3. Order TEL-16183-21, issued on May 26, 2021 remains in effect.
4. The Landlord shall pay the Tenant a rent abatement of \$1,745.00.
5. The Landlord shall pay the Tenant the full amount owing by October 23, 2022.
6. If the Landlord does not pay the Tenant the full amount owing by October 23, 2022 the Landlord will owe interest. This will be simple interest calculated from October 24, 2022 at 4.00% annually on the outstanding balance.
7. If the Landlord does not pay the Tenant the full amount owing by October 23, 2022, the Tenant may recover this amount by deducting \$872.50 from the rent in November 2022 and \$872.50 from the rent in December 2022.
8. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.
9. On or before November 11, 2022, the Landlord shall repair or replace the screen in the front screen door, and shall repair the stain in the kitchen/living room ceiling. If the Landlord fails to complete the work by November 11, 2022, the Tenant may undertake to do the repairs, starting November 12, 2022. The Tenant may deduct her reasonable out-

of-pocket costs to complete the work. The Tenant must provide the Landlord with receipts and invoices to reasonably prove her out-of-pocket costs.



October 12, 2022
Date Issued

Harry Cho
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.