



I hereby certify this is a  
true copy of an Order dated

**Nov 23, 2022**

Landlord and Tenant Board

Order under Section 31  
**Residential Tenancies Act, 2006**

**File Number:** TST-13628-20

**In the matter of:** UNIT 2, 625 EUCLID AVENUE  
TORONTO ON M6G2T6

**Between:** Ethan Wright Tenant

**and**

Barbara Harrison Landlord

Ethan Wright (the 'Tenant') applied for an order determining that Barbara Harrison (the 'Landlord') substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant and withheld or deliberately interfered with the reasonable supply of a vital service (heat) that the Landlord is obligated to supply under the tenancy agreement.

This application was heard via video conference on December 14, 2021.

The Tenant and the Landlord attended the hearing.

**Determinations:**

1. As explained below, the Tenant has not proven on a balance of probabilities the allegations contained in the application. Therefore, the application is dismissed.
2. The tenancy commenced on February 1, 2019 and ended on January 31, 2020. The Tenant and no longer occupies the residential unit.
3. The Tenant testified that he did not pursue a renewal of the lease because of the fluctuating temperatures in the residential unit, with special concern cold temperatures in the winter.
4. The residential unit is formerly a single family semi-detached house that has been legally converted to 3 apartments. The Tenant's residential unit is a 1 bedroom, 800 square foot apartment on the main floor.
5. The Tenant testified that a small passageway in the back of the unit, 8 x 4 ft is uninsulated and unheated and causes the rest of his unit to be cold, less than 20 degrees Celsius between the months of September to June.

6. The Landlord's witness, James Barass, the real estate salesperson that rented the unit to the Tenant, testified that the passageway not a living space specified or contemplated in the Tenant's lease.
7. It is uncontested that a new 100,000 BTU furnace was installed in the building by the Landlord on July 22, 2019.
8. The Tenant provided evidence in the form of several photographs dated Oct 27, 2019, Nov 1, 2019, Jan 23, 2020, Feb 1, 2020 of a thermometer showing the temperature below the 20 degree standard required under O. Regulation 516/06, s. (4):

*4. (1) For the purpose of the definition of "vital service" in subsection 2 (1) of the Act, September 1 to June 15 is prescribed as the part of the year during which heat is a vital service. O. Reg. 516/06, s. 4 (1).*

*(2) For the purposes of subsection (1), heat shall be provided so that the room temperature at 1.5 metres above floor level and one metre from exterior walls in all habitable space and in any area intended for normal use by tenants, including recreation rooms and laundry rooms but excluding locker rooms and garages, is at least 20 degrees Celsius. O. Reg. 516/06, s. 4 (2).*

9. 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. This involves a consideration of whether the landlord was notified of the issue and if so, whether their response was reasonable 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.
10. The Tenant provided a thread of texts and emails from October 5, 2019 10:58 am which supported the Tenant's complaint that the unit was heated at less than 20 degrees Celsius.
11. The Tenant's own evidence however confirmed that the Landlord responded via email within minutes of the October 5, 2019 email complaint to address the Tenant's complaints about low or poor heat.
12. The Landlord responded at 11:21am on October 5 confirming the furnace was working and keeping the unit at 20 degrees Celsius but nevertheless the Landlord would send in a technician to investigate the Tenant's complaints. The Landlord's testimony was the technician subsequently confirmed that the furnace was in good working order.
13. The Landlord conceded that there were several interruptions in the service of heat on October 27, 2019, November 1, 2019 and January 23, 2020 but that upon notice from the Tenant, she immediately called heating and ventilation contractors Reliance Heating and Polar Climate Control and they responded within hours to rectify the problems.

14. The Tenant's evidence of screenshots of emails and texts confirmed the Oct 27, 2019 and November 1, 2019 interruptions. It was uncontested however that the Landlord's contractor Polar Climate Control responded within hours and confirmed that the furnace was in good working order and that the safety shut off was triggered by dust and smoke as a result of the renovations in the basement and was resolved the same day.
15. On Jan 23, 2020 the Tenant complained again about lack of heat, the Landlord's contractor again responded within hours and it was uncontested that the Landlord confirmed the furnace was turned off by a Rogers technician who mistook a furnace on/off switch for a light switch.
16. It is uncontested that the Landlord promptly provided the Tenant with a space heater, (1500 Watts/5120 BTUs) to supplement the furnace after the Tenant wrote to the Landlord on December 20, 2019 that the living space was cold and suggested a space heater.
17. It is uncontested that the Landlord responded promptly on December 21, 2019 that she would indeed buy a second space heater.
18. The Tenant's own evidence confirmed that the Tenant thanked the Landlord on January 12, 2020 and essentially admitted that the space heater solved the problem of heat in the short term but raised a new complaint that the space heater was a fire hazard.

#### Analysis

19. For the following reasons I am not satisfied that the Landlord failed to meet the Landlord's obligations under subsection 20(1) of the Act to repair or maintain the rental unit and did not fail to comply with housing or maintenance standards.
20. I find that the Tenant's evidence fails to establish that the Landlord's brand new furnace and a supplemental space heater did not adequately heat the relatively small living space that the Tenant occupied.
21. The Tenant did not contest that the furnace and space heater was constantly and consistently working throughout the tenancy, with a few exceptions Oct 27 and Nov 1, 2019 and January 23, 2020. I accept the Landlord's evidence that on the days of the Tenant's notice of lack of heat in the residential unit, the furnace was always turned back on within hours of the Tenant's complaint.
22. The Tenant disputed that the temperature threshold of 20 degrees Celsius was met because of reading he took via a personal store-bought thermometer but the Tenant admitted that his thermometer was never calibrated nor tested for accuracy and that he was not aware of the proper placement of the thermometer 1.5 metres above floor level and away from exterior walls.

23. The Landlord testified that the 8 x 4 passageway in the back of the Tenant's unit was specified in the official house plans as a "mud room" and was separated from the Tenants living space and rented space which consisted of a living room, kitchen and bedroom.
24. The passageway in the back of the Tenant's unit is separated by a door from the Tenant's rented space and has been used by prior tenants as a place to store bikes.
25. The Landlord provided evidence that the passageway is also identified in the building plans as an emergency exit and could not be used as a study or work areas as suggested by the Tenant.
26. I accept the Landlord's testimony today corroborated by testimony of the real estate salesperson that rented the unit to the Tenant that the passageway was not a living space specified or contemplated in the Tenant's lease.
27. I find that the Landlord provided the residential unit with a brand new furnace in July 2019. I also find that upon complaints by the Tenant of low heat from the brand new furnace, the Landlord provided the Tenant with a supplemental heater to ensure the Landlord consistently provided the vital service of heat to the Tenant at the 20 degree Celsius standard.
28. The Tenant's own evidence submitted to the Board as "625 Euclid Tenant Evidence 4.0" dated January 12, 2020 confirmed that a supplementary space heater provided by the Landlord may not have been a satisfactory long term solution in the Tenant's view but the clear implication was that it was an adequate short term solution to provide legally sufficient heat to the residential unit .

**It is ordered that:**

1. The Tenant's application is dismissed.

November 23, 2022

**Date Issued**

15 Grosvenor Street, Ground Floor  
Toronto ON M7A 2G6



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John Tzanis

Member, Landlord and Tenant Board

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.