



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

**Citation:** Webber v Syed, 2024 ONLTB 4010

**Date:** 2024-01-18

**File Number:** LTB-T-053597-22

**In the matter of:** UPPER, 82 KING STREET WEST  
CLARINGTON ON L1C1R4

**Between:** David Webber Tenant

**And**

Hyder Syed Landlord

2024 ONLTB 4010 (CanLI)

David Webber (the 'Tenant') applied for an order determining that Hyder Syed (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 December 20, 2023.

Only the Tenant attended the hearing.

As of 9:15 am the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenant's evidence.

**Determinations:**

*Landlord's Breach of Obligation to Repair*

1. I find, as follows, that the Landlord failed to meet his obligations under the Act by failing to complete effective repairs to the roof of the rental unit in a timely manner.
2. I find the following facts, based on the uncontroverted testimony of the Tenant and my review, as noted, of various exhibits. The package of materials filed with the Board as 'Webber Pack.pdf' will be referred to as 'Tenant Materials':
  - a) The rental unit is an apartment located over a store. It contains two bedrooms, a living room, kitchen and bathroom. The larger of the two bedrooms is on the north side of the unit and is used by the Tenant's son;
  - b) The roof of the unit began to leak into the larger bedroom in February 2022. The Tenant reported the leak to the Landlord, who indicated that he would look into it.

- c) The Landlord went onto the roof shortly after receiving the complaint and reported to the Tenant that the roof was fixed. However, about three to four weeks later there was a heavy rainfall and water again leaked into the bedroom;
- d) The Landlord went up to the roof again and reported the issue fixed;
- e) This pattern – of reported fixes, leaks, complaints and reported fixes – continued through to August of 2022 when, for the second time, a portion of the ceiling of the bedroom let go. A great deal of water fell into the room and damaged contents;
- f) The Tenant contacted a Municipal Law Enforcement Officer for the Municipality of Clarington (the ‘Officer’) on August 24, 2022 to complain about the continued leaks and the Landlord’s failed attempts to repair the roof (Refer Exhibit 1, being emails at page 31 of the Tenant Materials);
- g) The Officer attended the unit on August 30, 2022 and confirmed water damage to the ceiling of the bedroom and a corner of the ceiling in the kitchen. The Tenant indicated that his main concern was with the bedroom where the damage and leaking was most extensive. The Officer noted, in her notes of the visit, that a pole was holding up the ceiling drywall in the bedroom and that there was a hole in the ceiling drywall. There was a garbage can in the bedroom under the hole in the ceiling and the can had water in it. The Officer noted that the chimney on the roof appeared to be in need of repair (Refer Exhibit 2, being the Officer’s notes on follow up of the Tenant’s complaint, at pages 38-40 of the Tenant Materials);
- h) Problems with the roof and the leaks continued, despite the Landlord’s repeated assurances that the issues had been addressed and that the roof had been repaired and despite further communications between the Officer and the Landlord;
- i) On March 13, 2023, the Officer emailed the Landlord and the Landlord’s agent to advise that the issue had gone on far too long and that a resolution needed to be found. The Officer noted that the Tenant had advised her that the roof continued to leak. The Officer stated, ‘Given the age of the building and the number of unsuccessful attempts that have been made to remedy the leak, I am requesting that the roof and its components be inspected by a reputable company working in the trade and repaired as recommended. A copy of the report outlining their findings and recommendations for remediation is to be provided to this office no later than April 14, 2023. Failure to comply will result in further action taken by this office’ (refer Exhibit 3, being March 13, 2023 email at page 33 of Tenant materials);
- j) The Landlord proceeded to instal a new roof within the next month;
- k) Although the roof had been repaired, water continued to leak for some time into the bedroom as water had accumulated above the ceiling. Photos taken in May 2023 show what appears to be mould around a hole in one area of the ceiling. Containers were still required for some time to catch the remaining leakage (Refer Exhibit 4, being photos of the room and ceiling taken in May 2023, at pages 1 to 8 of the Tenant Materials);

- l) The Tenant used industrial fans to dry out the ceiling and the room so that by the end of May 2023 the room was dry enough for the mould to be addressed and for the room to be re-occupied; and
  - m) The Tenant's son was unable to use the room at all from the time of the second major ceiling failure in August 2022 through to the end of May 2023. He resumed occupancy of the room after May 2023.
3. I find that the Landlord's repeated failure to fully address the roof problems amounted to a failure by the Landlord to meet his repair and maintenance obligations under the Act. I am particularly struck by the conclusion of the Officer that the attempts by the Landlord to effect repairs had been unsatisfactory for an extended time. It was only on receipt of threat of action from the Municipality that the Landlord finally effected the necessary repairs to the roof.

#### *Remedy*

4. The Tenant noted, in the hearing, that the repairs to the inside of the unit had yet to be effected. The ceiling of the bedroom still has a sizable hole and the pole is still in the bedroom holding up the ceiling. The Tenant requested that the Landlord be ordered to effect all necessary repairs to the inside of the unit. In note that the Tenant did not include this request as a remedy in the application which is before me. In the application the Tenant requested that the Landlord be ordered to repair the roof so that leaks are stopped. That fix has been completed. I find that the Landlord is without notice of a further request for indoor repairs in the context of this application. That portion of the Tenant's request during the hearing must be denied.
5. The Tenant requested a 50% rebate to his \$805.00 per month rent.
6. I find that the Landlord's failure to fix the roof resulted in the large bedroom being uninhabitable for the period from mid-August 2022 through to the end of May 2023. I estimate, based on the Tenant's evidence, that the bedroom area represents 25% of the unit area and consider this estimate a reasonable proxy for an appropriate rent rebate for the 9 ½ months to the end of May 2023.
7. I also note that the large bedroom is still, as of the date of the hearing, in a state of disrepair as a result of the past leaks and the Landlord's tardy response. I find that use of that bedroom is still compromised as a result of its condition and that the Tenant is entitled to an additional rent rebate for the period since May 2023. I find that the Landlord should compensate the Tenant a further 5% per month rent for the period June 2023 through December 2023.
8. I find that the Landlord must pay the Tenant a rental rebate totalling \$2,193.63, representing 25% of the rent for the 9 ½ months to the end of May 2023 and 5% for the period June through December 2023.

**It is ordered that:**

1. The Landlord shall pay the Tenant \$2,193.63 for rent abatement at the rate of 25% from mid-August 2022 to May 31, 2023 and at the rate of 5% from June 2023 through December 2023.
2. The Landlord shall also pay the Tenant \$48.00 for the cost of filing the application.
3. The Landlord shall pay the Tenant the full \$2,241.63 owing by January 29, 2024.
6. If the Landlord does not pay the Tenant the full amount owing by January 29, 2024, the Landlord will owe interest. This will be simple interest calculated from January 30, 2024 at 7.00% annually on the balance outstanding.
7. If the Landlord does not pay the Tenant the full amount owing by January 29, 2024, the Tenant may recover this amount by deducting the amount from the rent owing for the month of February 2024 and subsequent months until there is no longer any money owing.
8. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**January 18, 2024**  
**Date Issued**

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Lynn Mitchell  
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.