



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

**Citation:** Bourdages v Kauffman, 2024 ONLTB 3171

**Date:** 2024-01-08

**File Number:** LTB-T-012831-22

**In the matter of:** BASEMENT, 258 CONLEY ST THORNHILL  
ON L4J2Z5

**Between:** Chris Bourdages Tenants  
Marjorie Alvarado  
Kenneth Wakely

### **And**

Jonathan Kauffman Landlords  
Yan Kauffman  
Seung Huian Lee  
Kyang Sook Chae

Chris Bourdages, Marjorie Alvarado and Kenneth Wakely (the 'Tenants') applied for an order determining that Jonathan Kauffman, Yan Kauffman, Seung Huian Lee and Kyang Sook Chae (the 'Landlords') 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 June 15, 2023.

Only the Tenants Chris Bourdages on behalf of all Tenants attended the hearing.

As of 9:30 a.m., the Landlords were 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 Landlord's evidence.

### ***Landlord's attendance***

- 1. The Landlords have other applications in front of the board and are well aware of the procedure and required attendance to attend hearings.*

**Determinations:**

1. As explained below, the Tenants proved on a balance of probabilities the following allegations contained in the application:
  - Rat Infestation
  - Water Damage and Mold
2. Therefore, the Landlords must pay the Tenants a rental abatement and remedy the issues within the rental unit.
3. I find that the Landlords failed to meet the Landlord's obligations under subsection 20(1) or section 161 of the Act to both repair and maintain the rental unit in addition, failed to comply with health, safety, and/or housing and maintenance standards.
4. 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 Landlords 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.
5. In this case, the application was filed March 4, 2022 and a result only issues, costs and expenses that occurred from March 4, 2021 onwards will be considered.

***Rat Infestation***

6. The initial rat infestation began in December of 2020 but in the Tenant's own submission the problem was gone a few months later.
7. The initial rat infestation was mainly cleared up before March 4, 2021 and due to the Tenants filing in March 4, 2022. No compensation can be awarded for the initial rat infestation.
8. However, after the initial rat infestation cleared up, the rats returned in May 2021 due to the lack of maintenance on the property.
9. The Tenants provided evidence of the rat infestation, including photos and oral testimony of the rat infestation and what they spent and how they self remedied the situation.
10. The Tenants provided evidence and oral testimony submissions that they have spent approximately \$600.00 on out-of-pocket expenses on rat bait and traps since spring 2021 to spring 2023. This amount consists of \$300.00 in spring 2021, \$150 in spring 2022, \$150 in spring 2023 for a total of approximately \$600.00.

11. In February 2023, the Tenants contacted the appropriate Landlord to inform the Landlords once again of the ongoing rat issue and that rats were now entering the home in what the Tenants believed was a hole in the window coverings the rats had chewed through. The Tenants were informed nothing can be done except use rat bait.
12. The Tenant also provided evidence of the opening in the window covering and spent approximately \$100 in out-of-pocket expenses to repair the basement window covering and prevent rats from entering the home.
13. On the balance of probabilities, and based on the Tenants uncontested evidence, I find the Landlord responsible for paying the costs of rat preventative maintenance and extermination in the amount of \$700.00. I am using my discretion to award this amount to the Tenants.
14. I also find the Tenant deserves an additional rental abatement having to manage, live and deal with rats in their rental unit on a constant and ongoing basis through the duration of their tenancy. The Tenant is awarded an additional \$200 in monthly rental abatement from May 2021 to June 2023 in the amount of \$200 x 25 months = \$5,000.00.
15. The total amount the Landlords owe to the Tenants for the rat issue on the property is \$5,700.00, \$700.00 in out-of-pocket expenses and \$5,000.00 in rental abatement.
16. The Landlords are also required to hire a professional rat extermination company for a period of 3 months by April 1, 2024 to rectify the rat issue both inside and outside the rental complex.

### *Water Damage & Mold*

17. On or about March 31, 2021, the Tenants discovered significant water damage and mold in their rental unit.
18. After further observations the water damage and mold came from the upstairs unit where the water ran down to the basement unit causing and covering and approximately 70% of the tenant's unit.
19. The water damage was caused by the kitchen sink faucet and the dishwasher's effluent line in the main floor unit above the Tenant's basement unit.
20. The Tenants provided clear evidence that the rats had chewed through the dishwasher's effluent line, resulting in water to leak, and run down into their basement unit below.
21. As a result, every time the dishwasher was used in the main floor unit, dirty water from the dishwasher would run down the side of the wall and through the ceiling into the Tenant's basement unit.

22. The Tenants provided substantial uncontested evidence both via pictures and oral testimony of the mold and damage to their unit drywall, baseboards, ceiling drywall and water damage to personal property.
23. The Landlords, as of the day of the hearing, have never rectified or repaired the mold or water damage.
24. Based on the Tenants uncontested evidence, I find the Tenants are entitled to a 27-month abatement of ~30% of lawful rent per month for a total of \$437 x 27 months = \$11,826.00.
25. The Landlords are also ordered to rectify, repair and maintain the unit in good health and safety standard to be free of mold by May 1, 2024 or as soon as possible by a trained and licensed professional mold restoration company.

### *Summary*

26. It is clear the Landlords, be it oversee Landlords or not, the lack of maintenance and disregard to the property and the rat infestation both interior and exterior to the property is the root cause of all these issues. The Landlords provided no evidence or appeared at the hearing to show they hired a professional company to exterminate or manage the rat issue.
27. More importantly, the Landlords being well aware of the damage and mold, have yet to restore and rectify the unit from mold caused from the water damage to the unit.

### Remedies

28. I find that a full rent abatement of \$16,800.00 is appropriate in these circumstances. This is the amount the Tenants are seeking and thus the maximum I can award. I would have awarded more based on the %'s should I have been allowed to do so under the legislation.
29. The Landlords must do the following repairs and maintenance:
  - by April 1, 2024 - rat treatment for 3 months
  - May 31, 2024 mold removal and restoration, and unit repairs.
30. If the Landlords do not do the maintenance and repairs by the deadline, then the Tenants are authorized to arrange to do the work and deduct the cost from the ongoing rent in the amount of \$1,400.00 a month from the rent owing until the work is complete.
31. A deduction of \$400.00 a month until a professional rat removal company is hired and a deduction of \$1000.00 a month until the unit is restored mold free, and repaired to appropriate health standards.
32. The Tenants incurred the following costs and out-of-pocket expenses because of the Landlord's breach:

- \$700.00 for attempting to treat the rat infestation themselves

33. Therefore, the Landlords must pay the Tenants \$700.00 for these out-of-pocket expenses.

**It is ordered that:**

34. The Landlords shall comply to paragraph 29 of this order.

35. If the Landlords do not comply to paragraph 29, the Tenants have the legal right to apply paragraph 30 to rectify the issues and/or apply paragraph 31 of this order to all future rent.

36. The Tenants must also allow full access to the Landlords to do any or all repairs with proper notice from the Landlords to the Tenants. Should the Tenants refuse access to the Landlord, paragraph 31 becomes null and void.

37. The Landlords shall also pay the Tenants \$17,548.00. This amount represents:

- \$16,800.00 for a rent abatement for the period ending June 31, 2023.
- \$700.00 for the reasonable out-of-pocket expenses that the Tenants have incurred.
- \$48.00 for the cost of filing the application.

38. The Landlords shall pay the Tenants the full amount owing by January 31, 2024.

39. The Landlords may offset this amount by providing the Tenants credit for any unpaid rent.

40. The Tenants have the legal right to bring this Order as evidence as a determination for Section 82 submissions for any rent from July 1, 2023 onwards up until the repairs and maintenance obligations are met.

41. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**January 8, 2024**

**Date Issued**

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André-Paul Baillargeon-Smith

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.