



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

Citation: Medhurst v Gerrard, 2023 ONLTB 80659

Date: 2023-12-18

File Number: LTB-T-072651-22

2023 ONLTB 80659 (CanLII)

In the matter of: 16, 125 Bold Street
Hamilton Ontario L8P1V2

Tenant

Between: Adam Medhurst

And

Landlord

Bold Street Apartments

Brandy Gerrard

Landlord's
Agent

Adam Medhurst (the 'Tenant') applied for an order determining that Bold Street Apartments (the 'Landlord') and Brandy Gerrard(the 'Landlord's Agent'):

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household (T2 application).
- Failed to meet the Landlord’s maintenance obligations under the Act (T6 application).

This application was heard by videoconference on December 4, 2023. Only the Tenant attended the hearing. As of 9:48am, 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:

1. The Tenant’s applications were filed on September 7, 2021 and both contain the same allegations.
2. The tenancy commenced on August 1 2021 and the Tenant vacated the unit on August 30, 2021.

3. The Tenant testified that on the first day he moved into the rental unit he observed that the stove was not working. The Tenant contacted the Landlord about the broken stove immediately upon discovery of its dysfunction but stated that the Landlord never repaired and/or replaced the broken stove with a working appliance.
4. On or about the last week of August 2021, the Tenant observed bedbugs in this rental unit. The Tenant testified that due to the Landlord's inaction with respect to the stove that he did not contact the Landlord about the bedbug issue.
5. As a result of the bedbugs, the Tenant disposed of his area rug and loveseat and hired a pest control company to treat the rental unit for the bedbugs on or about the last week of August 2021.
6. The Tenant also testified that upon moving into the rental unit that he observed that the rental unit was not cleaned and had signs of mould and/or mildew behind the heaters and under the stove and that there was a presence of rats in the underground parking garage and entrances to the garbage area of the residential complex.

Analysis:

7. Sections 20 and 22 of the *Residential Tenancies Act, 2006* (the Act) state:

20 (1) 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.

(2) Subsection (1) applies even if the tenant was aware of a state of non-repair or a contravention of a standard before entering into the tenancy agreement.

22 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.

8. Based on the evidence before the Board, I am satisfied that the Landlord has breached the Act by not providing the Tenant with a working stove at the commencement of the tenancy and by failing to provide the Tenant with a working replacement stove for a 30-day period. The Landlord has a responsibility to ensure that the rental unit and its appliances are in a good-state of repair and/or working order prior to the commencement of the tenancy.
9. I am not satisfied however that the Landlord is in breach of the Act or responsible for the Tenant's out of pocket expenses with respect to the alleged pest control issues. The Tenant's own evidence is clear that the Landlord was not put on notice of this issue or

given an opportunity to rectify the bedbug issue during the time of the tenancy. Rather the Tenant took it upon himself to hire an exterminator to treat the rental unit and to dispose of some of his furniture.

10. Section 30(2) of the Act states that when determining a remedy against a landlord under section 30(1) that the Board must consider whether the tenant or former tenant advised the landlord of the alleged breaches before applying to the Board. The Tenant did not do so with respect to his allegations of pest control issues.
11. I further note that previous cases and testimony before the Board from licensed pest control technicians have confirmed that furniture can be successfully treated to remove the presence of bedbugs. The Tenant provided insufficient evidence at the hearing to support that he had no other option but to dispose of his sofa and/or area rug or that the furniture was infested to the point where it could not be restored back to its original condition.

Remedies:

Order terminating tenancy:

12. The applications request that the Board terminate the tenancy August 31, 2021. I find that this request is reasonable. The evidence before the Board suggests that the Tenant vacated the rental unit due to the Landlord failing to provide the Tenant with a working stove for 30 days. I find that had the Landlord met their section 20 obligations under the Act, that the Tenant would not have vacated the unit so early into his tenancy.

Rent abatement:

13. The Tenant requested a rent abatement in the amount of \$3,950.00. The monthly rent for the rental unit was \$1,250.00, plus \$50.00 for parking. The Tenant stated that this amount includes a 100% rent abatement for the month he resided in the rental unit (August 2021) and return of the last month's rent deposit and September 2021 rent which was paid in advance and prior to the commencement of his tenancy. The Tenant also paid 4 months of parking in advance for a total of \$200.00.
14. An abatement is a contractual remedy designed to address the idea that tenants are paying for a bundle of goods and services and if they do not receive everything they are paying for, the rent should be abated in an amount proportional to the difference between what is being paid for and what is being received.
15. For the month of August 2021, I find that the Tenant is entitled to a rent abatement in the amount of \$62.50 which represents a 5% rent abatement for the rent charged to the unit. Despite there being a non-working stove, there was insufficient evidence before the Board to suggest that this affected a substantial portion of the rental unit or the Tenant's ability to use his parking spot.

16. I do find however that the Tenant is entitled to reimbursement for his last month's rent deposit and the rent and parking charges pre-paid for the period after August 31, 2021 as the Tenant was no longer residing in the rental unit beyond this period.
17. As such, the Tenant is entitled to a total rent abatement in the amount of \$2,712.50.

Administrative Fine:

18. The Tenant also requests that the Landlord be ordered to pay an administrative fine to the Board. The Board's Interpretation Guideline 16 entitled Administrative Fines addresses when the Board generally imposes fines:

An administrative fine is a remedy to be used by the Board to encourage compliance with the Residential Tenancies Act, 2006 (the "RTA"), and to deter landlords from engaging in similar activity in the future. This remedy is not normally imposed unless a landlord has shown a blatant disregard for the RTA and other remedies will not provide adequate deterrence and compliance.

19. Based on the evidence before me, although I find the Landlord to be in breach of the Act, I am not satisfied that the Landlord has shown a blatant disregard for the legislation. The Tenant also provided insufficient evidence to warrant ordering an administrative fine against the Landlord. As such, this request is denied.

Out of pocket expenses and costs to replace property:

20. As stated above, I am not satisfied that the Landlord has breached the Act with respect to the bedbug issue. As such, the Tenants request for reimbursement for disposing of his furniture and out of pocket expenses to hire his own pest control technician are denied.

Filing Fee:

21. The Tenant paid \$53.00 for the costs of filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated effective August 31, 2021.
2. The Landlord shall pay to the Tenant \$2,765.50. This amount represents:

- \$2,712.50 for a rent abatement
 - \$53.00 for the costs of filing the application.
3. The Landlord shall pay the Tenant the full amount owing by January 3, 2024.
 4. If the Landlord does not pay the Tenant the full amount owing by January 3, 2024, the Landlord will owe interest. This will be simple interest calculated from January 4, 2024 at 7.00% annually on the balance outstanding.
 5. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

December 18, 2023
Issued

Date

Fabio Quattrociochi

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.