



**Order under Section 69  
Residential Tenancies Act, 2006**

**Citation:** Casiechitty v Imran, 2023 ONLTB 78843

**Date:** 2023-12-04

**File Number:** LTB-L-069481-23  
LTB-T-029978-23

**In the matter of:** 1401, 2460 EGLINTON AVE E  
TORONTO ON M1K5J7

**Between:** Langsford Casiechitty Landlord

**And**

Anila Imran, Abeer Imran and Nabeel Imran Tenants

Langsford Casiechitty (the 'Landlord') applied for an order to terminate the tenancy and evict Anila Imran, Abeer Imran and Nabeel Imran (the 'Tenants') because the Tenant did not pay the rent that the Tenant owes (L1 application).

The Landlord also applied for an order to terminate the tenancy and evict the Tenants because:

- the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex.
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has willfully caused undue damage to the premises (L2 Application).

The Tenants applied for an order determining that the Landlord Illegally entered the rental unit, harassed, obstructed, coerced, threatened or interfered with the Tenant (T2 Application)

The Tenants also applied for an order determining 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 (T6 Application).

**Procedural history:**

The Tenants applications were filed on April 18, 2023, and initially heard on July 24, 2023, and adjourned based on the Tenant's request to allow the Tenant to amend their applications and to afford the Landlord time to review and prepare responses to the amendments.

Following the Tenants applications being adjourned on July 24, 2023, the Landlord Agent filed the Landlord's applications on September 5, 2023, and submitted a request to have them combined with the Tenant's which was approved on September 15, 2023.

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The Landlord's applications were initially heard on October 18, 2023, and were adjourned due to a lack of time. I issued Interim Order LTB-L-069481-23-IN dated October 31, 2023, directing the Tenant to pay the rent until the matters had been resolved.

These matters were then reconvened on November 1, 2023, where I heard the remainder of the Landlord's applications before again adjourning the matters due to a lack of time.

The Tenant's applications were then heard by videoconference on November 17, 2023.

The Landlord Agent Romesh Casiechitty, the Tenant Representative Muhammed Alam and the Tenant Anila Imran attended the hearing.

### **Preliminary Issues:**

1. At the outset of the hearing the Landlord Agent Romesh Casichitty (RC) requested that I not consider any submission from the Tenant alleging an illegal rent increase as she failed to include them in either of her applications.
2. The Tenant Representative submitted that the Tenant filed her applications prior to him being retained and that it was merely an oversight on the Tenant's part and that the issue of an illegal rent increase should be considered as it also constituted part of the alleged harassment the Tenant was subject to from the Landlord Agent.
3. Conducting a review of the Tenant's applications I found a reference to an illegal rent increase as part of the remedies sought in the Tenant's T6 Application, however, given the mechanism for bringing such an allegation to the Board is through a T1 Application, and the Tenant didn't file one, and still could, I directed that I would not consider any such submissions.
4. RC then requested that I not hear the Tenant's amended applications, claiming that he didn't have time to prepare responses and it would be prejudicial to the Landlord.
5. Given the procedural history and the fact that the Tenant filed and provided copies of the amended applications on July 24, 2023, I denied the request. I am satisfied that the Landlord had an adequate opportunity to review the Tenant's amended applications.
6. RC then requested I dismiss the Tenant's T2 and T6 application submitting that they were brought forth for frivolous and vexatious conditions and that it lacked reasons and details as required by s.43(2) of the *Residential Tenancies Act, 2006* (the 'Act') and addressed by the Divisional Court in *Ball v. Metro Capital Property*, [2002] O.J. No. 5931 ("*Ball*").
7. I find that the Tenants T6 application provide details regarding leaks and mould in specified areas of the rental unit and when the Tenant allegedly informed Landlord. Further, the Tenant's T2 application, specifically the section covering interference, provide significant details including reasons dates and times pertaining to maintenance issues and the Landlord's alleged interference by not addressing them. Accordingly for these reasons I did not dismiss the Tenants' applications.

8. As to the submission that the applications were filed for frivolous and vexatious conditions, the RC led video evidence at the hearing on November 1, 2023, that gave credence to the allegations contained in the Tenants application.
9. Furthermore, the decision in *Ball* addressed what is now s.43(2) of the Act which contains requirements for notices of termination served by Landlords. While an application filed by a tenant must contain sufficient details to allow a landlord to understand the allegations and respond at the hearing, neither *Ball* nor s.43(2) of the Act are directly relevant. Accordingly for this reason and those above I denied the Landlord Agent's request.
10. At the outset of the hearing the Tenant Representative submitted that the Tenants' responses to the Landlord's L2 Application were addressed in the contents of their T6 and T2 Applications. Accordingly, for the purposes of this order, the determinations for both the Landlord's L2 application and the Tenants T6 and T2 Applications will be considered together.

### **Determinations:**

1. The rental property consists of a two bedroom, 2 bath condo unit within a condo complex. The Tenancy commenced on June 1, 2022, and is ongoing.

### L1 Application

2. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$2,203.75. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$72.45. This amount is calculated as follows:  $\$2,203.75 \times 12$ , divided by 365 days.
6. The Tenant has not made any payments since the application was filed.
7. The alleged rent arrears owing to November 30, 2023, are \$8,887.50.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$2,150.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
10. Interest on the rent deposit, in the amount of \$78.64 is owing to the Tenant for the period from June 2, 2022 to November 17, 2023.
11. The Tenant testified that she ceased paying rent due to the Landlord's alleged harassment and failure to address maintenance issues. She also testified that she believed she was

owed an abatement of rent for the same reasons and as such disagreed with the amount owing.

12. Based on the above testimony and evidence I am satisfied on the balance of probabilities that the rent arrears owing to November 30, 2023, including the cost for filing the application are \$9,063.50.

### L2, T2 and T6 Applications

13. On August 13, 2023, the Landlord gave the Tenant N7 Notice of termination (N7 Notice) deemed served on August 18, 2023. The termination date on the notice is August 29, 2023. The N7 Notice alleges:
  - a. On April 1, 2023, after the Tenant Anila Imran reported damage to the flooring, the Landlord requested that the Tenant send pictures which the Tenant failed to do until April 22, 2023, after the Landlord had called and texted her several times. As a result, on April 23, 2023, while inspecting the flooring, the Landlord determined that water spilled on the floor as a result of the Tenants delay and negligence caused the damage;
  - b. On May 13, 2023, while in the rental unit conducting repairs the Landlord and his helpers noticed that the Tenant had moved her mattress to the middle of the living room floor causing a tripping hazard. The Tenant refused to move it back to the master bedroom. The Tenant proceeded to harass and coerce the Landlord and his helpers into leaving the unit. Prior to their departure the Tenant, while walking by the Landlord's helper smacked the helper in the face, assaulting her. The other Tenants had to intervene; and
  - c. On July 15, 2023, while the Landlord and his helpers were conducting an inspection the Tenant Anila Imran followed and harassed the Landlord and helpers including making a false report to the police. Following this, the Landlord's helper trip and smacked his knee while trying to navigate around the Tenant's mattress that she still had refused to move back to the bedroom. The Tenant Anila Imran then threatened the Landlord and helpers by yelling "this is the last day." Following this, out of fear for their safety, the Landlord and his helpers left, not being able to complete the inspection.

### The flooring

14. RC testified that the flooring in the rental unit was brand new at the commencement of the tenancy, submitting pictures to support this claim dated May 14, 2022. He also testified that the Tenant Anila Imran (AI) informed him that there was an issue with the flooring on April 1, 2023, and that he immediately requested she send pictures. This was supported by text messages entered in evidence. He then testified that he had to repeatedly message the Tenant to remind her until she sent the pictures on April 22, 2023. The text message from AI to the Landlord from April 22, 2023, was entered in evidence which clearly show the floorboards were bellowing.

15. He then testified that when he inspected the flooring on April 23, 2023, he determined the damage was due to moisture and having inspected the rest of the unit, not finding a leak or another source, concluded that it must have been caused by the Tenants deliberately. To support this claim, he submitted a text message from the AI to him on April 25, 2023, in which she denied spilling cola and deliberately causing the damage.
16. In the weeks that followed, after having installed a dehumidifier to help dry the flooring the RC testified that AI repeatedly denied him entry to inspect and address the issue. In support of this he entered a log denoting the dates notices of entry were given by text message and AI's subsequent refusal to grant access which included 8 instances between May 5 and June 3, 2023. It was also his submission that this caused the flooring to get worse which he supported with pictures from May 13 to 19, 2023 in which the flooring is beginning to completely buckle.

### Leaks

17. AI denied deliberately pouring water or coke on to the floor. It was her submission that there was an ongoing issue with leaks and moisture in the rental unit. The leaks coupled with the RC's refusal to respond to these issues and the flooring in a timely manner is what resulted in the damage. She testified that on May 29, 2022, when viewing the unit, she remarked to the Landlord that the bathtub faucet in the master ensuite and in the second bathroom continually leaks. She also testified that the Landlord Agent's response was "take it or leave it." A video showing water flowing from the bathtub faucets despite being in the closed position was entered in evidence.
18. She also testified that towards the end of July and beginning of August 2022 she noticed a leak from the ensuite sink, which she reported to RC. Sending pictures as per RC's Request, his response was to tell her to stop leaving the sink full and to put a bucket under the sink until he could address it. She also testified that she had to empty the bucket every four hours. Pictures of the bucket under the sink where water damage can be seen to the surrounding cupboard were entered in evidence.
19. In response RC testified to only learning about the faucets and sink on November 27, 2022, and stated that there was no leak, submitting AI kept the sink full which caused condensation and that he brought in a plumber to inspect and found no leak on December 17, 2022. He also testified to replacing the surrounding cupboard. Pictures of the fixed cupboard were entered in evidence. It was also his testimony that the Tenant called him on December 1, 2022, and told him the leak had stopped.
20. As to the faucets, it was RC's testimony that he never said, "take it or leave it" and that they had been fixed of as June 13, 2023 per the Property Standards Order, dated May 23, 2023, entered in evidence.
21. It was AI testimony that it was RC's refusal to hire professionals or to address the issue of leaks that led her to filing a complaint with By-Law enforcement. With respect to her refusal to grant access to the rental unit to the Landlord between May 5 to June 3, 2023, it was her testimony that she had ongoing medical issues and appointments that she made RC aware of.

22. The Tenant Witness Waslam Safdar (WS) is a City of Toronto By-Law Enforcement Officer. He testified that he was assigned the Tenant's complaint on August 3, 2023, conducted an inspection on September 13, 2023, and issued a report on September 14, 2023. It was his findings, as stipulated in the report entered in evidence, that the caulking around the ensuite bathroom fixtures were in complete disrepair. It was his testimony that in cases such as this it was common for water to seep beneath the fixtures. He also testified to seeing a stain in the cupboard under the sink.
23. The report also detailed the condition of the flooring in the bedroom and living room being uneven a representing a tripping hazard.
24. On cross examination WS testified that he could not determine if the stain under the sink was mould or not, specifying that wasn't his specialty. He also testified that it was possible for water to seep through the caulking due to the Tenant's negligence. He also testified that problems could arise due to the poor ventilation, and moisture builds up in the bathroom. He also testified that it was normal for the Tenant to provide a copy of the report to the Landlord in cases where the Landlord didn't live at the rental unit.
25. RC then submitted that AI had failed to provide him with the report in a timely fashion which resulted in a delay in acting and that he had already addressed the uneven floor.

#### Mould

26. AI testified that she had detected a strong order and felt the floorboards "squish" under her feet leading up to her informing the RC on April 1, 2023. It was her testimony that she told him she thought it was mould and he should get it checked but he refused. Following this she informed the property complex management who advised her to contact a mould remediation company. An inspection was completed on April 25, 2023, and according to the report, entered in evidence, the technician found "significant mould growth under the sink in the ensuite, in the wall and under the floorboards. The report included pictures of the findings. The final recommendation of the report was the remediation of all the effective areas including removal of all affected building materials.
27. In response the RC called into question the credibility of the report, submitting that AI paid for it and therefore the company had a vested interest in reporting as she wanted. He also submitted that the property standards report of September 14, 2023, showed no indication of mould.
28. AI then testified that the RC had yet to do any remediation except for fixing the floor. However, the floor repairs were not initially successful because RC did the work himself while relying on a dehumidifier, a blow dryer and glue. This was supported by a video entered in evidence. She didn't dispute that the flooring had been addressed but testified that nothing had been done regarding the appliances, caulking or ventilation per the September 14, 2023, Property Standards Order. She also testified that due to RCs refusal to address the mould she moved her mattress out of the Bedroom out of concern for her health.
29. RC again disputed the presence of mould and testified that he had not addressed the remaining issues owing to the events of May 13, 2023, and the police advising him not to attend the property until the matter had been rectified before the Board.

## Harassment and Interference

30. Both the Landlord's L2 Application and the Tenants T2 Application contain allegations of harassment, interference and assault leading up to the and including the events of May 13, and July 15 2023, in the rental unit.
31. RC testified that he along with the Landlord his father and his sister Menaka Casiechitty (MC) acting as his helper attended the unit on May 13, 2023, to conduct an inspection. He further testified that the Tenant Anila Imran immediately began yelling, and making accusations against them and demand that they leave. It was also his testimony that at one point AI assaulted his sister by hitting her phone into her face, causing her to stumble and that following that AI had to be restrained. This was supported by MC who testified that the Tenant Anila Imran, while walking by her deliberately hit her hand knocking her own into her face causing her to stumble. A video of the incident was entered in evidence.
32. He also testified that on July 15, 2023, while conducting another inspection, AI immediately began harassing and threatening them to leave, including making a false report to the police that they broke into the rental unit and were refusing to leave. A video of the incident was entered into evidence.
33. On cross examination MC testified that the events of May 13, 2023, were not typical of the Landlord Tenant relationship, but after the events of that day things progressively got worse. She also testified that the light on her phone automatically came on due to the lights being off in the rental unit and that she didn't deliberately point the light in AI's face.
34. In response AI testified that the RC had failed to provide her a copy of the lease in a reasonable amount of time despite numerous requests. She also testified that she had repeatedly asked him to use email when corresponding with her, and to cease attempting to facetime or call her. She entered emails sent to RC to support this. She also testified RC had a habit of attending the rental unit unannounced and would stay for inappropriate amounts of time engaging in inappropriate conversations. She testified that on April 12, 2023, without notice he came to the property and attempted to gain entry while her daughter was home alone.
35. AI testified that May 13, 2023, was another example of RC's inappropriate conduct because she told him that she wasn't feeling well and did not want him to attend a few days prior. It was her testimony that the Landlord, RC and MC barged into the rental unit unannounced, and that MC immediately began filming her, shinning the light from her phone in her face. Distressed she called her daughter who came home to assist her. It was her testimony that at one point RC began following her around the unit and ran into her touching her breasts. She also testified that she did walk by MC as claimed but raised her hand to block the light from MC phone from being in her face, denying that she assaulted MC.
36. This was supported by the testimony of AI's daughter Abeer Imran (Abeer) who also recorded the incident and the video of which was entered in evidence. Abeer testified that RC would follow her mother around the rental unit, and that MC kept on recording and pointing the light in her mother's face despite being asked multiple times to stop.
37. Abeer also testified that the events of May 13, 2023, were not typical of the Landlord Tenant relationship and was shocked by the events.

38. Regarding the events of July 15, 2023, AI testified that she called the police as she felt that the Landlord, RC and MC were deliberately attending the unit to harass her and wanted it to stop. She also testified that she suffered from hypertension and chest pain as a result of the Landlord's conduct, submitting a doctor's note from April 3, 2023, denoting her treatment for the condition.
39. In response RC testified that he did provide AI with the lease once she finally provided proof of insurance. This was supported by text messages he sent AI repeatedly asking for confirmation of her insurance. Regarding communication, it was his submission that text, and facetime were more efficient and acceptable. He also testified he never received the email requesting that he cease using those forms of communication.
40. Regarding May 13, 2023, he testified he never touched AI's breasts, testifying his hands were full, holding a folder and phone and that she ran into him to knock him down. It was his position that he always gave proper notice and that AI had been illegally preventing him from entering the property. He then testified proof of this could be demonstrated by the fact that AI changed the locking system. He entered a picture of a chain lock and hotel style security lock that AI installed on door frame inside the rental unit.
41. On cross examination, RC confirmed the email address AI used to send her messages was his but again testified to never receiving them.

#### Remedies sought

42. The remedies sought by the Landlord in the L2 application are compensation for out-of-pocket expenses to replace or repair the damage floor totalling \$4,794.87 and to terminate the tenancy.
43. The remedies sought by the Tenants are as follows:
- a. Maintain the tenancy
  - b. The Landlord's Agents RC and MC to cease the harassment.
  - c. To hire professionals to address the mould.
  - d. An abatement of rent of 30% over 14 months based on the previous monthly rent of \$2,150.00 totalling \$9,030.00.

#### *Analysis*

##### Damage and Maintenance Issues

44. The following sections of the *Residential Tenancies Act, 2006* (the Act) are relevant with respect to the maintenance and damage allegations:
- 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.
- 62 (1)** A landlord may give a tenant notice of termination of the tenancy if the tenant, another occupant of the rental unit or a person whom the tenant permits in the



residential complex wilfully or negligently causes undue damage to the rental unit or the residential complex.

**89 (1)** A landlord may apply to the Board for an order requiring a tenant or former tenant to pay reasonable costs that the landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of damaged property if,

(a) while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant or former tenant wilfully or negligently causes or caused undue damage to the rental unit or the residential complex.

45. 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 landlord 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.
46. Applying this test and based on the testimony and evidence before me, and for the reasons that follow, I am not satisfied that the Landlord has proven that the Tenants have wilfully or negligently caused undue damage whereas I am satisfied the Tenants have established that the Landlord has not reasonably maintained or repaired the rental unit.

#### Flooring

47. Besides his oral testimony asserting his belief that AI deliberately damaged the flooring, the only evidence RC led was a text from AI denying the allegation. In contrast AI's testimony that the damage to the floor was likely caused by a bathroom leak was the evidence provided by By Law Enforcement Inspector and a corresponding report that there was an ongoing moisture and ventilation issues in the rental unit. Accordingly, I am satisfied on the balance of probabilities that the damage to flooring was not caused negligently or wilfully by the Tenants.
48. As to RC submission that AI's delay in providing the pictures of the flooring exasperated the damage, section 20 of the Act makes it clear that maintenance is a Landlord's responsibility. RC admitted to being told there was an issue on April 1, 2023, accordingly, he had a responsibility to act at that point in a timely manner. To blame the Tenants because they didn't send pictures is not reasonable, nor is waiting three weeks to act. In consequence not only am I satisfied that AI was not at fault, but I am also satisfied RC was in breach of the Act, namely the Landlord's maintenance obligations.

#### Leaks

49. RC was consistent in his testimony that there was never a leak in the ensuite sink and that the first he learned of the issue along with the faucets was on November 27, 2022. Even if

I were to accept that, that does not explain the delay in addressing the faucets. By his own admission it took a Property Standards Order for him to fix them in June 2023. That was 11 months after AI asserted that she informed him and 7 months after he admitted to being made aware. This is not reasonable delay and constitutes another breach of the Act and a failure of the Landlord's maintenance obligations.

### Mould

50. The mould report of April 25, 2022 clearly indicates that despite RC assertions that there isn't any mould that there is in fact a significant issue of mould in the rental unit. The report included pictures of growth under the ensuite sink, and on the flooring. I do not accept RC submission that the report isn't credible because the Tenant paid for it to be completed. The same could be said of the plumber he hired to inspect the unit on December 17, 2022. I do not accept his submission that the September 14, 2023, Property Standards Report's failure to mention mould as proof that it doesn't exist. WS, the author of the report, testified on RC's own cross examination that he couldn't identify mould as it wasn't his specialty. Accordingly, for these reasons I am satisfied that AI has established that there is mould issue in the rental unit and RC has failed to address it constituting another breach.
51. As to RC's explanation as to not addressing the other issues raised in the September 14, 2023, report, namely the police recommendation to not attend, I do not accept that either. As explained above section 20(1), clearly states maintenance is a landlord responsibility, just because the police recommend, they do not attend the property it does not absolve them of that obligation. RC could have and should have arranged for someone to deal with those issues and in failing to do so the Landlord has again failed to meet their maintenance obligations.

### Harassment and Interference.

52. As noted above, both the Landlord and Tenant Applications contain allegations of harassment and interference surrounding the events of May 13 and July 15, 2023. In both cases the parties gave conflicting testimony and entered video evidence.
53. The following sections of the *Residential Tenancies Act, 2006* (the Act) are relevant with respect to these allegations:

**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.

**23.** A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.

**66 (1)** A landlord may give a tenant notice of termination of the tenancy if,

(a) an act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person; and

(b) the act or omission occurs in the residential complex.

54. Having considered the testimony and reviewed the video evidence from both parties, I am satisfied on the balance of probabilities that both parties are in breach of the Act. It is clear from the video evidence from May 13, 2023, that MC was deliberately pointing the light of her phone in AI face, despite repeated request to stop, constituting harassment. However, it is also clear that AI through her abusive language and calls to the police was attempting to intimidate and harass the Landlord, RC and MC into leaving on July 15, 2023.
55. Similarly given the determination regarding the issue of mould above I am accepting of AI explanation for not moving the mattress back into the bedroom. Accordingly, although its clear that RC tripped from the video evidence, I do not find the Tenant intended to harm the Landlord by moving the mattress as claimed.
56. As to the allegations of AI hitting MC and RC touching AI breasts, the video evidence doesn't provide a clear depiction as such I am not satisfied on the balance of probabilities that either event occurred as each party claims. Accordingly, for this reason and those above I am dismissing the Landlord's L2 Application.
57. As to the Tenants T2 Application, and the allegation that RC insisted on using facetime when AI requested that they only use email, I am not satisfied that AI effectively communicated that request. Specifically, the emails she entered were one sided, cut and paste on to a word document so its unclear to me if they were sent or their full context. Nor did AI indicate that email was an accepted form of communication as stipulated in the lease.
58. Regarding interference, given my determination above regarding the maintenance issues, I am satisfied that AI has also established that the Landlord's failure to address the maintenance issues in a timely manner constitutes substantial interference with the Tenants' reasonable enjoyment of the rental unit. Specifically, by failing to address the moisture issues, the Tenant was required to accommodate repeated visits by the Landlord to address the flooring. Similarly, by not addressing the mould the Tenant was without her bedroom out of fear for her health.
59. I also take note of both Abeer's and MC's testimony that the events of May 13, 2023, were not typical of the Landlord Tenant relationship. However, what is clear to me is that all the parties lack of understanding their respective duties and responsibilities under the Act which I have no doubt have contributed to the animosity between the parties.

### Remedies.

60. An abatement is a monetary award expressed in terms of a portion of past or future rent. It may be in the form of an order: (a) directing that the landlord pay the tenant a fixed amount—return rent paid by the tenant; or (b) allowing the tenant to pay less rent going forward by a fixed amount or percentage of the rent the tenant pays.

61. A rent abatement is meant to compensate the tenant to the degree that the tenant was deprived of what was bargained for or what is prescribed by legislation or minimum housing standards. It is only when a tenant is completely deprived of all of the benefits of a tenancy—where the rental unit is uninhabitable—that a 100% abatement is appropriate. [See 22001839 (Re), 2022 ABRTDRS 15 (CanLII)] As noted by the Vice Chair in TST-56138-14 (Re) [2015 CanLII 3162 (ON LTB)], ‘[abatement of rent is a contractual remedy based on the principle that if you are paying 100% of the rent then you should be getting 100% of what you are paying for and if you are not getting that, then a tenant should be entitled to abatement equal to the difference in value.]’

62. In determining the appropriate abatement, the LTB will consider, among other things:

- a. what percentage of the ‘package’ of shelter and services the landlord contracted or was otherwise obliged to provide was not available to the tenant;
- b. the length of time the problem existed and the severity of the problem in terms of its effect on the tenant;
- c. whether the tenant told the landlord about the issue(s) in a timely manner;
- d. whether the landlord responded to the issues raised by the tenant within a reasonable time and the landlord’s response was appropriate and effective.
- e. whether the tenant is wholly or partially responsible for the issue(s); and
- f. whether the tenant hindered or interfered with the landlord’s efforts to address the issue(s).

63. The LTB will consider the impact the breach has on the average tenant or the impact a reasonable person would expect this problem to have on a tenant. If the tenant has a particular susceptibility to the problem, the landlord can only reasonably be liable to the tenant for a more significant abatement if it can be shown that the landlord knew of the particular condition of the tenant.

64. The ultimate objective is to grant an abatement that is fair considering all of the circumstances. In *Biltmore Terrace Apartments v. Nazareth* [[1997] O.J. No. 1881 (Gen Div)] the Court said, “It is always difficult to arrive at a proper amount or percentage by way of abatement. There is no magic formula. What is appropriate in each case will depend on the circumstances, including the amount of rent, the age and general condition of the premises, the nature and degree of the no- repair, and its duration, the efforts of the

Landlord to inspect, the co-operation or otherwise of the Tenant in that regard, and the efforts made by the Landlord to rectify the defect.”

65. Similarly, in *Offredi v. 751768 Ontario Ltd.* [1994 CanLII 11006 (ON SCDC)] the Court said that there is no mathematical way in which to determine an appropriate abatement.

66. In this case, the ongoing maintenance issues had a moderate to severe impact of the use and enjoyment of the unit by the Tenant. I The presence of mould forced the Tenant to move her mattress from the bedroom to the living room and she had to contend with leaking faucets for excess of 7 months. Ultimately the Tenants were forced to seek the assistance of the City of Toronto By-Law enforcement due to the Landlord’s failure to reasonably address the maintenance issues.

67. In this case, I believe that a lump sum abatement is appropriate in terms of compensating the Tenant for the impact the Landlord’s failure to address the maintenance issues in a timely and efficient manner had on her use and enjoyment of the unit. I set that abatement at \$10,000.00.

68. I am also satisfied that the following remedies are reasonable given the circumstances:

- a. An order directing that the Landlord hire professional contractors to address the mould issue within the rental unit; and
- b. An order directing the Landlord hire professionals to address the remaining maintenance issues as identified in the Property Standards Order of September 14 ,2023, to include:
  - i. The ventilation in the ensuite;
  - ii. The caulking around the fixtures in the bathrooms; and
  - iii. The appliances.

#### Landlord Agent’s Conduct.

69. Although I am not satisfied that the Landlord’s Agent RC deliberately harassed or intimidated the Tenant, his conduct during the hearings held was unprofessional and disruptive. Throughout the three days of hearings RC would regularly make groundless objections to the Tenants submissions and testimony. Furthermore, despite several warnings to cease such conduct along with explanations as to why his behaviour was unacceptable and the potential costs that could be levied against him, he continued to do so resulting in unnecessary delays.

70. Section 204(3) of the Act states the Board may order that its costs of a proceeding be paid by a party or the party's paid representative.
71. Rule 23.4 of the Landlord Tenant Board Rules states a party or a paid representative may be ordered to pay the LTB for its costs of a proceeding. Hearing costs will not exceed \$100 per hour to a maximum of \$700.00.
72. At the conclusion of the hearing, I canvassed the Landlord Agent RC for submissions as to why I should not order Board Costs levied against the Landlord. In response RC apologised and testified that he was inexperienced appearing before the Board and only had a brief consultation with a paralegal prior to the commencement of the hearings and based his behaviour the recommendations received.
73. Although I acknowledge that RC is inexperienced, I am not satisfied that adequately explains his repeated failure to follow instructions as such I am satisfied that Board Costs in the amount of \$500.00 should be ordered against the Landlord due to disruption and delay caused by RC conduct and his failure to reasonably follow my directions.

**It is ordered that:**

1. The Landlord's L2 Application is dismissed.
2. The Landlord shall pay to the Tenants **\$936.50**. this amount represents the \$10,000.00 lump sum abatement less the above determined amount owing to the Landlord for arrears of rent for the period ending on November 30, 2023 and the fee for the Landlord's L1 Application.
3. If the Landlord does not pay the Tenant the full amount owing on or before December 31, 2023, the Landlord will start to owe interest. This will be simple interest calculated from January 1, 2024, at 7.00% annually on the balance outstanding.
4. On or before January 31, the Landlord shall have professional contractors:
  - a) Address the mould issue within the rental unit to include a complete inspection and remediation and replacement of all affected areas and materials;
  - b) Inspect and clean the ventilation in the ensuite to ensure it is working as prescribed by prevailing property standards;
  - c) Repair the caulking around the fixtures in the bathrooms to include remediation of any mould or moisture; and
  - d) Inspect, repair or replace the appliances to ensure those provide are in working order according to the prevailing property standards.
5. Should the Landlord fail complete all of the work required in paragraph four above, commencing February 01, 2024, the Tenants may deduct \$1,000.00 from the rent each month until it the work has been completed.

6. The Landlord and Tenant shall use email or text message to communicate issues surrounding the rental unit and tenancy.
7. The Landlord shall pay into the Board \$500.00 in costs by December 31, 2023.

**December 11, 2023**  
**Date Issued**

\_\_\_\_\_  
Kelly Delaney  
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.