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Order under the
Residential Tenancies Act, 2006

Citation: Oswald v Travi Inc./The Morassutti Group, 2023 ONLTB 68350
Date: 2023-10-23
File Number: LTB-T-069511-22

In the matter of: 109, 339 THE WEST MALL
ETOBICOKE ONTARIO M9C1E2

Between: Travi Inc./The Morassutti Group — Landlord

And

Ajala Oswald — Tenants
Jonathan Beggs Oswald
Kesi Oswald

Ajala Oswald, Jonathan Oswald and Kesi Oswald (the 'Tenants') applied for an order determining that:

(a) Travi Inc./The Morassutti Group (the 'Landlord') and/or the Landlord's (former) superintendents: (i) harassed, obstructed, coerced, threatened or interfered with the Tenants; and (ii) substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants; and

(b) the Landlord failed to meet its maintenance obligations.

The Tenants asked for[1]: (a) a $19,897.00 rent abatement; (b) $5,000.00 in out-of-pocket expenses consisting of $4,800.00 for boarding of a dog and $200.00 for a mold inspection; (c) $2,000.00 for damaged sheets, comforters, towels, etc. and lost food; and (e) $5,000.00 in 'general' compensation.

I heard the applications on October 31 and December 12, 2022, and March 13, 2023. The

[1] The Tenant filed an amendment to the T6: DOC-784637. The Landlord did not object to the amended T6 being considered. The Tenant explained on March 13, 2023 what exactly he was asking the LTB to award on each of the T2 and the T6.

Landlord was represented by David Ciobotaru. Ajala Oswald ('AO') spoke for the Tenants.

I heard evidence from AO and Jonathan Oswald ('JO'), and two employees of the Landlord: Diedre Klemann and Aynsley Saxe. The Landlord and the Tenants also filed documents and I have reviewed and considered those documents.

AO was honest and forthright in answering the questions put to him by me and Mr. Ciobotaru. I accept his evidence.

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JO testified for less than five minutes and his evidence did little to assist me in determining the application.

Ms Saxe had limited personal knowledge and I found her to be evasive and her evidence to be, at times, unclear. Much of the direct examination of Ms Saxe involved Mr. Ciobotaru running through documents and asking leading questions that yielded 'evidence' that I would describe as self-serving and of questionable reliability. When challenged on facts under cross-examination by AO, Ms Saxe often purported to have little or no recollection of the facts; often the same facts that she purported to recall when questioned by Mr. Ciobotaru. Where the evidence of Ms Saxe differs from that of AO, I prefer the evidence of AO.

Ms Klemann is the (new) superintendent at the complex. While Ms Klemann was honest and forthright, she did not become the superintendent until April of 2022 and was only able to testify with respect to what transpired after she became the superintendent.

Determinations:

1. These applications were filed because of a sewage backup in the rental unit on April 8, 2020, but the causes and consequences of that backup were not addressed by the Landlord in a timely or effective manner.

2. On October 31, 2022, I adjourned the application to be heard on December 12, 2022. I did that because I was told the final repairs to the rental unit were scheduled to be completed during the week of November 7, 2022 and I believe that the application could best be dealt with once the repairs were completed. However, when the parties appeared before me on December 12, 2022 the repairs to the unit had not yet been completed and when the parties appeared before me on March 13, 2023, the repairs had still not been completed.

I. Hybrid Hearing

3. The *Statutory Powers Procedure Act* (the 'SPPA') provides me with jurisdiction to hold a combination written-electronic hearing. **[SPPA, ss. 5.2.1 and 6(4)(b)]**

4. To expedite the hearing of the application, I decided to 'convert' the hearing of the T6 application to a hybrid written-electronic hearing. The Tenants filed a document titled 'Schedule A Evidence Summary' **[DOC-751168]** that was, in my view, sufficiently detailed that it could stand as the AO's direct evidence on the T6 application. Rather than have AO relay this evidence verbally, I had him confirm that the information in the documents was true and correct. The Landlord then cross-examined AO on the document as if it were an affidavit. The Landlord consented to this approach being taken to the T6.

5. For the purposes of the T2, the Tenants' direct evidence was given verbally by AO and JO, and Mr. Ciobotaru was given the opportunity to cross-examine both of them.

II. Liability of the Landlord

6. A number of the issues raised by the Tenants relate to the actions and conduct of the Landlord's (former) superintendents. A landlord is vicariously liable for the actions and conduct of its employees in the course of their employment. **[See *TST-95840-18 (Re)*, 2019 CanLII 134566 (ON LTB) and *TST-73526-16 (Re)*, 2016 CanLII 38748 (ON LTB)]** The *Residential Tenancies Act, 2006* (the 'RTA') also specifically contemplates that a remedy may be awarded against a landlord based on the conduct of its superintendent(s) or agent(s). **[See RTA, ss. 29(1), and 31(1)-(3)]**

III. Limitation Period

7. The T6 is based on incidents that occurred in January through July of 2019[2] and April of 2020. The T2 is based on the actions and conduct of the Landlord's (former) superintendents beginning in 2017.

8. The applications were filed under section 29 of the RTA on September 11, 2020. Subsection 29(2) of the RTA says:

   ***29** (2) No application may be made under subsection (1) more than one year after the day the alleged conduct giving rise to the application occurred.*

9. The effect of subsection 29(2) is that the LTB can award a remedy only in relation to conduct or actions that occurred during that one-year period before an application under section 29 was filed.

10. Subsection 29(2) does not restrict the ability of the LTB to provide a remedy based on the continuation after the application was filed of actions or conduct raised in the application. The LTB often, for example, grants ongoing abatements where the actions and conduct of the landlord are continuing. **[See *Alexandre* v. *Jones*, 2022 CanLII 82028 (ON LTB)]**

[2] The T6 refers to the issues dating back to 2018.

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11. As a result of the application of subsection 29(2), I am only able to award compensation to the Tenant based on conduct or actions that took place after September 11, 2019. Where conduct or actions began prior to September 11, 2019 and continued afterwards, I may award compensation based on the impact of the conduct or actions after September 11, 2019, but not before.

12. The issues for which I can award the Tenants compensation are: (a) a sewage backup on April 8, 2020; and (b) the actions and conduct of the (former) on-site superintendents after September 11, 2019.

13. I note that the Tenant asserted in the attachment to the T6 application that: (a) the Landlord's (former) superintendent used the excuse that they did not have keys to the unit as an excuse for not doing repairs; and (b) the Landlord did not follow-through with pest control treatment to the unit in September of 2020. I do not regard these as separate claims by the Tenants, but as examples of the conduct of the (former) superintendents and have treated them as such.

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IV. Merits of the Application

A. Sewage Backup

14. Subsection 20(1) of the RTA says:

> ***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.*

15. The Tenants assert that the Landlord breached subsection 20(1) by failing to address the cause and consequences of the sewage backup that took place in the unit on April 8, 2020.

16. There is no dispute that a sewage backup occurred in the kitchen of the rental unit in the middle of the night on April 8, 2020. The Tenants asserted that the Landlord did not address the cause or the consequences of the sewage backup for almost three years.

17. Ms Saxe asserted that there had been not one but three separate floods in the unit between April of 2020 and October of 2022, but could not say if they were from the same source. AO asserted that the subsequent floods were a 'continuation' of the flood that took place in April of 2020. I accept the AO’s assertion as being more likely and find that it was an underlying issue that caused the sewage backup on April 8, 2020 and the failure of the Landlord to effectively address that issue resulted in further flooding and other issues in the unit, including water leaks, mold and issues with the flooring in the unit.

18. Even if there were three separate incidents it is of no practical consequence in terms of the outcome of this application. The Landlord failed to address the issues resulting from the situation in the unit in a timely, appropriate and effective manner.

19. In *Onyskiw* v. *CJM Property Management Ltd.* **[2016 ONCA 477 (CanLII)]** the Court of Appeal found: (a) a landlord is not automatically in breach of its obligation to repair and maintain under subsection 20(1) of the RTA as soon as the issue arises; and (b) the reasonableness of the landlord's maintenance and repair efforts is a relevant consideration when determining whether the landlord has breached subsection 20(1). In general terms, a tenant is not entitled to a remedy where the landlord has dealt with any maintenance-related issues in a timely, appropriate and effective manner.

20. In this case, I find that the Landlord did not address the cause or consequences of the sewage backup in a timely manner. While the issues were addressed, it took almost three years, which is nowhere close to what I would consider reasonable, particularly given the nature of the issues involved—raw sewage and mold.

21. There was substantial documentary evidence from the Tenants that indicated AO repeatedly and persistently[3] raised with the Landlord the issues that resulted from the flood on April 8, 2020. Unfortunately, it appears that the Landlord was of the (incorrect) opinion, no doubt influenced by the views of the (former) superintendents concerning the Tenants, that the issues being raised by the Tenants were not significant or were exaggerated—that the Tenants' complaints were without merit.

22. The initial reaction of the (former) superintendents to the sewage backup on April 8, 2020 was, according to AO, to get angry because the Tenants were bothering them in the middle of the night. The Tenants attempted to address the situation themselves by calling a plumber, but I accept the AO's evidence that the superintendents frustrated those efforts by telling the plumber that he would not get paid.

23. While there was evidence that the Landlord took steps to open the wall from Unit 209 to 'snake' the drain on April 8, 2020 **[DOC-998063 Ex X]**, that was not, in my view: (a) appropriate to address the sewage backup in the unit—there is no evidence the Landlord did anything on April 8, 2020 to deal with the raw sewage in the unit; or (b) effective to address the issue(s) that caused the backup as evidenced by the fact that there were subsequent floods in the unit.

24. There is no evidence whatsoever that the Landlord did anything appropriate or effectively address the consequences of the sewage backup or subsequent floods until the Fall of 2022. It was not until July of 2020—almost four months later—that the Landlord made any effort at all to address the damage to the unit caused by the sewage backup. **[See**

[3] Ironically, Ms Saxe testified that she began to ignore AO's complaints, which of course exacerbated the situation and led to further, more aggressive, complaints from AO.

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DOC998063, Ex R] At that point in time the Landlord took steps to address the obvious consequences of the sewage backup, but appears to have done only what I would describe as 'cosmetic' repairs. Those efforts were not, in my view, appropriate and did not effectively address the causes or consequences of the sewage backup.

25. Even when, in July 29 of 2021, the Tenants obtained a report from Precision Home Inspection that indicated mold was present in the unit **[DOC-751168, Ex 5A to 5G]** the Landlord still did not take effective steps to deal with the issues, although some further 'cosmetic' work appears to have been done to the unit in August of 2021.

26. It was not until the Tenants reached out to the City of Toronto in August of 2022 **[See DOC751168, Ex 30, 32A, E35 and E36A]** that the Landlord appears to have taken the situation seriously and effective steps to address the issues arising from the sewage backup that took place in April of 2020.

27. Ms Saxe attempted to blame the COVID pandemic for the failure of the Landlord to address the issues raised by the Tenants in a timely manner. I do not accept that explanation.

28. I am prepared to take 'official' notice of the COVID pandemic, but, in my view, a landlord who asserts that the pandemic impacted its ability to undertake maintenance in a timely fashion is obliged to provide some evidence to establish the specific impact caused by the pandemic. There was nothing in the documents filed by the Landlord to even suggest that the delay was the result of issues arising because of the COVID pandemic.

B. Harassment/Substantial Interference

29. Sections 22 and 23 of the RTA say:

> ***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.*

30. On the T2 application, the Tenants asserted that they were discriminated against—treated differently in terms of requests for repairs—and harassed by the Landlord's (former) superintendents from the start of the tenancy in 2017. As noted above, I am only able to provide a remedy for actions and conduct that occurred after September 11, 2019. I can, however, consider the Tenants' assertions concerning the conduct of the (former) superintendents to provide context to what took place after September 11, 2019. **[See *Toronto Community Housing Corporation* v. *Allan Vlahovich*, 2010 ONSC 1686 (CanLII)]**

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31. The Tenants are racialized. AO is a single father and lives in the unit with his two children. For reasons that are not relevant to these applications, AO's partner no longer lives in the unit.

32. The AO's evidence, which I accept, was that: (a) the (former) superintendents told him on multiple occasions that they did not like 'his kind', which AO took to refer to his race; (b) AO heard one of the (former) superintendents say in reference to his complaints 'I can't deal with this little black shit'; and (c) one of the superintendents mocked the AO's children based on the fact that their mother was no longer living with them. Mr. Ciobotaru did not seriously challenge any of these assertions on cross-examination and the Landlord put forward no evidence to refute the allegations.

33. The conduct of the (former) superintendents was raised with the Landlord, but the Landlord did not take any substantive steps to address the issue. The Landlord's initial response was to tell the AO to not deal directly with the superintendents, but the Landlord later appears to have changed its mind and told AO to deal with the superintendents with respect to any maintenance-related issues. This exacerbated the situation.

34. In an apparent attempt to deflect attention from the conduct of the (former) superintendents, Ms Saxe asserted that one of the (former) superintendents felt threatened by the AO and referred me to a letter to AO dated August 28, 2020. **[DOC-998208, page 9]** The Landlord did not, however, call anyone to give evidence on the issue[4] and I am not prepared to find that the (former) superintendent had any basis to feel threatened by AO. I find that it is more likely than not that the (former) superintendent's interpretation of her interactions with AO was influenced by a personal bias as opposed to any well-founded concerns.

35. In my view, the conduct of the (former) superintendents described by AO constituted harassment and substantially interfered with the reasonable use and enjoyment of the unit and the residential complex by the Tenants.

36. In my view the Tenants have established that the (former) superintendents engaged in a course of vexatious conduct that they knew or ought reasonably to have known was unwelcome. **[See I v I, 2021 CanLII 144590 (ON LTB)]**

37. The actions and conduct of the (former) superintendents also directly impacted the use and enjoyment of the unit and the complex by the Tenants. I also find that it is more likely than not that the attitude of the (former) superintendents toward the Tenants had a direct impact on the Landlord's response to the maintenance-related issues that are the foundation of the Tenant's application. That, in my view, resulted in substantial interference with the

[4] Ms Saxe testified almost in passing that the Landlord had evidence of harassment by AO, but referred me to no such evidence and I can find no such evidence in the documents filed by the Landlord.

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reasonable enjoyment of the unit by the Tenants insofar as it exacerbated the situation caused by the sewage backup.

D. Remedies

i. Rent Abatement-$7,509.00

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

39. 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 the benefits of a tenancy—where the rental unit uninhabitable—that a 100% abatement is appropriate. **[See *22001839 (Re)*, 2022 ABRTDRS 15 (CanLII), considering the Alberta legislation.]**As noted by the Vice Chair in *TST-56138-14 (Re)* **[2015 CanLII 3162 (ON LTB)]**, '[a]batement 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.'

40. 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 advised the landlord of the alleged maintenance issues 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 fully or partially responsible for the issues; and

    (f) whether the tenant hindered or interfered with the landlord's efforts to address the issue(s).

41. The ultimate objective of the LTB is to grant an abatement that is fair considering all the circumstances.

42. In *Biltmore Terrace Apartments* v. *Nazareth* **[[1997] O.J. No. 1881 (Gen Div)]** the Court said:

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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 cooperation or otherwise of the Tenant in that regard, and the efforts made by the Landlord to rectify the defect.

43. 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.

44. The sewage backup and its consequences impacted the Tenants from April of 2020 until March of 2023. There was a great deal of photographic evidence from the Tenants showing the extent of the damage caused to the unit. **[See DOC-751168, Ex 14, 15, 23 and 25]**

45. Ms Saxe asserted that AO acknowledged the repairs to the unit resulting from the flood had been completed by February 3, 2021 **[DOC-796564, Ex LL]** when he signed a document in which he acknowledged 'all work has been completed'. AO testified that he understood that to refer to work relating to a leak in the bathroom of the rental unit that impacted the bedroom. I accept AO's evidence. It is consistent with an invoice filed by the Landlord **[DOC-796564, Ex MM],** which is an invoice relating to the repairs required to address a leak in the bathroom of the unit. I also note that, on February 4, 2021, the AO sent Ms Saxe an e-mail **[DOC-75116, Ex 4B]**—an e-mail that Ms Saxe could not recall when it was put to her by AO on cross-examination—confirming that the work referenced in the letter was work from 2019.

46. There were days during the period from April of 2020 and October of 2022 when the Tenants were unable to live in the unit due to the Landlord requiring vacant possession to make repairs—the unit was not inhabitable. The remaining days, the Tenants were able to live in the unit, but the unremedied consequences of the sewage backup impacted the use and enjoyment of the unit by the Tenants—the Tenants were not getting 100% of what they were paying for.

47. The Tenants advised the Landlord on April 8, 2020 as soon as the flood happened **[DOC751168, Ex 1A]** and there was evidence that the Tenants were in contact on a regular basis with the Landlord afterwards concerning the on-going issues **[See DOC-751168, Ex 1B, Ex 2C and 3H]**.

48. Mr Ciobotaru argued that there was no evidence that the Landlord ignored the Tenants' complaints. This is not correct. Ms Saxe testified that at some point she started to ignore the AO's e-mails. She further testified that she received a copy of the mold report obtained by the Tenants, but did not read the report. Ms Saxe admitted that, if she had read the report, the Landlord would likely have taken steps earlier to address the mold.

49. Mr. Ciobutaro argued that the Tenants had refused to permit the Landlord to complete the repairs to the unit. This argument was based on Ms Saxe's assertion that the Tenants did

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not allow access to the unit. When I attempted to determine where in the record I could find the notices of entry to establish that the Landlord had attempted to enter the unit to complete the repairs, Mr. Ciobotaru pointed me to two documents, neither of which was a notice of entry[5] and I do not accept that the Tenants impeded the Landlord's ability to complete the repairs.

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50. Mr. Ciobotaru argued that the landlord had spent a great deal of money—over $16,000.00—making repairs to the unit. **[See DOC-998208, page 11]** The amount a landlord has spent is not particularly relevant. The issue for the LTB on an application based on the breach of subsection 20(1) is whether the landlord addressed the issue(s) in a timely, appropriate and effective manner, not how much the landlord spent (attempting in this case) to address the issue(s).

51. Based on the monthly rent of $1,286.20, the *per diem* rent was $42.29. In my view, an appropriate rent abatement is: (a) 20% ($8.50 per day and $257.25 per month) for the time the Tenants lived in the unit between April 8, 2020 and October 20, 2022; and (b) 100% for the days the Tenants were out of the unit.

52. The Tenants were out of the unit: (a) between August 31 and September 4, 2021; (b) between September 20 and 26, 2022; and (c) between September 28 and October 15, 2022. During these periods the Landlord: (a) paid for hotel accommodations for the Tenant and his family; (b) provided $200.00 per day for boarding for the Tenant's dog; and (c) provided the Tenants with *per diems* of $75.00 for travel and $150.00 to cover out-of-pocket expenses. **[See DOC-998208, pages 12 and 18(a) to (h)]**

53. The RTA contemplates that a tenant may be awarded an abatement and out-of-pocket expenses, including hotel costs. **[RTA, s. 30(1)]** Mr. Ciobotaru argued that because the Landlord paid for a hotel, the Tenants were not entitled to a rent abatement for the days the Tenants were out of the unit. I agree.

54. There do not appear to be any cases at the Divisional Court level that address the issue raised by Mr. Ciobotaru.

55. While none of them were cited by Mr. Ciobotaru, I am, however, aware that there are LTB orders where the Members have not awarded hotel costs and a rent abatement for the same period on the basis that to do so would be to compensate the tenant twice. **[See *CET-73814-18 (Re)*, 2018 CanLII 88545 (ON LTB) and *TST-02331 (Re)*, 2010 CanLII 12124**

[5] There were documents that indicated that the Landlord could not access the unit for other reasons—DOC-793727, Ex G and Ex I, for example—but these are not relevant to these applications. Mr. Ciobotaru also challenged my jurisdiction to make inquiries concerning matters that were not raised by the Tenants on cross-examination. I have jurisdiction to make inquiries and to request that a party refer me to the evidence upon which they rely. I also note that the approach Mr. Ciobotaru took on the direct examination of Ms Saxe resulted in it being difficult to understand the purpose for which he was having Ms Saxe confirm statements made by him concerning documents. It was only when Mr. Ciobotaru raised the matter in closing that it became apparent that the Landlord was asserting (incorrectly in my view) that the Tenants had not co-operated with the efforts by the Landlord to repair the unit.

(ON LTB)] There are, however, also cases of which I am aware where the Member granted both a rent abatement and the cost to the tenant of alternative accommodations for

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the same period. **[See, for example, *TNT-55269-14 (Re)*, 2014 CanLII 58655 (ON LTB), *SOT-66343-15 (Re)*, 2016 CanLII 88179 (ON LTB) and *Blais* v *Khairzad*, 2021 CanLII 85267 (ON LTB)]**

56. The objective of section 30 of the RTA is to put the tenant in the same position as if the landlord had not breached—to make the tenant 'whole'. A tenant should not be made better off by the remedy awarded by the LTB.

57. In my view, where the LTB finds that the tenant is entitled to recover from the landlord the amounts paid by the tenant for alternative accommodations, it is because the unit is uninhabitable or otherwise not available to the tenant and, in that circumstance, a 100% abatement is appropriate. Were, however, the LTB to award both a 100% abatement and the amount paid by the tenant for alternate accommodations, the effect would be to make the tenant better off financially than if the landlord had not breached. A tenant may, however, be entitled to additional compensation for out-of-pocket expenses such as the cost of meals while they are not able to remain in their unit.

58. In this case, the Landlord provided the Tenants with hotel accommodations for the days the Tenant and his family could not live in the unit.[6] As a result, the Tenants are not, in my view, entitled to rent abatement for those days.

59. The fact that the Landlord provided the Tenant with a $150.00 *per diem* and $75.00 per day for travel means that the Tenant is also not, in my view entitled to any other compensations for out-of-pocket expenses incurred while he was out of the unit. In fact, the Tenant does not claim any such out-of-pocket expenses.

60. The Landlord effectively admitted that there were issues that impacted the Tenant's use and enjoyment of the unit while repairs were being done (a) on September 26 and 27, 2022; and (b) between October 15 and 20, 2022. The Landlord gave the Tenant a rent abatement of $100.00 per day for those days. **[See DOC-998208, page 12]** That was more than the *per diem* rent and, in my view, the Tenant is not entitled to any further rent abatement for those days, although he is entitled to a rent abatement for the other days between April 9, 2020 and September 19, 2022.[7]

61. In summary, the Tenants are entitled to a rent abatement of **$7,509.00**, calculated as follows:

    (a) $187.00 for April 9 to April 30, 2020 (22 days @ $8.50 = $187.00);

[6] The Tenants agreed to the compensation provided by the Landlord for the days in 2022: see DOC-751168, Ex 46. [7] As noted above, when the parties were before me on March 13, 2023, the repairs to the unit had still not been completed. There was painting left to be done and baseboards left to be installed. The Tenants indicated, however, that he was only seeking an abatement until September of 2022.

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(b) $4,116.00 for May 1, 2020 to August 31, 2021 (16 months @ $257.25 = $4,116.00); and

(c) $3,206.00 for September 4, 2021 to September 19, 2022 (14 days @ $8.50 + 12 months @ $257.25 = $3,206.00).

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62. I appreciate that the Landlord may feel that having incurred over $16,000.00 to repair the unit and compensate the Tenants, it ought not to have to provide the Tenants with further compensation. The fact of the matter is, however, that the Landlord is the author of its own misfortune. Had the Landlord taken the situation seriously when the sewage backup occurred in April of 2021—or when the Tenants delivered the report showing there was mold in the unit in July of 2021—the outcome would have probably been much different.

ii. Damage to Property—$250.00

63. The Tenants did not file any receipts for the purchase or replacement of the property that they assert was damaged or destroyed because of the breach by the Landlord of its maintenance obligations.

64. While it is typically the case that the LTB requires receipts or some other evidence of value to award a tenant compensation for property damaged or destroyed, the Tenants established that: (a) they used sheets, towels, etc. to try to deal with the sewage backup; and (b) those sheets, towels, etc. were destroyed—JO testified under cross-examination that washing them did nothing to take the smell out of the sheets, towels, etc.—and I am prepared to award the Tenants $250.00 to replace that property.

iii. Out-of-Pocket Expenses—$200.00

65. In July of 2021, the Tenants paid $200.00 for a third-party report that confirmed the presence of mold in the rental unit. **[DOC-751168, Ex 5]** This expense was, in my view, incurred because of the failure of the Landlord to address the sewage backup in a timely manner and the Tenants are, as a result, entitled to recover from the Landlord the $200.00 paid for this report as an out-of-pocket expense. **[RTA, s. 30(1).5.ii]**

66. Concerning the claim for boarding the family pet, I accept that where a tenant has a pet and is forced to vacate a rental unit or the unit becomes uninhabitable, the landlord can be responsible for any out-of-pocket expenses incurred to board the tenant's pet. In this case, however, the evidence was that the Landlord compensated the Tenants $200.00 per day for boarding their dog on the days that they were out of unit **[DOC-998208, pages 12 and 16]** and the Tenants filed no additional invoices for dog boarding. The Tenants are not, in my view, entitled to any further amounts for boarding the family dog.

iv. General Compensation—$5,000.00

67. The LTB has jurisdiction to make any order that it considers appropriate, which includes awarding general compensation. **[*Mejia* v. *Cargini*, 2007 CanLII 2801 (ON SCDC)]**

68. General compensation involves compensating a tenant financially for, in this case, the trauma, stress and anxiety that resulted from the actions—or inactions—of the landlord.

69. When determining general compensation, the LTB should consider the effect of the breach(es) on the tenant. While there is no fixed formula for general compensation, the LTB should attempt to make an award that is consistent with previous awards. **[See *HOT-02167-17 (Re)*, 2019 CanLII 86881 (ON LTB) citing *Domtar Inc.* v. *Quebec*, 1993 CanLII 106 (SCC)]**

70. In this case, the breaches involved both: (a) the failure of the Landlord to address the maintenance-related issues in a timely, appropriate and effective manner; and (b) the harassment and substantial interference of the Tenants by the (former) superintendents, which I find to have been because the Tenants are racialized.

71. Among the factors that LTB should consider when awarding general compensation in cases involving discrimination are: (a) humiliation; (b) hurt feelings; (c) the loss of self-respect, dignity and confidence by the tenant; (d) the vulnerability of the tenant; and (e) the frequency and duration of the offensive treatment **[See *Payne v. Otsuka Pharmaceutical Company*, 2002 CanLII 46516 (ON HRT), considering the award of general damages under the *Human Rights Code* (the 'HRC').]** The LTB should also consider the power imbalance that exists in the landlord-tenant relationship. **[*Hill-LeClair* v. *Booth*, 2009 HRTO 1629 (CanLII), considering the award of general damages under the HRC.]**

72. I have no doubt that the actions and conduct of the Landlord's (former) superintendents towards the Tenants and the failure of the Landlord to properly address the issues that resulted from the incident that took place on April 8, 2020 had a significant impact on the Tenants and caused them mental distress.

73. There is no doubt in my mind that the actions of the (former) superintendents hurt AO's feelings, resulted in a loss of self-respect and humiliated AO. AO testified to his concern that he was treated differently by the (former) superintendents based on his race and how it impacted him both in terms of his perception of the lack of response from the Landlord to his concerns and how he interacted with others in the residential complex.

74. I am further satisfied that:

    (a) the mocking by the (former) superintendent of the AO's children based on their family situation caused the children mental distress; and

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(b) AO and his family suffered mental distress: (i) dealing with the failure of the Landlord to address their legitimate maintenance-related concerns; and (ii) as a result of having to move out of their home into a hotel on three occasions, which impact is not reflected in the abatement I have awarded[7].

75. I was not referred to, and have been unable to locate, any LTB orders involving similar facts to these in this case. However: (a) in *TST-26870-12 (Re)* **[2012 CanLII 46802 (ON LTB)]** the LTB awarded general compensation of $5,000.00 in a case involving a pattern of conduct that the Member described as causing 'extreme psychological stress'; and (b) in *Francis* v I-land Corp **[[2021 CanLII 129998 (ON LTB)]** the LTB awarded a tenant

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$1,000.00 in general compensation of, among other things, inconvenience and displacement after being locked-out[8];

76. In my view, having regard for all the circumstances, an award of $5,000.00 in 'general' damages is appropriate to compensate the Tenants for their pain, suffering and mental distress. I find that the actions and the conduct of the Landlord and its (former) superintendents resulted in the Tenants suffering a high degree of stress and anxiety that would characterize as on the extreme end of the scale.

v. Filing Fee—$53.00

77. The Tenants paid $53.00 to file these applications and is entitled to recover that filing fee from the Landlord.

vi. Summary of Remedies

78. The Tenants are entitled to $12,762.00 broken down as follows: (a) a rent abatement of $7,509.00; (b) out-of-pocket expenses of $200.00; (c) general damages of $5,000.00; and (d) the filing fee of $53.00.

It is ordered that:

1. The Landlord shall pay to the Tenants $12,762.00. If the Landlord does not pay the full amount owed by November 15, 2023, the Landlord shall be liable to pay the Tenants simple interest at 7% per year beginning November 16, 2023.

[7] An abatement reflects the loss of the benefit of the rent the tenant is paying, not pain, suffering or mental distress.
[8] I appreciate this is not an illegal lockout, but the Tenants were forced to vacate their home because of the Landlord's breach.

October 23, 2023
Date Issued

E. Patrick Shea
Vice Chair, 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.

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