



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

**Citation:** Dallaire v Génier, 2023 ONLTB 62554

**Date:** 2023-09-25

**File Number:** LTB-T-010471-22

**In the matter of:** 350 Eighth Avenue  
Cochrane ON P0L1C0

**Between:** Lorraine L Dallaire Tenant

**And**

Robert Génier Landlord  
Julie Génier

Lorraine L Dallaire (the 'Tenant') applied for an order determining that Robert Génier and Julie Génier (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.

The Tenant also applied for an order determining that the Landlord substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant.

This application was heard by videoconference on August 10, 2023.

Both Landlords and the Tenant attended the hearing.

### **Determinations:**

1. As explained below, the Tenant proved on a balance of probabilities that the Landlord breached their maintenance obligations and substantially interfered with the Tenant by failing to shovel the snow on the pathway and steps to the rental unit front door.
2. Therefore, the Landlord must pay the Tenant \$573.00. This amount represents out of pocket expenses, general damages, and the Tenant's filing fee.

3. The Tenant did not prove on a balance of probabilities that the Landlord breached their maintenance obligations, nor substantially interfered with the Tenant, by failing to shovel the area directly around her car in her assigned parking area, or the backyard of the rental unit which provided access to the Tenant's storage unit.
4. The Tenant moved into the rental unit on November 15, 2020 and vacated in July 2022.

### Scope of the Application

5. The Tenant's application concerns the Landlord's failure to shovel snow. The Tenant claims remedies for two snow seasons, November 2020 to April 2021, and November 2021 to May 2022.
6. Pursuant to section 29(2) of the *Residential Tenancies Act*, 2006 ('the Act') no application alleging maintenance deficiencies or substantial interference can be made more than one year after the day the alleged conduct occurred. There is no such limitation on remedies going forward from the date an application is filed.
7. The Tenant filed her application on February 22, 2022. As such I can only award a remedy for the period from February 22, 2021 onward.

### The Facts

8. The facts regarding the T2 application for substantial interference and the T6 application for maintenance are the same.
9. The Landlord hired a snow removal company that would shovel the front parking area of the rental unit. However, the Tenant testified that the company would box in her car and push snow in front of her car in a way that made it difficult to get out. Photographs show a clear parking space beside the Tenant's car, but snow around the tires and body of the Tenant's car.
10. The Tenant also testified that snow removal was not done to access the front door of the rental unit. Photographs show snow on the small pathway to the rental unit steps, and snow on the short steps to the rental unit front porch.
11. The Landlord also did not shovel the rental unit's backyard. The reason that the Tenant wanted the backyard shoveled is because it provides her access to her storage unit. The Tenant also wanted to be able to access the backdoor of the rental unit.

Analysis – T6 Application

12. Pursuant to section 20(1) of the Act 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. This includes snow removal.
13. The Landlord has a maintenance obligation to provide a clear pathway to the rental unit door. As snow was only removed from the parking area, and not the small pathway and steps to the front door, I find that the Landlord did breach their maintenance obligations in this regard. While the court in *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, stated that a Landlord is not automatically in breach of its maintenance obligation as soon as an interruption in service occurs, I find that the Landlord's failure to clear the front steps and pathway was unreasonable.
14. I do not find that the Landlord breached their maintenance obligations by failing to completely remove the snow from around the Tenant's vehicle. While the Landlord is responsible for snow removal, the Tenant must make the snow removal reasonably possible. Had the Tenant's car not been in the parking space when the removal was done, the space would have been cleared. The parking spot beside the Tenant's vehicle is clear because there was no car there when the snow removal occurred.
15. I also do not find that the Landlord breached their maintenance obligations by failing to shovel the backyard of the rental unit. The backyard is a grassy area with no paved or otherwise clear path to the storage unit. Clearing a pathway to the storage unit would have required the Landlord to shovel the grass lawn.
16. The Tenant did not point to any bylaws that establish that a backyard must be free of snow or that a pathway must be provided to a storage unit. The Act's regulation O. Reg. 517/06 on maintenance standards states that exterior common areas should be free of unsafe accumulations of ice and snow. While this regulation only applies when there is no municipal property standards by-law, and as such would not apply in this situation, it is still illustrative of what obligations a landlord has for snow removal. The Tenant did not lead evidence that the backyard snow was unsafe, just that it blocked her entrance to her storage area. For those reasons I do not find that the Landlord breached their maintenance obligations by failing to shovel the backyard.

Analysis – T2 Application

17. Section 22 of the Act states that 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.

18. I find that the Landlord's failure to clear the small pathway and steps to the rental unit substantially interfered with the Tenant as she needed to pass through this area to access her rental unit.
19. I do not find that the Landlord's failure to clear the area directly around the Tenant's car or the backyard of the rental unit substantially interfered with the Tenant. As stated previously had the Tenant's car not been parked when the snow removal occurred, the parking spot would have been cleared.
20. I also do not find that the Landlord's failure to clear the backyard substantially interfered with the Tenant. The Tenant's main access to the rental unit is through the front door, not the back. I also do not think it would be reasonable to expect the Landlord to shovel a grassy area. While the Tenant would have liked to be able to access her storage unit in the winter, I do not find the inability to do so to be a *substantial* interference. The Tenant could have moved any items that she needs access to during the winter temporarily indoors for the season.

### Remedies

9. The Tenant seeks her out of pocket expenses for hiring her own snow remover. The Tenant submitted two invoices for the two snow seasons totalling \$1,200.00.
10. The invoice for the first snow season lists the services provided as "front and rear entrance door snow services". As I can only award a remedy back to February 22, 2021, a little more than half of the first snow season cannot be compensated. Additionally, as I have found only the snow at the front entrance constituted a breach of the Act, I find it reasonable to award \$75.00 of the \$300.00 invoice.
11. The invoice for the second snow season lists the services as "front and rear entrance door, assigned storage/garage, and assigned parking". As I have only found 1/4 of those services to be required in relation to a breach of the Act, I find it reasonable to award \$225.00 of the \$900.00 invoice.
12. The Tenant also seeks \$100.00 a month for a total of \$1,200.00 in general damages to compensate her for the substantial interference from having to do the snow removal herself when she could not hire someone. The Tenant required the front steps to be clear to access the rental unit and as such had no choice but to either clear them herself or hire someone. However, as stated previously I can only award the Tenant a remedy for 3 months for the first snow season plus 6 months of the second season. Additionally, I have only found that the Landlord breached the Act by failing to shovel the front steps, not the other outdoor areas. As such, I find \$225.00 in general damages to be reasonable. This amount is 1/4 of the amount requested for 9 months.

**It is ordered that:**

1. The Landlord shall pay the Tenant \$573.00. This amount represents:
  - \$300.00 for the reasonable out-of-pocket expenses that the Tenant has incurred; •
  - \$225.00 in general damages; and
  - \$48.00 for the cost of filing the application.
5. The Landlord shall pay the Tenant the full amount owing by October 31, 2023.
6. If the Landlord does not pay the Tenant the full amount owing by October 31, 2023, the Landlord will owe interest. This will be simple interest calculated from November 1, 2023 at 6.00% annually on the balance outstanding.
8. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**September 25, 2023**

**Date Issued**

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**Amanda Kovats**

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.