



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

**Citation:** Paine v Hoey, 2023 ONLTB 26570

**Date:** 2023-09-25

**File Number:** LTB-L-014324-22

**In the matter of:** 101, 88 ISABELLA ST  
TORONTO ON M4Y1N5

**Between:** Capreit Limited Partnership

Landlord

**And**

Vanessa Leigh Hoey

Tenant

Capreit Limited Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Vanessa Leigh Hoey (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 13, 2023.

The Landlord, Landlord's representative Geoff Paine, and the Tenant attended the hearing.

**Preliminary:**

1. As a result of s.29(2) of the *Residential Tenancies Act, 2006* (Act), the Board cannot consider any alleged breaches of the Act that occurred more than one year before the filing of these applications on March 10, 2021. The Tenant acknowledged this limitation and explained that some of the issues in the application that pre-date March 10, 2021 are intended to provide context for his complaints.

**Determinations:**

1. 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.

2. The parties confirmed that the property had been sold to an unidentified party on April 30, 2022, and the rent arrears owing to April 30, 2022 are \$6,444.29.
3. The lawful rent is \$1,625.71. It is due on the 1st day of each month.
4. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
5. The Landlord collected a rent deposit of \$1,625.71 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.
6. Interest on the rent deposit, in the amount of \$44.56 is owing to the Tenant for the period from August 1, 2020 to March 13, 2023.
7. At the hearing, the Tenant agreed that she had not paid her rent owing to April 30, 2022, and submitted that she withheld rent because of maintenance issues and raised these issues pursuant to section 82 of the Act.

### **S.82 Maintenance Issues**

8. The Tenants raised the following issues pursuant to section 82 of the Residential Tenancies Act, 2006 (the 'Act'):
  - ✦ Mouse Infestation
  - ✦ Inadequate Heat & Faulty Windows
  - ✦ Bedroom Mould
  - ✦ Cockroach Infestation
  - ✦ Bedbugs
  - ✦ Vibrating Floors

#### Tenant's Evidence

9. The Tenant claims that she has been dealing with a **mouse infestation** in their rental unit since moving in 2011. Despite efforts by the super and property manager to administer poison and seal entry points, the infestation has persisted. The Tenant has found dead mice in the apartment and even had a mouse crawl onto their ear and gnaw at their hair.
10. The property manager sealed the holes with steel wool and plaster, which worked for a few years. However, the mice returned in January 2020. The Tenant bought mouse traps and asked for the entry points to be sealed, but the infestation continued. The Tenant claims the mouse infestation was never resolved before the new Landlord purchased the residential unit and was worried about the health risks and her cat's safety.
11. The Tenant claims that the **heating system** in her rental unit, particularly her bedroom, has been **inadequate** since around December 2013, when she informed the Landlord of the issue. To achieve a comfortable temperature during winter, she has resorted to using

her kitchen oven as the radiators have not provided enough heat, and her bedroom has been freezing. This is mainly due to a faulty window that needs to be replaced as it is allowing a significant amount of heat to escape. The Tenant claims that the issue is ongoing until the Landlord sold the complex on April 30, 2022.

12. The Tenant claims that the wall surrounding her **bedroom** window deteriorated and became infested with **black mold** a few years after she moved in. The superintendent initially addressed the issue, but the solution was found to be insufficient. In an attempt to fix it, the superintendent scraped down the plaster and replaced it with new plaster and paint, but the mold resurfaced in late 2015.
13. The Tenant claims that the Landlord hired painters to fix the mould issue by applying mould killer, which was left to dry for a day before painting. This resolved the problem for a few years, but it recently came back due to the need to replace the window. During winter, the window produces condensation that causes the Tenant to worry about the black mould, which can worsen their neurological issues, including memory problems and headaches caused by a car accident.
14. The Tenant claims that **cockroaches infested** the apartment during the elevator replacement 2015. Despite the Tenant's preference for non-toxic pest control, the infestation persisted, and the Tenant resorted to homemade sticky traps. The Tenant claims that the Landlord only began using pesticides after the Tenant allowed it, but the treatment was delayed due to the Landlord's demand that the Tenant empty the kitchen cabinets. The Tenant found this task challenging due to her disabilities. The Tenant alleges that the landlord's demand was discriminatory and a violation of the rights of persons with disabilities.
15. Upon discovering insect bites on her body in November 2016, the Tenant claim that she reported the issue to the landlord in January 2017, and superintendent identified the insects as **bed bugs**. Despite being hesitant to use pesticides due to a disability, the landlord suggested a heat treatment to eliminate the infestation. However, there was a delay in scheduling the technician to turn off the sprinkler system in the tenant's apartment. Eventually, when the heat treatment was carried out, it failed to reach the required temperature to kill the pests.
16. The Tenant claims that after multiple unsuccessful treatments to eliminate the infestation, she contacted the regional director, who opted for a potent pesticide requiring only one application. The Tenant claims the Landlord breached maintenance obligations by choosing the cheapest treatment option, resulting in seven treatments over two years.
17. The Tenant claims that after the Landlord replaced the boiler, the **floors vibrate** intensely during winter months. The loud rattling of the stove can be heard through walls up to 40 feet away. The vibrations are causing anxiety and disrupting sleep, leading to a considerable loss of sleep. The Tenant sought refuge at a friend's apartment in 2020 due to unbearable vibrations. The issue was ongoing despite contacting the property manager and superintendent multiple times. The Tenant last informed the Landlord about the issue in December 2021.

18. The Tenant alleges that the Landlord's failure to address the issues of cockroach, mouse infestation, inadequate heat, faulty windows, bedroom mould, bedbugs, and vibrating floors in her rental unit severely damaged her mental and physical health, exacerbating her injuries sustained from the motor vehicle accident.

#### Landlord Evidence

19. GP explained that the evidence shows that the Landlord acted promptly and responsibly in addressing all of the maintenance issues that the Tenant reported to him or the superintendent. GP claims that the Tenants never informed the Landlord that these issues still need to be resolved and are ongoing, and the Landlord only found these issues as ongoing when the Tenant filed her evidence to the Board.
20. GP claims the Landlord had no prior knowledge of ongoing issues. GP claims that since the Tenant did not report any maintenance requests before the property was sold on April 30, 2022, the new Landlord inherits all the obligations of the previous Landlord, including any maintenance issues.

#### Analysis:

21. Section 20(1) of the Act states: A landlord is responsible for providing and maintaining a residential complex, including the rental units, in a good state of repair and fit for habitation and complies with health, safety, housing and maintenance standards.
22. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, the Court of Appeal held that it is necessary to take a contextual approach to determine whether a landlord has breached its maintenance obligations under section 20(1) of the Act and a landlord will not be found liable for such a breach if the Landlord responded to the maintenance issue reasonably in the circumstances. In *Onyskiw*, the Court of Appeal also specifically considered the Landlord's mitigating efforts as part of its contextual analysis.
23. Additionally, in accordance with section 16 of the Act, when a landlord becomes liable to pay any amount as a result of a breach of subsection 20(1), the tenant has a duty to take reasonable steps to minimize the loss.
24. As the Tenants raised the section 82 issues at the hearing, the onus lies with them to establish that the Landlord breached his maintenance obligations. In order to prove the Landlord breached his maintenance obligations, the Tenants must provide enough details as to when the breach occurred, how many times and when they notified the Landlord of the problems.
25. In review of all of the evidence before me, I am satisfied on balance of probabilities that the Landlord met his obligations under subsection 20(1) of the Act with respect to the alleged mouse infestation, inadequate heat, faulty windows, bedroom mould, cockroach infestation, bedbugs, and vibrating floors as the evidence offered in support of each of the maintenance allegations was inadequate.

26. The evidence supports that the issue of cockroach, bedbug, and mouse infestation existed because the Tenant preferred a non-toxic treatment approach to pest control and was nervous about using pesticides to treat the bedbugs, cockroaches, and mice infestation. The evidence shows that the infestation was finally resolved when the Tenant allowed pesticide treatment, and the Tenant's concerns about the use of pesticides may have contributed to the delay in resolving the infestation. Therefore, the Landlord took steps to address the issue, and the infestation was ultimately eradicated through the use of pesticides.
27. Further, the evidence provided by the Tenant regarding insufficient heat, faulty windows, the presence of mould in the bedrooms, and vibrating floors is imprecise, and it lacks crucial details about the initiation of these issues, the timeline of the Tenant's reports to the Landlord, and whether any efforts were made to remedy the situation. The Tenant has not offered any supporting evidence to establish that the temperature within the rental unit had fallen below the legal requirement of 20 degrees Celsius, as per s. 4(2) of Ontario Regulation 516/06. Moreover, no documented inspection reports, photographs, affidavits, or witnesses are absent to support the claim of bedroom mould, faulty windows and shaking floors.
28. Based on the Tenant's evidence, it is difficult to ascertain that the items required ongoing repairs and that the Landlord should have responded promptly to address the issues. The Tenant's evidence did not establish that the Landlord has breached her maintenance obligations under the Act.
29. This Order contains all the reasons for this matter. No further reasons will issue.

**It is ordered that:**

1. The Tenant shall also pay the Landlord \$6,444.29, which represents the rent arrears owed by the Tenant to April 30, 2022, when the Landlord sold the residential unit.
2. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
3. If the Tenant does not pay the Landlord the full amount owing on or before October 7, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 8, 2023 at 5.00% annually on the balance outstanding.

**September 26, 2023**

**Date Issued**

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**Percy Laryea**

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.