



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

Citation: Krizon v Lu, 2023 ONLTB 63225

Date: 2023-09-20

File Number: LTB-T-071816-22 (SOT-24446-21)

In the matter of:

Main Floor Back Left
Unit, 31 Page Street St
Catharines Ontario
L2R4A6

Tenant

Between: Michael Krizon

And

Landlord

Frank Lu

Your file has been moved to the Landlord and Tenant Board's new case management system, the Tribunals Ontario Portal. Your new file number is LTB-T-071816-22.

Michael Krizon (the 'Tenant') applied for an order determining that Frank Lu (the 'Landlord'):

- Substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.
- Withheld or deliberately interfered with the reasonable supply of a vital service that the Landlord obligated to supply under the tenancy agreement.
- 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.

This application was heard by videoconference on May 25, 2023.

The Tenant and the Tenant's Legal Representative, Mandip Grewal, attended the hearing. The Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenant's evidence. **Determinations:**

1. Pursuant to Rule 15.1, the Tenant's application is amended in accordance with the amended application filed with the Board and served on the Landlord on November 15, 2021.
2. The rental unit is a room, located on the main floor of the house with shared common areas with other tenants.
3. The tenancy with respect to this rental unit (Main Floor Back Left Unit) commenced on April 1, 2021. Prior to this date, the Tenant was renting a different rental unit in the residential complex.
4. The Landlord or their spouse, child or parent do not live in the house and the Tenant is not required to share a kitchen or a bathroom with the Landlord, their spouse, or their child or parent.
5. The Tenant moved out on May 1, 2022.
6. The monthly rent was \$550.00.
7. Given the uncontested evidence, the Landlord failed to reasonably address the following maintenance issues:
 - Cockroach infestation: the Tenant noticed cockroaches in the rental unit 2 weeks after moving in. Pictures of live and dead cockroaches in the residential complex were submitted at the hearing. The Tenant says they informed the Landlord in May 2021. However, the Landlord did not do any treatments to treat the infestation.
 - Stove: the Tenant says the stove broke towards the end of April 2021. The Tenant informed the Landlord but the stove was never repaired or replaced for the duration of the tenancy.
 - Windows: the Tenant says that both windows in his rental unit would not open or lock. They were also broken or cracked. He informed the Landlord towards the end of April 2021. The Landlord did nothing to repair or replace the windows throughout the tenancy.
 - Washing machine: the Tenant says the washing machine stopped working and that he informed the Landlord about the problem on July 22, 2021. The Landlord did not repair or replace the washing machine.
 - Holes in the walls: several pictures were submitted which show holes in the walls throughout the residential complex. The Tenant says they informed the Landlord in July 2021 but the Landlord did not repair the holes.

- Roof leak: the Tenant says on June 8, 2021, he notified the Landlord that the roof in the kitchen was leaking. The leaks would occur every time someone would use the shower or when it would rain. The issue was never resolved throughout the tenancy.
8. There was insufficient evidence to prove a rat infestation. The picture evidence shows a dead rat outside the residential complex but no pictures to suggest they were inside the residential complex. The Tenant did not testify that he saw rats in the rental unit. He did say that he heard them inside the walls. Based on the testimony and absent any pictures of rats in the rental unit, I am not prepared to make a finding that there was a rat infestation.
9. In the case *Onyskiw v. CJM Property Management*, 2016 ONCA 477 (Onyskiw) (CanLII), the Court of Appeal for Ontario determined that a contextual approach should be adopted when considering a landlord's potential breach of maintenance obligations under the Act. A breach will not be found if the landlord's response to a maintenance issue was reasonable in the circumstances.
10. In the present case, the Landlord's response to the multiple maintenance issues raised by the Tenant was not reasonable in the circumstances. Therefore, I find that the Landlord breached their maintenance obligations pursuant to s.20(1) of the Act.
11. The Tenant says that the lease agreement provides that the rent includes utilities. The Tenant was without heat or hot water from September 21, 2021. The heat was restored on December 2, 2021, and the hot water was restored on January 31, 2022. It appears that the utilities were disconnected because the Landlord did not pay the bills. Therefore, I find that the Landlord withheld or interfered with the Tenant's vital services by failing to provide heat and hot water to the Tenant.
12. The Landlord also failed to address behavioural issues with other tenants and their guests at the residential complex. The Tenant says that shortly after the Tenant moved in, another tenant at the residential complex broke into the Tenant's room. The Tenant says that the other tenants at the residential complex would invite guests over and would use drugs at the rental unit and discard their garbage and drug paraphernalia throughout the residential complex. The Tenant says that he informed Landlords about the above issues, but the Landlord did not act to correct the offending behaviour or evict the offending tenants.
13. The above resulted in substantial impact on the Tenant's reasonable enjoyment of the rental unit. The Tenant's security interests, privacy interests and interests in quiet enjoyment of the rental unit was substantially interfered with. Therefore, I find that the Landlord substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.

Remedies

14. Given the circumstances describe above, I find that a rent abatement of \$2,090.00 is appropriate in the circumstances. The amount represents a 20 percent rent abatement for the period April 1 2021 to September 30, 2021, a 50 percent rent abatement for the months of October 1, 2021 to January 31, 2022, and a 20 percent rent abatement for the period February 1, 2022 to April 30, 2022. A higher rent abatement is justified for the period October 1, 2021 to January 31, 2022 given the lack of vital services for this period and the significant impact this had on the Tenant.
15. The Tenant has out-of-pocket expenses in the amount of \$432.00 because of the Landlord's inaction to repair the laundry machine. This amount represents the reasonable costs to do laundry for the 9 months the Tenant was without a working laundry machine.
16. The Landlord has shown a complete disregard towards the Tenant's rights and the Landlord's obligations under the Act. I do not find the above remedies sufficiently deter the Landlord from future breaches of the Act. Therefore, I find that the Landlord must pay an administrative fine to the LTB in the amount of \$1,000.00.
17. The Tenant did not claim general damages in their amended application. Therefore, this remedy is denied.
18. This order contains all of the reasons for the decision within it and no further reasons will be issued.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$1,972.00. This amount represents:
 - \$2,090.00 for a rent abatement.
 - \$432.00 for the estimated reasonable out-of-pocket expenses the Tenant has incurred.
2. The Landlord shall pay the Tenant the full amount owing by October 1, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by October 1, 2023, the Landlord will owe interest. This will be simple interest calculated from October 2, 2023 at 6.00% annually on the balance outstanding.
4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.
5. The Landlord shall pay to the Landlord and Tenant Board an administrative fine* in the amount of \$500.00 by October 1, 2023.

September 20, 2023

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Khalid Akram

Member, Landlord and Tenant Board

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

* Payment of the fine must be made to the LTB by the deadline set out above. The fine can be paid by certified cheque, bank draft or money order made payable to the Minister of Finance. If paying in person, the debt can also be paid by cash, credit card or debit card.