



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

Citation: MENEZES v ASSAL, 2023 ONLTB 62382

Date: 2023-09-14

File Number: LTB-T-063677-22
(formerly TNT-31897-21)

In the matter of: 1906, 7 BISHOP AVENUE
NORTH YORK ON M2M4J4

Between: Sunaina Menezes Tenant

And

Selim Assal Landlord

Sunaina Menezes (the 'Tenant') applied for an order determining that Selim Assal(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.

This application was heard by videoconference on May 9, 2023.

The Landlord and the Tenant attended the hearing.

On June 16, 2023, the Board received a request to pay rent to the Board from the Tenant. In this request, the Tenant stated she would like to pay the monthly rent for the month of July 2023 to the Board. She also stated she provided the proper 60 days notice to the Landlord to terminate her tenancy thus she sought to pay only one month's rent to the Board. As the Board did not address this request due to unforeseen circumstances and as the Tenant had vacated the unit, the request is moot.

Determinations:

1. As explained below, the Tenant has proven, on a balance of probabilities, the allegations contained in the application, therefore, the Landlord must pay to the Tenant \$484.42, which represents a rent abatement (\$73.76), costs incurred by the Tenant (\$362.66), and the cost of filing the application with the Board (\$48.00).

2. In her testimony, the Tenant stated that on March 20, 2021 at approximately 9:00 a.m., the toilet in her rental unit stopped working. She stated she contacted the Landlord by telephone numerous times but did not receive a response. As she was without the use of the toilet, on her own volition she contacted a plumber to fix the issue.
3. On March 21, 2021 at 10:30 a.m., she received a call from the Landlord and advised him that a plumber was on his way to the rental unit. She stated the Landlord told her to cancel the plumber however she advised him the plumber was in the building thus she could not cancel the service call. She stated the Landlord contacted her again, demanding she cancel the plumber as he would fix the issue himself. At 12:30 p.m., the Tenant contacted the Landlord advising him the issue was resolved and that she had paid the plumber's invoice. She also informed the Landlord she would be deducting the invoiced amount from her monthly rent. The Tenant further stated the Landlord angrily informed her not to deduct the amount from her rent and stated he would not be compensating her.
4. In his testimony, the Landlord stated is was not available at the time of the Tenant's phone calls and was not able to contact her until the next morning. He did not dispute that he was aware a plumber would be attending at the rental unit and advised the Tenant to cancel the service call. He admitted he was annoyed that the Tenant had not waited for his return phone call and stated he would have rectified the issue himself so as not to bear any additional costs. Should he have not been able to affect the repair, he would have called a plumber himself. He stated he did not view a non-working toilet as an emergency but offered the Tenant \$150.00 in compensation for the costs she incurred.
5. Section 20(1) of the Act sets out:

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.

6. The standard of proof in proceedings before this Board is "proof on a balance of probabilities." By that standard, the party bearing the burden of proof must show with evidence that, "more likely than not", their assertions are true. Where, the evidence of the opposing party is as believable as that of the party bearing the burden of proof, that burden cannot be said to have been discharged.
7. Based on the evidence adduced by the parties and on a balance of probabilities, I am satisfied that the Tenant has met that burden and acted reasonably in her attempts to contact the Landlord and by contacting a plumber on her own accord when the Landlord did not return her call until the next day. In my view, the Landlord has the responsibility to be available to the Tenant in the case of an emergency and in this case, a non-working toilet can be considered an emergency. Due to the Landlord's lack of communication with the

Tenant, she was forced to incur costs for the maintenance of the rental unit. As such, I find the Landlord has breached s.20(1) of the Act.

It is ordered that:

1. The Landlord shall pay to the Tenant a rent abatement of \$73.76.
2. The Landlord shall also pay to the Tenant \$362.66 for the costs incurred to repair the toilet.
3. The Landlord shall also pay to the Tenant \$48.00 for the cost of filing the application with the Board.
4. The total amount the Landlord owes the Tenant is \$484.42.
5. The Landlord shall pay the Tenant the full amount owing by September 25, 2023.
6. If the Landlord does not pay the Tenant the full amount owing by September 25, 2023, the Landlord will owe interest. This will be simple interest calculated from September 26, 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 14, 2023

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Susan Priest

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.