



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

**Citation:** Palubeskie v Bonas, 2023 ONLTB 60719

**Date:** 2023-09-11

**File Number:** LTB-T-014242-22

**In the matter of:** 5, 57 GARDEN ST  
GANANOQUE ON K7G1H6

Tenant

**Between:** Brianna Palubeskie

**And**

Landlord

Tommy Bonas

Brianna Palubeskie (the 'Tenant') applied for an order determining that Tommy Bonas (the 'Landlord'):

- entered the rental unit illegally.
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.

The Tenant also applied for an order determining that 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 July 10, 2023.

The Landlord, the Landlord's Representative, Crystal Francey, the Landlord's Witness, Bradley Young, and the Tenant attended the hearing.

**Determinations:**

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenant \$248.00 which is the sum of a rent abatement of \$200.00, as well as the \$48.00 filing fee the Tenant incurred to file this application.

Illegal Entries- Evidence

2. The Tenant alleged that the Landlord illegally entered the rental unit on April 28 and 29, 2021.
3. The parties agreed that these entries were due to having to change a door lock on the rental unit entrance door because the original keys had been misplaced.
4. The Tenant testified that the Landlord wanted to replace the locks on the apartment on April 28, 2021. The Landlord knocked on the Tenant's door and asked to enter the unit to change the Tenant's door lock. The Tenant refused the Landlord entry because she did not have any prior notice from the Landlord. The Landlord did not enter the unit at this time.
5. At 4pm, on April 28, 2021, the Landlord sent a text to the Tenant stating that he would be entering the unit at 10am on April 29, 2021, to change the door lock and to allow an electrician in to inspect the unit.
6. The Landlord testified that he did enter the unit on April 29, 2021. The Tenant was not in the unit at the time of entry. The Landlord stated that the lock no longer needed to be changed because the spare set of keys for the Tenant's door had been found, thus negating the necessity of changing the lock. The electrician did attend the unit for the purpose of inspection.
7. The Tenant testified that the Landlord illegally entered the rental unit on May 11, 2021, because the Landlord had to enter the unit to deal with a non-emergency issue with plumbing at a neighbouring residence, and the Landlord required to the building's water shut-off valve located through the Tenant's bathroom.
8. The Tenant testified that the Landlord called the police. When the police attended, they stated that the issue was not an emergency and that the Tenant did not have to give entry.
9. Under cross-examination, the Tenant admitted that the police had told her to allow the Landlord into the rental unit. The Tenant was unsure if the date of this occurrence was May 11<sup>th</sup>, or May 10<sup>th</sup>, as was asked of her in cross-examination.
10. Landlord stated that the event in question happened on May 10, 2021. The police were contacted, but police told the Tenant to let the Landlord into the unit to access the water shut-off.
11. The Tenant testified that the Landlord entered her rental unit without notice on June 8, 2021. The Tenant testified that the Landlord brought the police with him again, but the police told him it was not an emergency and that he was turned away from entering the rental unit. The Tenant further testified that if the entry had 4 days of notice, then the issue could not be deemed an emergency.
12. Under cross-examination, it was determined that the Tenant had been given notice of the entry by text on June 5, 2021, and that the entry was not without notice.
13. The Landlord testified that he did not actually enter the rental unit on June 8, 2021.

Illegal Entries- Analysis

14. Section 26 of the Act states:

26 (1) A landlord may enter a rental unit at any time without written notice,

(a) in cases of emergency; or

(b) if the tenant consents to the entry at the time of entry.

15. Pursuant to section 27 of the Act, a landlord may enter a rental unit with written notice given to the tenant at least 24 hours before the time of entry for the purposes of maintenance or repairs.

16. Regarding the entry on May 10 (or 11) 2021, based on the evidence before me, I am satisfied that the entry was legal pursuant to section 26 of the Act and that an emergency situation required the Landlord access to the Tenant's unit to shut the water off to the building.

17. I am not satisfied an illegal entry occurred on April 28, 2021, because no evidence was provided that the Landlord entered the rental unit.

18. Regarding the entry on June 8, 2021, the Tenant and the Landlord gave conflicting evidence, however based on the testimony of both people, I am more inclined to accept the Landlord's evidence over the Tenant's. I find that Tenant's credibility was weakened due to the contradictory evidence that she provided throughout the hearing, specifically when testifying to the alleged illegal entry on May 10 or 11. During that testimony the Tenant stated that the police had sided with her, only to admit under cross-examination that the police had sided with the Landlord. I find the contradictions in the Tenant's testimony throughout the hearing tempered my faith in the truthfulness of the Tenant's testimony.

19. Based on the evidence before me, I find that there is only one entry that would be considered an illegal entry, which occurred on April 29, 2021, when the Landlord admitted to having given a written notice of entry via text to the Tenant at 4pm on April 28, to enter the unit at 10am on April 29. That is less than the 24 hours of notice required under section 27 of the Act, therefore, this entry was illegal.

20. For the one illegal entry on April 29, 2021, I find that a rent abatement of \$100.00 is appropriate.

Substantial Interference/Maintenance- Water Access Room

21. The main water feed valve for the rental complex is in the Tenant's rental unit. It is located through a door on the opposite side of the entrance of the Tenant's bathroom.

22. The Tenant testified that the water access room lacks insulation and does not always shut securely. The Tenant testified that cold air comes in from the water access room into her rental unit.
23. The Tenant presented photos of the room where the water valve is located. They showed a room with a door next to the toilet. It looked relatively small, maybe 3 feet by 3 feet in floor space.
24. No pictures were submitted showing the wall facing the exterior of the building, which is where any insulation would be located. The Tenant also did not include any corroborating evidence showing that the door did not latch properly.
25. The Tenant testified that she believes that the Landlord should have a new door installed outside of her rental unit so that the Landlord can access the water access room without having to enter her unit.
26. No evidence was presented that the Landlord has entered the rental unit illegally to access the water valve room.
27. Based on the evidence before me, I am not satisfied that there is a maintenance issue. I found that there is a lack of corroborating evidence to back up the Tenant's claim that the room is allowing cold air into her rental unit. I also do not have any corroborating evidence to back up the Tenant's claim that the door does not latch.
28. The Tenant has been aware of the location of the water access room since the tenancy began. It would be reasonable to expect that the Landlord would require entry on occasion. Furthermore, there has been no evidence provided suggesting that the Landlord had ever made plans to move access to the water room to the outside of the rental unit.
29. I find that as long as the Landlord enters in accordance with sections 26 and 27 of the Act, then there is no interference with the Tenant's reasonable enjoyment of the rental unit.
30. I am not satisfied that the state of the water access room or the existence of the water access room has substantially interfered with the Tenant's reasonable enjoyment of the rental unit, or breaches the Landlord's maintenance responsibilities, as stated in section 20(1) of the Act. Therefore, any claims based on the water room are denied.

#### Harassment

31. The Tenant alleged that the Landlord had, on multiple occasions, harassed, or acted in an aggressive manner towards the Tenant.
32. The Tenant did not present any documentary evidence that would corroborate any of the Tenant's testimony. I found that most of the emails and text threads submitted as evidence showed that the Tenant was acting aggressive towards the Landlord.

33. The Landlord denied ever having harassed the Tenant and stated that he had been always cordial and professional with the Tenant.
34. Based on the evidence presented at the hearing, I am not satisfied that the Landlord, at any time, harassed the Tenant. Therefore, any claim for harassment is denied.

Maintenance- Flood

35. The Tenant testified that on December 6, 2021, a flood occurred in the rental unit. The Tenant alleged that the shower and toilet backed up and caused an overflow on to the floors in the rental unit.
36. The Tenant testified that the Landlord did attend the rental unit with a plumber and had unclogged the drains, however the Tenant stated that when the Landlord had finished, the Landlord and the plumber left the unit, leaving "grey water" (water from the backed-up drains) on the floor.
37. The Tenant then testified that the Landlord used a wet/dry vacuum to remove the standing water in the shower stall.
38. The Tenant testified that the drainage issues occurred before the December 6 incident, however, no evidence, such as prior emails, or work orders, were presented to corroborate this testimony.
39. The Tenant claims that the drains in the rental unit are still an issue, however, no additional evidence was presented to corroborate this testimony.
40. The Tenant testified that the floor had been water damaged. The Tenant presented some photos of the flooring to corroborate the evidence. The pictures showed what appears to be laminate flooring with some yellow staining on the floor.
41. In cross-examination, the Tenant admitted to owning a dog, that had urinated on the floor on a few occasions.
42. The Landlord's Witness, Bradley Young (BY), testified that he had entered the rental unit with the Landlord on December 6, 2021. A plumber, who cleared the drain, also had entered the unit at that time.
43. BY testified that the clog was removed by using a drain snake. The drain snake discovered the clog before the drain connected to the drain stack in the rental complex. The clog was caused by a mix of hair and grease.
44. BY testified that he had used the wet/dry vacuum to clean all of the floors affected by the flooding once the clog was cleared and the drain was running freely. BY also testified that the Landlord went and bought towels to help BY clean the floors. When cross-examined, BY stated that he used a bleach/soap/water solution to clean all of the floors.

45. Pursuant to section 20(1) of the Act, the Landlord is responsible for the maintenance of the rental unit and the complex.
46. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, (“*Onyskiw*”) the Court of Appeal held that the LTB should take a contextual approach and consider the entirety of the factual situation in determining whether there was a breach of the landlord’s maintenance obligations, including whether the landlord responded to the maintenance issue reasonably in the circumstances. The court rejected the submission that a landlord is automatically in breach of its maintenance obligation as soon as an interruption in service occurs. In this case, did the Landlord act in a reasonable manner in clearing the drain and restoring the unit after the flooding occurred on December 6, 2021?
47. I was not satisfied that the pictures of the floor showed water damage. The floors appeared to show some minor receding, but they did not show any flood damage, or any damage that would cause any substantial interference with the Tenant’s reasonable enjoyment of the rental unit.
48. Based on the evidence before me, I find that the Landlord acted in a reasonable manner and effectively cleared the drain and restored the rental unit from any flood water damage on the same day the flood occurred.
49. Therefore, I find that the Landlord did not breach section 20(1) of the Act when the flood occurred on December 6, 2021. Therefore, any claims regarding issues of flooding are denied.

#### Maintenance- Windows

50. The Tenant claimed that the windows in the Tenant’s living room were damaged. The Tenant claimed that the latches were not secure or broken. The Tenant also claimed that the weatherstripping around the windows was worn out and causing wind from the outside to enter the unit. The Tenant also claimed that the wood windowsills were water damaged.
51. The Tenant presented photos of the windows as documentary evidence. I found that the pictures showed windows in different states of being opened or closed, however, I found that the pictures did not help me determine whether the windows, the weatherstripping, the window frame or the windowsill were damaged.
52. The Landlord testified that he had never been made aware of any window damage. Furthermore, his inspections showed that the windows were in good condition.
53. Based on the evidence before me, I find that the Tenant has not met the burden of proof required for me to find that the windows were damaged. Therefore, any claims based on the damaged windows are denied.

#### Maintenance- Kitchen Disrepair

54. The Tenant alleged that the kitchen cupboards were damaged due to a flooding incident that occurred in the rental unit above the Tenant's unit earlier in 2020. No specific date was given for that flood by the Tenant at the hearing.
55. The Tenant alleges that water came in from the ceiling and caused mold to grow on the ceiling-facing side of the drop-ceiling tiles, and cause warping of the boards on top of the cupboard.
56. The Tenant presented a photo that showed some minor water staining on two of the dropceiling tiles, however no mold appeared to be present.
57. The Tenant presented photos of the cupboards, but no damage was observed in the photos.
58. The Landlord denies that there is any damage to the cupboards. The Landlord also denies the existence of mold in the rental unit.
59. I find that the Tenant has not proven, on a balance of probabilities, that any damage to the kitchen cupboards has occurred, or that there is any mold in the ceiling. Had the Tenant made a claim on the T6 portion of the application for water-damaged tiles, a nominal award might have been appropriate, however, the Tenant did not make that claim on the application, therefore, I do not have to discretion to make such an award.
60. Therefore, any claim for damages based on the state of the kitchen ceiling or cupboard is denied.

#### Maintenance- Furnace

61. The furnace in the rental unit is fueled by natural gas.
62. The Tenant testified that the furnace was not functioning properly and forced her to rely on heat from an electric baseboard located in the bathroom.
63. The Tenant claimed that a vent for the furnace was blocked with spray foam insulation that the Landlord applied around the vent. No supporting evidence, such as a photograph, was presented to support this claim. Furthermore, no assessment of the furnace by a professional, such as a furnace repair person, was submitted to corroborate the Tenant's evidence.
64. Under cross-examination, the Tenant admitted that she was responsible for the payment of the gas bill, and that the natural gas utility was shut off due to the Tenant's failure to pay.
65. I am not satisfied, on a balance of probabilities, that the furnace did not function properly. No evidence has been presented to me that would suggest that the furnace was not functional for any other reason other than that the natural gas utility was shut off by the supplier.

66. Therefore, any claim based on the maintenance of the furnace is denied.

Maintenance- Bedroom Door

67. The Tenant testified that the bedroom door was in disrepair because the door would not latch properly when closed.

68. The Tenant testified that the Landlord was notified of the issues with the door not closing properly in 2021. When asked what month specifically, the Tenant could not respond. No documentary evidence, such as text conversations, or emails, were submitted to corroborate this evidence.

69. The Tenant testified that the Landlord fixed the door in September 2022.

70. The Landlord testified that the door did use the wrong screws in the hinges, but once the right screws were installed, the door functioned properly. The Landlord did not present any evidence regarding when he received notice of the bedroom door issues, nor did he contest the Tenant's testimony that it was repaired in September 2022.

71. Based on the evidence before me, I find that the Landlord did fail to repair the bedroom door in a timely manner. I find that the Landlord knew the bedroom door would not latch properly since 2021.

72. Based on the evidence before me, I find that the maintenance issue is minor. Therefore, I find that a lump sum rent abatement of \$100.00 is appropriate.

**It is ordered that:**

1. The total amount the Landlord shall pay the Tenant is \$248.00. This amount represents:
  - \$200.00 for a rent abatement.
  - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by September 22, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by September 22, 2023, the Landlord will owe interest. This will be simple interest calculated from September 23, 2023, at 6.00% annually on the balance outstanding.
4. If the Landlord does not pay the Tenant the full amount owing by September 22, 2023, the Tenant may recover this amount by deducting \$248.00 from the rent due for October 2023.
5. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**September 11, 2023**

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**File Number:** LTB-T-014242-22

**Date Issued**

Robert Brown  
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.

2023 ONLTB 60719 (CanLII)