



**Order under Section 29  
Residential Tenancies Act, 2006**

**Citation:** Eljachi v Williams & McDaniel Property Management, 2023 ONLTB 49070

**Date:** 2023-08-10

**File Number:** LTB-T-064287-22

**In the matter of:** 05, 205 BRANDON AVE  
KITCHENER ON N2M2J2

**Between:** Eric Eljachi Tenant

**And**

Williams & McDaniel Property Management Landlord

Eric Eljachi (the 'Tenant') applied for an order determining that Williams & McDaniel Property Management (the 'Landlord') or the Landlord's superintendent/agent entered the rental unit illegally; harassed, obstructed, coerced, threatened or interfered with the Tenant and substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household; and, for an order determining that the Landlord failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* or failed to comply with health, safety, housing or maintenance standards.

This application was heard by videoconference on May 8, 2023.

The Landlord's representative J. Andersen, the Landlord's agent Penny Verti and Aaron Willing, the Tenant and the Tenant's representative Andrew Franzke attended the hearing.

**Determinations:**

1. The Tenant brought a T6 Application and a T2 Application pursuant to s.29(1) [Residential Tenancies Act, 2006](#) (the 'Act'). Both applications were filed on April 12, 2021.
2. The Tenant moved into the rental unit on October 1, 2017.

## T6 Application

3. The Tenant's T6 Application alleges the Landlord has breached an obligation under s.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

4. By way of background, there was a fire on the 3<sup>rd</sup> floor of the residential complex on December 1, 2019, requiring the entire building to be vacated. Temporary housing was arranged for the Tenant at a nearby hotel for the period of December 1, 2019 through to December 14, 2019.
5. The Tenant returned to the rental unit in mid-December 2019 and testified the fire incident resulted in water/soot damage to his rental unit and caused a "noxious" smell. Subsequently, in October 2020, the Tenant temporarily left the rental unit so the Landlord could perform substantial repairs and renovations to the building. The Tenant later returned to the building on February 1, 2021 where he continues to reside.
6. The Tenant's T6 Application seeks a 75% abatement from December 1, 2019 to September 30, 2020, in the amount of \$6526.32. The Tenant also seeks compensation for the costs to repair/replace property that was damaged or destroyed in the amount of \$4,242.02, as well as other non-monetary relief.

### Living room / kitchen: Floors / Balcony

7. Upon returning to the rental unit in mid-December 2019, the Tenant alleges the living room and kitchen floors were peeling off and covered in soot and other residue from the fire. The Tenant produced pictures of the kitchen and living room floors showing dark burn stains and residue throughout, and in need of replacement. The Tenant testified he tried cleaning without success and that the apartment smelled "mouldy". Given the condition of living room/kitchen, he testified he was essentially confined to his bedroom.
8. Similarly, with respect to the balcony area, the Tenant alleges there was a significant amount of debris still present related to the fire. The Tenant produced multiple balcony pictures showing substantial debris covering nearly the entire balcony, as well as what appeared to be peeling or chunks of roof debris; the combined effect, of which, effectively rendered the balcony unusable and not reasonably remedied through ordinary cleaning.

9. The Tenant testified he notified the Landlord of the maintenance issues in January 2020 and produced a letter sent to the Landlord on February 26, 2020, outlining the various concerns, to which the Landlord responded on March 10, 2020, stating “*with regard to the structural damage to your unit floors, walls and ceilings....these issues are part of the on going insurance claim*”. Ultimately, these maintenance issues persisted until the Tenant temporarily vacated the rental unit in October 2020.
10. Given the pervasiveness of the residue and staining throughout the apartment and balcony and the Landlord’s failure to address these maintenance concerns in a reasonable period of time, I find the Landlord breached the Landlord’s maintenance obligation under section 20 of the Act. Moreover, I find the maintenance concerns significantly affected the Tenant’s enjoyment of the rental unit. Accordingly, I am awarding the Tenant an approx. 45% abatement in rent from February 1, 2020 through to September 30, 2020, for a total abatement of \$3675.00.

#### Bathtub, Bathroom Floors and Bed Bugs

11. The Tenant also alleged the bathroom toilet ran continuously, the bathtub and bathroom floor were covered in soot/fire residue and the bathroom ceiling contained water damage.
12. The onus to prove the allegations in the application rests with the Tenant. With respect to the bathtub and bathroom floor tiles allegations, the Tenant produced pictures of the bathtub and bathroom floor tiles containing some light staining. Upon hearing the evidence and reviewing the pictures submitted, I find it is unclear whether the staining in the bathtub or bathroom tiles required simple cleaning, or repair work
13. With respect to the alleged ceiling water damage, the Tenant produced a picture of the bathroom ceiling which showed a somewhat rougher surface. While not a requirement to prove the Tenant’s case, the Tenant did not produce any expert or independent report in support of the ceiling water damage allegation. Absence such corroborating evidence, it was unclear from the evidence presented whether the ceiling was actually in need of repair work, or that it constituted a safety concern. Similarly, I find there was insufficient evidence rendered with respect to the toilet malfunction to determine whether the Landlord breached its obligations under section 20 of the Act. These allegations are accordingly dismissed.
14. The Tenant alleged there was an infestation of bed bugs in the rental unit, which was noticed upon the Tenant’s return to the rental unit in December 2019. The Tenant testified he raised this issue verbally with the Landlord and produced a letter written to the Landlord on February 26, 2020, advising “*I have been experiencing a bug problem since I was allowed*

*to return to my unit...my body is riddle with bite marks...*”, to which the Landlord responded on March 10, 2020, stating a pest control company would be attending on March 12, 2020.

15. The Landlord testified the pest control company ultimately came in March, and later in midApril to resolve the issue. The Landlord submits they acted reasonably. In *Onyskiw v. CJM Property Management* (“Oniskew”), the Ontario Court of Appeal [2016 ONCA 477 \(CanLII\)](#) provided a guiding framework for the analysis of alleged breaches of [section 20](#) of the [Act](#), and urged a “contextual approach” to the analysis of maintenance and repair issues. The court also rejected that the mere occurrence of a problem constitutes an automatic breach of the [Act](#). As it appears the Landlord arranged for a pest control company to apply the first treatment approximately 2 weeks after being notified of the pest control issue and given the follow-up treatment thereafter, I am not satisfied that the Landlord breached their maintenance obligations under the Act.

## Damaged Items

16. The Tenant claimed that numerous pieces of furniture were damaged in the rental unit as a result of “*being covered in soot and residue arising out of the fire*” and seeks \$4,242,02 for damage caused to the Tenant’s sofa/couch, carpet and coffee table. At the hearing, it was the Tenant’s evidence that such items were discarded in November 2020, after only purchasing such items in November 2019. The Tenant also alleged there was damage caused to some of his items as result of an upper-unit flood in March 2021.
17. The Tenant indicated the Landlord placed humidifiers in the unit after the fire, but this was of no help as the fabric was already “compromised”. While I am sympathetic to the Tenant’s situation, the Tenant must establish on a balance of probabilities that any damage caused to the Tenant’s items were the result of a breach on the part of the Landlord. More likely, it appears any damage caused to the Tenant’s items was the result of the unfortunate fire or flood that occurred, and not any action or inaction on the part of the Landlord. This allegation is accordingly, dismissed.

## T2 Application

18. The Tenant’s T2 Application seeks a rent abatement of \$511.87, in addition to other nonmonetary relief.
19. The Tenant alleges the Landlord or the Landlord's superintendent/agent entered the rental unit illegally; harassed, obstructed, coerced, threatened or interfered with the Tenant and substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household.

20. As noted above and by way of background, there was a fire at the residential complex on December 1, 2019, requiring the entire building to be vacated. The Landlord arranged for temporary housing for the Tenant at a nearby hotel for the period of December 1, 2019 through to December 14, 2019.

21. The Tenant's T2 Application essentially raises three allegations:

- (i) that on December 3, 2019 there was a "break and enter" in the Tenant's unit that the Landlord failed to promptly report to the Tenant;
- (ii) that on December 14, 2019 there was another "break and enter" in the Tenant's unit that the Landlord failed to promptly report to the Tenant.,
- (iii) That at the end of December 2019, the Landlord's superintended wilfully obstructed the Tenant's friend from entering the building for no valid reason.

22. The Tenant alleges that after the first break-in, the Landlord promised to hire a security guard to secure the building, but this never occurred. When the Tenant returned to the rental unit on December 16, 2019 and discovered the second "break and enter", the Tenant indicated the lock was damaged and that there were likely "many people" in his unit.

23. The onus to prove the allegations rests with the Tenant and the evidence was unclear by whom - and how - the break-in incidents from December 3 and 14 occurred. While it is unfortunate the Landlord did not engage a security guard as purportedly promised in early December, the incidents occurred only 11 days apart. Accordingly, I do not find the Landlord's failure to engage security in this period of time resulted in a breach under the Act. While it is also unfortunate the Tenant was not immediately notified of the break and enter, the Tenant has not proven on a balance of probabilities that the Landlord's actions or inactions could reasonably have prevented the break-ins or minimized the Tenant's losses.

24. With respect to the 3<sup>rd</sup> allegation of not allowing the Tenant's friend to enter the building without "valid reason", the Tenant's friend did not testify as to this event. I find there was insufficient evidence presented to establish that the Landlord was acting with ill intent, or that their behaviour continued a breach under the Act. The Tenant's T2 Application is dismissed

**It is ordered that:**

1. The Landlord shall pay the Tenant a rent abatement in the total amount of \$ 3,675.00

2. The Landlord shall also pay to the Tenant \$50.00 for the cost of filing the application.
3. The total amount the Landlord owes the Tenant is \$ 3,725.00.
4. The Landlord shall pay the Tenant the full amount owing by August 21, 2023. If the Landlord does not pay the Tenant the full amount owing by August 21, 2023, the Tenant will owe interest. This will be simple interest calculated from September 1, 2023 at 6.00% annually on the balance outstanding.

**August 10, 2023**

**Date Issued**

\_\_\_\_\_  
Peter Nicholson

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