



## Order under Section 30, 31 and 135 Residential Tenancies Act, 2006

**Citation:** MALENFANT v SOROKOPUD, 2023 ONLTB 20063

**Date:** 2023-03-08

**File Number:** LTB-T-061675-22

**In the matter of:** B, 723 JAMES STREET NORTH  
THUNDER BAY ONTARIO P7C5M7

**Between:** GERALD MALENFANT Tenant

**And**

GEORGE SOROKOPUD Landlord

Gerald Malenfant (the 'Tenant') applied for an order determining that George Sorokopud (the 'Landlord') has collected or retained money illegally.

Gerald Malenfant (the 'Tenant') also applied for an order determining that George Sorokopud (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 January 18, 2023.

The Landlord George Sorokopud and co-owners of the property, DJ Connors, Maria Sorokopud, attended the hearing.

The Tenant and the Tenant's daughter attended the hearing.

### **Background:**

1. The Tenant signed a 3-year lease for the period October 2017 to October 31, 2020. On November 1, 2020, it became a month-to-month tenancy.
2. The Tenant paid \$600.00 monthly rent from August 1, 2021, until March 31, 2022.
3. The Tenant paid \$700.00 monthly rent from April 1, 2022, until the end of his tenancy in September 2022.
4. The Tenant moved out in September 2022 and an automatic rent payment was made by the Tenant for October 2022 in the amount of \$700.00.
5. D.J. Connors spoke on behalf of the Landlords.

### **Determinations:**

T1 APPLICATION

Illegal rent increase

6. As explained below, the Landlord has collected rent in excess of the amount allowed by the *Residential Tenancies Act, 2006* (the 'Act') and collected a charge which is not allowed by the 'Act'.
7. The parties agreed that the Landlord verbally and gave a written notice in March 2022 that the Tenant's rent would increase from \$600.00 to \$700.00 on April 1, 2022. The parties agreed that the Landlord did not give the Tenant a Notice of Rent Increase (NORI) as required by s.116 of the Act.
8. Therefore, in accordance with s.116(4), the rent increase was void and the lawful rent remained at \$600.00 per month.
9. The Landlord collected \$100.00 above the lawful amount from April 1, 2022 through to September 2022.
10. The Tenant is entitled to be reimbursed for the illegally collected rent from April 1, 2022 to September, 2022 in the amount of \$600.00

Monies retained illegally

11. It was the Tenant's evidence that when he vacated the unit in September 2022 the \$700 monthly rent charge was taken out of his account by automatic deposit and not returned by the Landlord. The Tenant testified that the Landlord never returned this payment.
12. The Landlord did not dispute that he owes the Tenant the \$700.00. He argued that it was the Tenant's responsibility to inform the bank and to cancel the automatic deposit. The Landlord further testified that when the Landlord and Tenant were negotiating a settlement, the Landlord had agreed to send the Tenant a \$1,100.00 cheque by mail with a second cheque of \$700.00 sent separately. When the Tenant received \$1,100.00, the Tenant called the Landlord and advised that he was no longer in agreement with the proposal. The Landlord testified that he never sent the Tenant the \$700.00.
13. Based on the evidence before me, the Landlord has collected and retained money from the Tenant which is contravention of s.135(1) of the Act.
14. The Landlord will be ordered to repay the Tenant the \$700.00 he retained illegally.

## T6 APPLICATION – MAINTENANCE

## Tenant evidence

15. As explained below, the Tenant has proven on a balance of probabilities the following allegations contained in the application.
16. The Tenant testified that in May 2022 his basement rental unit suffered a flood caused by clogged city pipes. It happened previously in August of 2021. The Tenant immediately

advised the Landlord "Nadine Sorokopud" who lived in the unit above from the Tenant. The Landlord called a company to come and clear the water from the floor.

17. The Tenant testified that he could not stay in the unit, was not offered alternate living accommodations by the Landlord and he stayed at a friend's place. When he returned to the unit he was told by the Landlord that they would need to remove and replace the bottom of the walls due to water damage. The Tenant's kitchen and furniture had to be covered with plastic and would not be able to live in the unit until the repairs were complete.
18. The Tenant testified that once he left his rental unit, the Landlord started doing repairs and could not access his belongings because they were stacked in piles and covered with large sheets of plastic. The Tenant submitted to the Board 25 photos of the unit as evidence. The photos confirm the Tenant's submissions and show the Tenant's belongings piled and covered with plastic, the lower portion of the drywall cut, the baseboards, doors and trim missing.
19. The Tenant further testified that he didn't have anywhere to stay so he stayed at his trailer. On July 5, 2022 he returned to his unit and the repairs were not yet completed. The Tenant's daughter testified that she had spoken to Nadine Sorokopud about finding a new place for the Tenant to stay and was told that the Landlord's insurance does not cover that expense that if the tenant had insurance that his insurance would cover that expense. The Tenant did not have insurance. The Tenant's daughter also asked if the Landlord's could lower the rent. N.S. responded that the contractor should be done in two weeks but did not respond to request to lower the rent.
20. The Tenant stated that he continued to pay his rent on time during the months he was unable to live in the rental unit.

Landlord evidence

21. The Landlord did not dispute that the unit had a flood. He stated the flood happened on April 23, 2022.
22. The Landlord testified that they cleaned up the water but the water was still seeping in and the Tenant continued to mop it up.
23. The Landlord was informed on May 14, 2022, by his insurance company that they could not start the renovation repairs until the September 2022 or the fall. He then contacted a private contractor to complete the remediation. The contractor took off 2 feet of drywall, baseboard, frames and doors. The Landlord covered everything with plastic.
24. The Landlord testified that the Tenant was told to let the Landlord know when he was returning, and he would have the unit finished and fixed for him.
25. The Landlord testified that they tried to do the repairs as soon as possible and that they were completed by the end of September 2022. He stated the unit was habitable and advised the Tenant that they would make it more livable.

## Analysis and Legislation

26. Section 20(1) of the 'Act' states that:

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.

27. In *Onyskiw v. CJM Property Management*, [2016 ONCA 477 \(CanLII\)](#), the Court of Appeal determined that a contextual approach should be adopted when considering a landlord's potential breach of subsection 20(1) of the Act and a breach will not be found if the landlord's response to a maintenance issue was reasonable in the circumstances.

28. The Landlord was not responsible for the flood in the Tenant's unit on April 23, 2022, and I am satisfied that the Landlord took reasonable steps to dry up the water immediately after the flood. The Landlord also had an obligation to the Tenant to complete the repairs promptly make all efforts to address the disrepair and to ensure the unit was habitable. I find that the Landlord did not meet this obligation and was therefore in breach of s.20(1) of the Act.

29. Both parties confirmed that the repairs were finalized in September 2022, approximately five months after the flood. While the Landlord testified that they did the best they could under the circumstances, I do not find 5 months a reasonable time to complete the repairs. The Landlord waited for the Insurance company to respond and were advised the work would be completed in the fall. The Landlords then contacted a private contractor for the repairs however they were not completed in a timely manner. There was no explanation as to why the contractor remediation took so long to finalize. I also find it unreasonable for the Landlord to require the Tenant to specify a date when he wanted to return to his unit. The Landlord should have taken all steps to have the repairs completed as quickly as possible. Furthermore, the Landlord did not offer any rent reduction or alternative accommodation and the Tenant continued to pay his rent in full and on time every month.

30. Based on the evidence summarised above, I am satisfied that the Landlord did not respond in a timely manner of repairs after the flooding occurred and the Tenant is entitled to some remedy.

## REMEDY

31. Abatement of the rent is a contractual remedy designed to address the idea that if a tenant is paying for a bundle of goods and services and not receiving them, the rent should be abated proportional to the difference between what was being paid for and what was being received.

32. The Tenant is seeking a rent abatement in the amount \$2,100.00 which represents a 100% rent abatement for \$700 for three months.

33. In this case the Tenant provided photographic evidence of the state of the rental unit. I find the Tenant credible based on the photos and his testimony that the unit was completely inhabitable. The Tenant thru the daughter request had made attempts to have alternate living arrangements until the Tenant can return. The Landlord testified that the unit was habitable but did not provide and further proof that it was. As such the Tenant has shown that on a balance of probabilities it was more likely than not the unit was inhabitable for the Tenant. The Tenant will be awarded 100 % abatement of rent for the three months the Tenant claimed in the application in the amount of \$1,800.00.
34. The Tenant is seeking an order which prevents the Landlord from increasing the rent until the work has been finished. The Tenant also is requesting the Landlord not to give two months notice. Since the Landlord and the Tenant have confirmed the Tenant is no longer in the unit as of the end of September 2022, it is no longer necessary to consider this relief.

**It is ordered that:**

1. The Landlord shall pay to the Tenant sum of \$1,300, for the illegal rent increase and the monies collected and retained illegally.
2. The Landlord shall pay to the Tenant \$1,800.00 for the rent abatement for the three months the Tenant claimed.
3. The Landlord shall also pay the Tenant \$53.00 for the cost of filing the application.
4. The total amount the Landlord owes to the Tenant is \$3,153.00
5. If the Landlord does not pay the Tenant the full amount owing by March 5, 2023, the Landlord will owe interest. This will be simple interest calculated from March 6, 2023, at 5.00% annually on the outstanding balance
6. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**March 8, 2023**  
**Date Issued**

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Nicole Huneault  
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.