



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

Citation: Rosevear v Lachance, 2023 ONLTB 48816

Date: 2023-07-11

File Number: LTB-T-004324-23

In the matter of: 2, 1781 Hwy 11 West
Hearst Ontario P0L1N0

Between: Bruce Rosevear Tenant

And

Karen Lachance Landlord

Bruce Rosevear (the 'Tenant') applied for an order determining that Karen Lachance (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 16, 2023.

The Landlord and the Tenant attended the hearing.

Determinations:

1. The Tenant's T6 application is brought pursuant to s.29(1) [Residential Tenancies Act, 2006](#) (the 'Act'), which alleges the Landlord has breach 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

2. The Tenant moved into the ground-floor rental unit on January 1, 2020 and vacated the rental unit on August 31, 2022. The monthly rent was \$750.00.
3. For the reasons that follow, I find the Tenant has proven on a balance of probabilities that the Landlord breached its maintenance obligations under s.20(1) of the Act.

4. The Tenant's alleges there is a 2-foot crawl space below the Tenant's unit which accumulated raw sewage over a 3 month-period after a sewage pipe burst. According to the Tenant, raw sewage would flush onto the ground below the Tenant's rental, resulting in an unbearable foul odour that caused his eyes to burn.
5. Moreover, as the underground holding tank was full, the Tenant indicated that upon flushing the toilet, sewage would continually overflow back into the rental unit through the bathtub drain and sinks in the rental unit.

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6. The Tenant advised the Landlord of the sewage accumulation on February 14, 2022 and multiple times thereafter. It is not disputed that the issue was rectified on May 5, 2022 when the source of the problem was identified and the raw sewage was pumped out.
7. The Landlord testified she engaged a plumber to attend at the property multiple times to snake the toilet and address the Tenant's concerns. She acknowledged the municipality was called at the Tenant's request, at which point, the pipe burst causing sewage to accumulate below the Tenant's unit was discovered. She indicated the issue was rectified soon upon becoming aware of the problem source.
8. *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](#). The Court of Appeal urged a "contextual approach" to the analysis of maintenance and repair issues and rejected that an interruption of service or occurrence of a problem constitutes an automatic breach of the [Act](#).
9. Here, it appears that the Landlord was taking insufficient steps to identify and correct the serious maintenance issue raised by the Tenant in a timely manner. I find the Landlord could have acted more diligently in detecting the source of the problem and that the sewage odour and backflow into the Tenant's rental unit significantly affected the Tenant's use and enjoyment of the rental unit to the point of nearly rendering the rental unit uninhabitable.
10. The Tenant sought a rent abatement for 3 months, in the amount of \$2250. I am awarding the Tenant an 85% abatement of rent from February 20, 2022 (1 week after the issue was brought to the Landlord's attention) through to May 5, 2022 (date problem rectified), for a total abatement of \$1,550.00. The Tenant also sought \$200.00 for 10 hours spent cleaning whenever there was a backflow and produced a picture of a bathtub containing brown/sewage water. It is clear the Tenant was required to expend a significant amount of time

cleaning the rental unit during this unfortunate period of time, and thus, this request is granted.

It is ordered that:

1. The Landlord shall pay to the Tenant a rent abatement of \$1,750.00
2. The Landlord will pay the filing fee to the Tenant in the amount of \$53.00.
3. The total amount the Landlord shall pay to the Tenant is \$1,803.00.

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4. If the Landlord does not pay the Tenant the full amount owing by July 22, 2023 the Landlord will owe interest. This will be simple interest calculated from July 23, 2023, at 6.00% annually on the outstanding balance.

July 11, 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.

