



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

**Citation:** Fedayizada v 650 Parliament, 2023 ONLTB 39138

**Date:** 2023-05-26

**File Number:** LTB-T-004250-22

**In the matter of:** 1201, 650 PARLIAMENT ST  
TORONTO ON M4X1R3

**Between:** Rahmatullah Fedayizada Tenant

**And**

650 Parliament Landlord

Lahmatullah Fedayizada (the 'Tenant') applied for an order determining that 650 Parliament (the 'Landlord') 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. ('T2 Application')

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. ('T6 Application')

This application was heard by videoconference on March 21, 2023.

The Tenant and the Landlord's Representative, Charlie Bobrowsky, attended the hearing.

**Determinations:**

1. The Tenant has applied for an order determining that the Landlord substantially interfered with the Tenant's reasonable enjoyment of the rental unit and breached section 20(1) of the Act by failing to properly treat the rental unit and rental complex for bedbugs, and for failing to prevent second-hand cigarette smoke from entering the Tenant's rental unit.
2. The tenancy began on March 28, 2021. The applications were filed with the Board on January 24, 2022. Rent for the unit was \$1,700.00/month at the time the applications were filed with the Board.

3. The parties agree that the tenancy terminated on April 30, 2022.
4. As explained below, the Tenant has proven on a balance of probabilities the allegations contained in the application. Therefore, the Landlord must pay the Tenant \$2,908.00 on or before June 6, 2023.

#### Second-Hand Smoke

5. The Tenant reported an issue of second-hand smoke entering his rental unit to the Landlord on April 5, 2021. The Tenant testified that the Landlord had told him that there was nothing that they could do about it.
6. The Landlord testified that they had received a service request on April 5, 2021 to address the second-hand smoke coming from the rental unit. The Landlord stated that the nearby resident who was causing the smoke issue was given a warning letter.
7. The Tenant, under cross-examination, admitted that he had not contacted the Landlord after April 5, 2021. The Landlord testified that they thought the issue had been resolved after the other resident in the complex had received the warning letter.
8. I am satisfied that the Landlord's response was reasonable and appropriate in the circumstances. They investigated the issue and took action by serving the tenant with a warning letter. In my view the Landlord's belief that the issue had been resolved after they had taken action and not heard any subsequent complaints from the Tenant was reasonable. Furthermore, the Tenant has presented very little evidence on this issue and has made no submissions for a remedy for having dealt with the second-hand smoke issue. Therefore, this issue is dismissed.

#### Bedbugs- Tenant's Evidence

9. The Tenant informed the Landlord on November 14, 2021, via the Landlord's online portal, that their unit was having an issue with bedbugs.
10. The Tenant testified that he had properly prepared his rental unit for each treatment.
11. The Landlord had the first treatment of the rental unit on November 18, 2021. After the initial treatment, it had appeared that the treatment was ineffective. The Tenant informed the Landlord of the situation and for the next few months, the Tenant's rental unit was treated on an almost bi-weekly basis.
12. The Tenant testified that on January 12, 2022, the Landlord recommended that the Tenant dispose of the box spring in the Tenant's bedroom because it may be infested with bedbugs.

13. The Tenant testified that the Landlord promised to conduct weekly steam cleanings of the hallway and common area, however the Landlord contested this evidence stating that there was no evidence supplied by the Tenant to support this claim.
14. The Tenant testified that on February 7, 2022, he and several other residents of the complex confronted the Landlord about their failure to effectively treat their units and the complex for bedbugs.
15. The Tenant testified that he and his family would suffer from bedbug bites. His one child developed a severe reaction to the bedbugs which required medical attention. Under cross-examination, the Tenant was unable to provide any evidence to support the claim that the Tenant's son had received medical attention.
16. Due to the COVID lockdowns, the Tenant was working from home, however due to the bedbugs, he was unable to work effectively.
17. The Tenant testified that due to the bedbug infestation, he had to dispose of some of his property, including a sofa, both his and his children's beds, bedding and clothing. The Tenant also purchased a steam cleaner (\$733.37) for the purpose of treating his own unit after the Landlord's pest control company failed to treat the unit. The Tenant stated that he had not used the steam cleaner in a way that would have interfered with any pest treatments.
18. The Tenant stated that the bedbugs continued to be an issue up to and including the day the tenancy terminated.

#### Bedbugs- Landlord's Evidence

19. The Landlord agreed that the rental unit had been treated nearly on a bi-weekly basis. The Landlord used the same company for each treatment. The Landlord submitted several invoices for pest treatments to support this evidence.
20. The Landlord did not contest that that Tenant was always prepared for bedbug treatments.
21. The Landlord submitted cleaning logs from the superintendents of the rental complex showing that steam cleaning of the hallways in the complex had occurred, as well as a regular cleaning schedule. The log only showed detailed entries from January 28, 2022, until April 8, 2022. However, the Landlord denies having agreed to having the hallways steam cleaned on a weekly basis.
22. The Landlord testified that they had not instructed the Tenant to dispose of the box spring, and only to remove it from the unit to allow the pest control company to better treat the unit. Under cross-examination, the Landlord was unable to show that they offered any means of storing the box spring while the unit was being treated.

23. The Landlord stated that the source of the bedbugs was from a neighbouring resident in the complex. That tenant had failed to prepare his rental unit on a regular basis of the pest treatments. The issue was further exasperated by the fact that the neighbour appeared, according to the Landlord, to be not affected by the bed bug bites.
24. The Landlord testified that on January 26, 2022, the tenant of the neighbouring unit was served with an N5 for failing to properly prepare for pest treatment. A hearing was held on this matter on January 23, 2023, in which a mediated settlement was reached.
25. The Landlord did not present any evidence of any other means of trying to improve the effectiveness of the pest control, such as entering the neighbouring resident's unit and overseeing, or aiding in preparation of the resident's rental unit for pest treatment.

#### Bedbugs- Analysis

26. Pursuant to section 20(1) of the Act, the Landlord is required to maintain the rental unit and rental complex in a good state of repair.
27. Pursuant to section 22 of the Act, a Landlord may not substantially interfere with the reasonable enjoyment of the Tenant's rental unit or the residential complex.
28. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, 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, the issue is whether the Landlord acted reasonably and appropriately in response to the Tenant's complaints about the bedbugs.
29. Bedbug treatments are a common issue brought before the Board. Generally, there is an initial treatment and at least one follow-up treatment for a unit before a bedbug issue is brought under control. Sometimes, extra follow-up treatments are required for more severe infestations.
30. The parties have submitted that from November 18, 2021 until April 1, 2022, there were fifteen bedbug treatments to the Tenant's unit. Many of the reports stated that bedbug activity was minimal, however, I am satisfied that the treatment did not eradicate the pest issue at any point.
31. After the units had been treated, it was discovered that another unit was the source of the bedbugs throughout the complex. The Landlord stated that shortly after the source of the bedbugs was discovered, they gave that tenant a chance to prepare their rental unit, but when that failed, they served that tenant with an N5- Notice to Terminate Tenancy for substantial interference with the Landlord's and neighbouring Tenants' reasonable enjoyment of the rental unit and complex.

32. The Tenant testified that the bedbug infestations got worse as treatments were applied. The Landlord's service records show a decrease in bedbug activity. The Tenant did not present any evidence to substantiate the claim that the bedbug infestation was intensifying, however, the Tenant did present evidence that the bedbugs were present right until the tenancy terminated.
33. I am satisfied that the pest treatments themselves were effective. I am satisfied that the pest control company properly treated the units to the best of their abilities. The issue I find is whether the Landlord did enough to reasonably address the bedbug issue once it discovered the source of the bedbug infestation.
34. Based on the evidence before me, I am satisfied that the Landlord did not act in a reasonable manner when it failed to address the source of the bedbugs in the complex once the source of the bedbugs was discovered.
35. I find that although the Landlord's approach was originally reasonable (they responded with a treatment within 4 days of the complaint), at some point after multiple treatments it ought to have been clear that the treatments were not working and that a different approach was needed.
36. The Landlord did not submit any communications between itself and the tenant whose unit was the source of the bedbugs. There was no evidence regarding when the Landlord learned of the neighbouring tenant's bed bug issues, and no evidence of the timeline of events from when the neighbour issue was discovered. There was no evidence that help was offered and either accepted or refused by the source unit's tenant, to at least attempt to bring that tenant's bedbug issues under control, and by extension solve the rest of the complex's bedbug issue. In short, the Landlord provided little, if any, evidence of the steps they took to resolve the issue beyond repeatedly applying treatments despite that they did not appear to be working.
37. Based on this evidence, I find that the Landlord's response to the Tenant's bedbug complaint was not reasonable, and thus the Landlord failed to properly maintain the rental unit and complex in breach of s. 20 of the Act. I find that the Landlord's failure substantially interfered with the Tenant's reasonable enjoyment.

#### Remedies

38. The Tenant is seeking the following remedies on the two applications:
  - a) \$1,700.00 rent abatement on the T2 application
  - b) \$1,700.00 rent abatement on the T6 application
  - c) \$ 6,790.58 to replace damaged or destroyed property including:
    - i) \$3,161.74 for a sofa, ii)  
\$739.63 for a bed frame

- iii) \$189.21 for bedding iv)  
\$1,200.00 for carpet
  - v) \$1,500.00 for clothing
- d) \$25,000.00 for out-of-pocket expenses, including the purchase of a \$733.37 steam cleaner, and general damages.
39. A rent abatement is a contractual remedy, which is based on the idea that if you pay 100% of the rent you, should get 100% of the goods and services you are paying for, and if not then you should be granted an abatement which represents the difference between what you are receiving and what you are paying for. In this instance, the Tenant was unable to fully use or enjoy the rental unit due to the discomfort caused by the Landlord's failure to effectively treat the rental unit and complex for bedbugs. I am satisfied that a rent abatement is reasonable under these circumstances.
40. In calculating a rent abatement, we need to ascertain at what point had the Landlord breached sections 20(1) and 22 of the Act.
41. I find that the breaches of the Act did not occur when the issue was first brought forward to the Landlord on November 14, 2021. At that point, the Landlord was acting reasonably in getting pest control out to the Tenant's unit within four days of making the complaint to the Landlord. However, I find that when the Landlord had to engage the pest control company's services for the fourth time, on January 7, 2022, they ought to have reasonably been aware that the pest control services being utilized were insufficient and that further action was required to rectify the situation.
42. I find that a 20% total rent abatement from January 2022 until April 2022 is appropriate under these circumstances. I decline to duplicate an abatement simply because the Tenant brought two applications in respect of the same issue. However, in coming to this conclusion I have considered that the Landlord's breaches substantially interfered with the Tenant's reasonable enjoyment of the rental unit. Therefore, the Landlord shall abate the Tenant's rent by \$1,360.00.
43. Pursuant to section 16 of the Act, a person entitled to claim an amount has a duty to take reasonable steps to minimize their losses. I find that, outside of the one box spring (which will be addressed shortly), the Tenant has not proven that he attempted any other solutions to preserve his property, such as heat treatment (steam or hot water washing) or treating the individual furniture or clothing with additional pesticide.
44. However, I find that the Tenant should be awarded \$400.00 for the loss of the box spring. The Landlord had acknowledged that the box spring might be harbouring bedbugs and asked the Tenant to remove the box spring from the unit for one of the treatments. In their testimony, the Landlord stated that they only asked the Tenant to remove the box spring, not to dispose of it. However, the Landlord did not offer any method of storing the box spring for potentially isolating it for separate treatment. I find it reasonable that the Tenant would assume that the Landlord meant for the Tenant to dispose of the box spring.

45. I find that the Tenant should be awarded \$100.00 towards the purchase of the steam cleaner. Although I am satisfied that the Tenant purchased the steam cleaner solely for the purpose of bedbug treatment, the Tenant is still in possession of this steam cleaner. If the goal of owning the steam cleaner was solely for bedbug treatment, the Tenant could have sold the steam cleaner to recover some of his loss, however, he is still in possession of the property, to use as he sees fit. Based on this evidence, I find it fair that the Landlord only partially compensate the Tenant for the steam cleaner.
46. I find that the Tenant has not substantiated any other out-of-pocket claims or lost wages. The Tenant was unable to show evidence of any tangible loss of wages or any other expenses that resulted from the bedbug issues in his rental unit.
47. I find that the Tenant has substantiated the claim that their household suffered stress and inconvenience, however I find \$25,000.00 to be an excessive claim. Therefore, I find that \$1,000.00 in general damages is reasonable in these circumstances to address the psychological impact of the Landlord's breach.

**It is ordered that:**

1. The tenancy for this rental unit is terminated effective April 30, 2022.
2. The total amount the Landlord shall pay the Tenant is \$2,908.00. This amount represents:
  - \$1,360.00 for a rent abatement,
  - \$400.00 for the reasonable costs that the Tenant has incurred to replace property that was disposed of as a result of the Landlord's actions,
  - \$100.00 for the reasonable out of pocket expenses the Tenant has incurred,
  - \$1,000.00 for general damages, and
  - \$48.00 for the cost of filing the application.
3. The Landlord shall pay the Tenant the full amount owing by June 6, 2023.
4. If the Landlord does not pay the Tenant the full amount owing by June 6, 2023, the Landlord will owe interest. This will be simple interest calculated from June 7, 2023, at 6.00% annually on the balance outstanding.
5. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**May 26, 2023**

**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.