



**Order under Section 30 and 31  
Residential Tenancies Act, 2006**

**Citation:** Lahaie v Rotfleisch, 2023 ONLTB  
17302 **Date:** 2023-02-09  
**File Number:** LTB-T-068949-22  
(TST-19712-21)

**In the matter of:** Attic, 111 Silver Birch Avenue Toronto  
Ontario M4E3L3

**Between:** Suzanna Lahaie Tenant

**And**

David Rotfleisch Landlords  
Rotfleisch & Samulovitch

**Your file has been moved to the Landlord and Tenant Board’s new case management system, the Tribunals Ontario Portal. Your new file number is LTB-T-068949-22.**

Suzanna Lahaie (the 'Tenant') applied for an order determining that David Rotfleisch and Rotfleisch & Samulovitch (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 19, 2022, September 15, 2022, December 6, 2022, and December 12, 2022.

The Landlord’s Agent, Adrian Ilie, the Landlord’s Representative, Sam Ursino, the Tenant, Suzanna Lahaie and the Tenant’s Representative, Ademofe Oye-Adeniran, attended the hearings.

**Determinations:**

1. The Tenant is seeking an order determining that the Landlord failed to meet their obligation under section 20(1) of the Act to maintain the rental unit.
2. For the reasons below I find that the Landlord has failed to meet the Landlord’s maintenance obligations pursuant to section 20(1) of the Act. The Tenant shall be awarded an abatement of \$2,978.61, and the Landlord shall repair the kitchen faucet by February 28, 2023.

Landlord’s maintenance obligations

3. Section 20(1) of the Act states:

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. 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.

#### Notice of Maintenance Issues

5. Pursuant to section 30(2) of the Act, the Board needs to consider whether the Tenant gave notice to the Landlord of the maintenance breaches throughout the unit and the complex before filing the application.
6. The Tenant relied heavily upon a Property Standards Order (PSO) from the city of Toronto throughout this hearing. According to the PSO, the inspection occurred on February 4, 2020, however the inspection report was not released to the parties until December 16, 2020. Although neither party brought forward a witness from the Property Standards department in Toronto to speak to this issue, both parties believe that due to the onset of the COVID-19 outbreak, the issuance of the order was significantly delayed. I find this to be a reasonable assumption under the circumstances.
7. The Tenant testified that she had notified the Landlord of multiple maintenance issues on February 4, 2020, as well as on December 16, 2020, which is when the Landlord received its copy of the PSO.
8. However, the Landlord testified that it was not made aware of any of these maintenance issues until December 16, 2020. The Tenant was unable to provide any supporting evidence, such as text message records, copies of written requests, or email threads that would support the Tenant's claim that she had notified the Landlord of her maintenance issues prior to December 16, 2020.
9. Therefore, unless otherwise stated, I find that the Landlord first received notice of the maintenance issues on December 16, 2020. The exceptions will be identified in their individual subsection of this order.

#### Interior Entrance Door

10. The interior entrance door is the access to the rental unit from inside the rental complex. It is reached by using the interior stairwell located in the front of the rental complex.
11. The Tenant testified that the original interior door had to be replaced because it had been damaged by someone other than Tenant, possibly in an attempted break and enter. The door at issue was the replacement door installed in late 2019 or early 2020. The Tenant did not define exactly when the door was replaced, however testified that it had been replaced by the Landlord.
12. The Tenant stated that the interior entrance door was ill-fitting and allowed drafts in the rental unit. There was a 2-inch gap on the upper edge of the door from the frame and a wide gap coming from the floor. There was no weatherstripping on the bottom of the door to prevent drafts from entering the unit.
13. The Tenant presented a photo of the door to show that the door did not fit properly. The Tenant brought attention to Item #1 in the Property Standards Order (PSO) to corroborate her testimony.
14. The Tenant also pointed out that the doorknob was not properly fastened to the door and was "hanging off". Item #2 on the PSO was shown to corroborate the Tenant's testimony.
15. The Tenant testified that the interior door repairs were completed as of June 2022, when the weatherstripping was added to the door. However, it should be noted that in the Tenant's application it states that the door was repaired in October 2021.
16. The Landlord challenged the Tenant's timeline of events, stating that the door was brought up to code by May 21, 2021. The Landlord provided an invoice for the door repair dated for May 21, 2021, to support their testimony. The Landlord presented an email from a city dated October 1, 2021, indicating that a city official had confirmed with the Tenant that the interior door had been repaired and that the matter was now closed. The Tenant did not challenge this evidence at the hearing.
17. In the Tenant's application, they are claiming a 3% rent abatement from December 16, 2020, until October 2021. The application is not seeking a remedy past October 2021 for these specific issues.

#### Interior Entrance Door- Analysis

18. The Tenant had testified that the door had been replaced prior to February 4, 2020, by the Landlord, therefore the Landlord should have been already aware of its deficiencies. A 2" gap in a door is visually obvious and should have been noticed at installation as a deficiency. Therefore, the Landlord was aware, or ought to have been aware of the problem prior to the notice given December 16, 2020, that the Tenant is claiming compensation for. This includes both the deficiencies in the fit of

the door in the door frame as well as the state of the doorknob. However, the Tenant is only claiming a remedy from December 16, 2020 until October 2021, therefore, that is all that will be considered when calculating rent abatement.

19. Therefore, I am satisfied that the Landlord breached section 20(1) of the Act by failing to repair the Tenant's interior entrance door in a timely manner. Furthermore, I find that the Tenant's claim of 3% rent abatement from December 16, 2020, to October 2021 is reasonable, therefore, the Landlord shall abate the Tenant's rent by the sum of \$269.25.

#### Exterior Door

20. The exterior door being referred to in this section is a door that leads from the Tenant's rental unit to a staircase outside of the building that leads to the rear of the complex.
21. The Tenant testified that the exterior entry door to her unit had a large gap at the bottom and allowed cold air, and sometimes other elements, such as rain or snow, into her rental unit.
22. The Tenant drew attention to "Item #5" from the PSO to support her testimony which referenced the large gap in the door and the lack of weatherstripping.
23. The Tenant stated that the weatherstripping had not been replaced on this door until June 2022.
24. The Landlord gave testimony that the weatherstripping had been repaired in May 2021, however the supporting evidence presented at the hearing (exhibit QQ) states that the weatherstripping was completed on May 16, 2022. The Tenant did not challenge this testimony in cross-examination.
25. The Tenant is claiming a 5% rent abatement from December 16, 2020, until June 2022.

#### Exterior Door- Analysis

26. I find that Landlord breached their obligations under s.20(1) of the Act by failing to address this issue in a timely manner once brought to their attention.
27. The adding of weatherstripping to a door is a relatively simple minor repair but can have a major impact as it aids in insulating and protecting a property from the elements of nature, such as wind, rain and snow.
28. I find that the Tenant has shown that the failure to add weatherstripping affected the Tenant's use of the unit because it allowed elements such as wind, rain and snow into her unit. This would understandably affect the insulation of her unit and

therefore, effect a much greater portion of her unit than just the gap underneath her door.

29. I find it unreasonable that it took the Landlord until May 16, 2022, or 18 months after the Landlord received notice of the deficiency, to complete this simple repair. Therefore, I find that the Landlord acted unreasonably in completing this repair.
30. The Tenant is claiming a 5% rent abatement starting from December 16, 2020, until June 2022. However, I am satisfied, based on the evidence presented to me, that the weatherstripping was successfully replaced on the door as of May 16, 2022. Therefore, I find that the 5% rent abatement rent abatement sought by the Tenant to be reasonable.
31. Therefore, the Landlord shall abate the Tenant's rent by 5% for the period from December 2020 to May 2022, or \$807.84.

#### Exterior Stairs

32. The Tenant has access to her second-floor rental unit from two sets of stairs. One set of stairs is in the interior of the complex and one set located on the exterior at the rear of the building.
33. The set of stairs being referred to in this issue are the stairs located on the exterior of the building.
34. The Tenant alleged the following:
  - a) The stairs were missing guards;
  - b) Sharp edges, including exposed nails, were protruding from the wood structure;
  - c) The stairs were unusable for periods of time.
35. The Tenant testified that the guards were missing from the stairs and the landings on the exterior staircase. The Tenant presented Item #6 of the PSO to support her testimony which states that the lack of guards on a structure at a height of 600mm or more is a safety concern.
36. The Tenant did not give any further testimony regarding the impact of this issue on the Tenant's use of the rental unit or the complex.
37. The Tenant gave testimony regarding the exposed nails and sharp protrusions coming from the existing guardrails and handles. The Tenant brought attention to item #7 from the PSO to corroborate her testimony.

38. The Tenant stated that the condition of the rails on the stairs made it difficult to use the exterior stairs in a safe manner.
39. The Tenant testified that the stairs were disassembled on some occasions and could not be used at all. The Tenant did not testify to the duration that the exterior stairs were unusable, however, she did provide two photos taken from June or July 2022 showing that a significant section of the stairs were removed, thus making them unpassable.
40. The Landlord testified that the original stairs, up until they were replaced by the wood stairs, were made of metal. Due to their age, and the safety hazards of the stairs, the Landlord chose to remove the stairs and replace them with wooden stairs.
41. The Landlord testified that it was aware that the original stairs required replacement prior to having received the PSO. The Landlord testified that it began the process of replacing the exterior stairs in April of 2020. According to the Landlord, the stairs were replaced as of November 2020, however, the stairs were built without a building permit, and the stairs did not meet the building code and needed to be altered to meet the standards set in the code.
42. The Landlord stated that the nails and other protrusions were fixed by May 21, 2021. The Landlord presented an invoice dated May 21, 2021, that stated one of the tasks completed by the company was removing nails and other protrusions coming from the stair rails.
43. The Landlord testified that the exterior stairs were brought up to code by June 2022. This was contrary to the Tenant's testimony that that the stairs were not completed until mid July 2022.
44. The Tenant is claiming a 10% rent abatement from February 4, 2020, to July 2022 for the Landlord's failure to install proper guards and other safety issues. The Tenant is also seeking another 10% rent abatement from February 4, 2020, until October 21, 2021, for failing to maintain the stairs free of exposed nails and other sharp objects.

Exterior Stairs- Analysis

45. With respect to when the Landlord was aware of the issues with the stairs and when the repairs began, I am having difficulty accepting either party's testimony. The PSO, which was issued as a result of the inspection conducted on February 4, 2020, addresses nails and other sharp objects protruding from the wooden frame. However, the Landlord was aware of issues with the stairs as of April 2020. Furthermore, decisions and plans to dismantle old stairs of this size do not happen overnight and I find it more likely that the Landlord was aware of the stairs' deficiencies prior to April 2020.

46. Since the PSO states that the nails were protruding from the wood frame and not the metal frame, it appears more likely that the stairs were replaced, in whole, or in part, prior to February 4, 2020, which is when the PSO inspection occurred. Therefore, I find that the Tenant's request for a remedy starting from February 4, 2020, to be reasonable.
47. Other than the protruding nails from the handles and guardrails, the Tenant did not provide any evidence of any hazard or any inability to use the exterior stairs other than the times when the stairs were not available.
48. According to the evidence presented by both parties, the stairs were under construction from April 2020 until November 2020. The Tenant did not present any evidence that would suggest that this was an unreasonable amount of time to build the exterior stairs. Furthermore, it was not established whether the Tenant was able to use the stairs, in whole, or in part, during the time from April to November.
49. The Tenant did provide photos from July 2022 that showed a section of the stairs missing from the stairway, however the Tenant failed to testify as to the duration of this condition

of the stairs. A photograph is a snapshot of the moment. A series of photographs, or more specific testimony would have gone a long way in determining the duration of this condition of the stairs. Therefore, I find that the Tenant has failed to prove that the stairs were unavailable for the Tenant's use for a significant period of time.

50. The Landlord stated that due to their failure to go through the proper process with the municipality (building permit, adhering to building code) the Landlord was required to attain the proper permits and the stairs were required to be rebuilt to come into compliance with the municipal codes.
51. I find that it would have been reasonable for the Landlord to have been knowledgeable enough to know that a substantial construction project such as replacing exterior stairs that extend to a second floor would require permits as well as knowledge of the building code. Because of the Landlord's failure to act in a reasonable manner, the Tenant unnecessarily lost use of the exterior stairs for a period of time.
52. The parties agree that the issue regarding the nail protrusions were rectified by July 16, 2021.
53. I find that the Landlord would have had to have been aware of these protrusions prior to having received the PSO because the stairs were just recently rebuilt. I find that the protrusions were a result of the Landlord's failure to ensure that the project was completed in a professional manner. Therefore, I find that the Landlord was aware of the protrusions from February 4, 2020, until July 16, 2021 and failed to take action. Thus, the Landlord breached section 20(1) of the Act.

54. I find that because the Tenant had access to another set of stairs (interior), the set of exterior stairs did not prevent movement in and out of her rental unit. Therefore, a 5% rent abatement from February 2020 to July 2021 is appropriate. Furthermore, the Tenant shall be awarded an additional \$250.00 lump sum rent abatement for being unable to use the stairs for periods of time between May 2021 and July 2022.
55. Therefore, the Landlord shall pay the Tenant a rent abatement of \$1,057.84 for the issues regarding the exterior stairs.

Wall and Ceiling Damage

56. The Tenant alleges that the Landlord failed to repair damaged drywall in the Tenant's rental unit as well as ceiling damage where the stucco was deteriorating and falling to the floor.
57. The Tenant brought attention to items 3 and 4 of the PSO to show that the issues were present as of February 4, 2020. However, as stated earlier in this order, the Landlord was not made aware of this issue until December 16, 2020, when it received a copy of the PSO.
58. At the hearing, the Tenant claimed that the drywall and the ceiling had not been repaired until November or December 2021. The Tenant's application (which was amended as of February 2022) is seeking a remedy until October 2021, which would suggest that the repairs, according to the Tenant, were completed in October 2021.
59. The Landlord testified that the repairs to the drywall and the ceiling were completed May 18, 2021. The Landlord presented an invoice from a third-party renovation company stating that the drywall and ceiling issues had been fixed. The date of the invoice was May 18, 2021.
60. The Tenant did not state how the wall or ceiling damage affected her use of the rental unit, however she did state that the damage was cosmetically unappealing.

Wall and Ceiling Damage- Analysis

61. I find that the Landlord was made aware of the wall and ceiling issues as of December 16, 2020 when it received the PSO.
62. I find that the repairs were likely completed on May 18, 2021 as part of more substantive repair project in the Tenant's unit as established by the Landlord's testimony as well as the invoice submitted as corroborating evidence.
63. The Landlord did not present any evidence regarding why it took nearly six months to have the repair made. Therefore, the Landlord was in breach if s.20(1) with



respect to this issue because I am not satisfied that the repair was completed in a timely manner.

64. However, I also find that the issue had little impact on the Tenant. Based on this fact, I find that the Tenant shall only be awarded a nominal rent abatement of \$50.00.

Kitchen

65. The Tenant alleges that the Landlord had failed to address these maintenance issues within a reasonable amount of time:

- a) Countertop deterioration/Replacement improperly fits,
- b) Cupboard doors have deteriorated and require repair or replacement,
- c) Ceramic floor requires repair or replacement,
- d) Doors on the stove and on the laundry washing machine are damaged and require replacement and/or repair, and
- e) Plumbing issues.

Kitchen-Countertop

66. The Tenant testified that the countertop was deteriorating and could not be properly used. In particular, the counter was not impervious to moisture and had a significant amount of wood exposed.
67. The Tenant brought attention to item #12 of the PSO which supports the Tenant's testimony regarding the deterioration of the countertop.
68. The Tenant testified that the countertop was replaced by the Landlord in May 2021, however the countertop did not fit properly. The Tenant further testified that the faucet for the kitchen sink was not properly attached to the counter or the sink and was twisting or floating when it should be stationary.
69. The Tenant presented a photograph to show how the base of the faucet is twisting from the base of the countertop, however no other evidence suggesting that the countertop did not fit properly was introduced.
70. When asked under cross-examination, the Tenant admitted that the faucet does function, however it should not be moving.
71. The Landlord testified that the kitchen counter was replaced as of January 16, 2021. The Landlord submitted an invoice dated January 16, 2021, stating that the

countertop was replaced on January 16, 2021. The Landlord also presented photos of the kitchen from January 2021 showing that the countertop had been replaced.

72. The Landlord testified that the Tenant had made them aware of the faucet not being stationary on the countertop, however it does not affect its function.
73. The Tenant is seeking a 10% rent abatement from February 4, 2020, until the date of the hearing for the countertop because as of the last hearing on December 12, 2022, the faucet has not been addressed.

Kitchen- Countertop: Analysis

74. There is no dispute that the countertop in the rental unit, prior to January 16, 2021, was in poor condition and required replacement.
75. The Tenant has alleged that she gave notice to the Landlord of this issue as of February 4, 2020, however, as previously stated in this order, there is no evidence that the Landlord became aware of the issues until the Landlord received a copy of the PSO on December 16, 2020.
76. Based on the evidence before me, I am satisfied that the countertop was replaced January 16, 2021.
77. In consideration of the holiday season and the difficulties associated scheduling contractors and purchasing goods during that season, I find that the Landlord acted to replace the countertop in a reasonable amount of time. Therefore, no abatement will be awarded for the condition of the former countertop or for the installation of the new countertop.
78. With respect to the faucet issue, it is common knowledge that faucets are supposed to remain stationary. Even if there is flexibility in the connections, excess movement will cause wear and tear to occur at the connections and potential faucet failure will be more likely to happen. However, the Tenant did not provide any evidence to show that the faucet was unusable up to, and including, the hearing date.
79. Based on the evidence before me, I find that the Landlord has breached section 20(1) of the Act by failing to repair the faucet and ensure that it is secured properly to the countertop.
80. I find that a lump sum rent abatement of \$250.00 for the floating faucet is appropriate in this case. Furthermore, the Landlord is ordered to repair the faucet by February 28, 2023. If the Landlord fails to repair the faucet by February 28, 2023, then starting March 1, 2023, the Tenant may withhold an additional \$50.00/month from the rent until the repair is completed.

Kitchen- Cupboards

81. The Tenant testified that the kitchen cupboards were either missing and the ones that were still attached did not close properly. The Tenant drew attention to item #13 on the PSO that states that the “under sink cupboard doors are missing.”
82. The Tenant stated that the cupboards were not replaced until April 2021
83. The Landlord testified that the kitchen cupboard was replaced at the same time as the countertop, on January 16, 2021. The Landlord presented an invoice (the same as the one for the countertop) that stated the cupboards were replaced as of January 16, 2021.
84. The Tenant stated that after the cupboards were repaired, one of the doors would not close properly. The Tenant presented a photo of one cupboard door that appears to have a broken hinge on it.
85. The Landlord stated that they were not aware of the damaged hinge until the Landlord received the Tenant’s disclosure in early 2022.
86. The Landlord presented an invoice that showed that the door was replaced May 13, 2022.
87. The Tenant is seeking a rent abatement of 5% from February 4, 2020, until April 2021. No remedy is sought for the cupboard door that was repaired May 2022.

Kitchen- Cupboards: Analysis

88. I am satisfied that the Landlord had not received notice of the issue with cupboards until it received the PSO on December 16, 2020.
89. I am persuaded by the Landlord’s evidence that the cupboards were replaced approximately one month later on January 16, 2021. The Landlord presented supporting evidence that the repairs had been made on that date. The Tenant did not provide any supporting evidence to support her claim that the cupboards were not replaced until April 2021.
90. I find that the Landlord acted within a reasonable amount of time to address the maintenance issues regarding the cupboards.
91. Since the Tenant did not ask for a remedy for the broken hinge on the cupboard, there is no reason to award any rent abatement for the cupboards.
92. Therefore, the claim for abatement regarding the cupboards is dismissed.

Kitchen- Floor

93. The Tenant claimed that the ceramic floor in the kitchen was damaged and in need of replacement. The Tenant presented item #14 of the PSO to support her claim, which stated that “ceramic tiles located throughout the kitchen are broken/cracked.”
94. The Tenant testified that the floor tiles were not replaced until October 2021, however, the Tenant’s application claims that the repairs were completed in April 2021.
95. The Landlord testified that the floor tiles had been replaced as of Jan 16, 2021, alongside the countertop and the cabinets. An invoice from January 16, 2021, as well as photos of the floor were entered as evidence to support the Landlord’s claim. The Landlord’s Agent testified that he took the pictures in January 2021. The photos showed a floor free of damage.
96. The Tenant is seeking a 5% rent abatement from February 4, 2020, until April 2021.

Kitchen- Floor: Analysis

97. I find the Landlord’s evidence regarding the date of the repair to be more reliable than the Tenant’s. The Landlord was able to corroborate their testimony that the floors were replaced in January 2021 with supporting documentation. The Tenant testified that the floor was replaced in October 2021, despite her application stating that the floor tiles were replaced in April 2021. This inconsistency calls into question the reliability of her evidence on this point.
98. I also find that the Tenant has not proven that the Landlord had any notice of the state of the kitchen floor until it received the PSO on December 16, 2020.
99. I find that the Landlord responded to the maintenance issue within a reasonable timeframe of having been given notice of the maintenance issues.
100. Therefore, the Tenant’s claim for arrears for the damaged floor is dismissed.

Kitchen Appliances

101. The Tenant testified that the door to her oven was broken and unable to close.
102. The Tenant testified that the original washing machine was a front load washer. The Tenant testified that there was a crack on the exterior windowpane on the washer. The crack did not affect the function of the washing machine.
103. The Tenant drew attention to item #16 of the PSO which states, “Stove/oven glass door has fallen and the dryer door is broken.”
104. The Tenant testified that the oven was replaced in November 2021 despite her application stating that it was replaced in October 2021.

105. The Landlord testified that the stove had been replaced as of May 2021. The Landlord testified that another property owner may have purchased the new oven for the Tenant, because the Landlord has no record of having replaced the stove.
106. The Tenant testified that the washing machine was replaced with a combination washer/dryer in October 2021. The Tenant's testimony was consistent with her application claim regarding the washing machine. The Landlord stated that the laundry combo machine was in the unit as of January 2021. The Landlord showed a photo of the kitchen taken in January 2021 showing a picture of the combo laundry machine.
107. The Tenant testified that this new combo laundry machine does not function well and takes hours to complete the full cycle. The Tenant stated that she was not given the right owner's manual. The Tenant testified that because of the state of the washer/dryer combo appliance, she must do her laundry at a laundromat. The Tenant did not present any evidence of out-of-pocket expenses related to having to use the laundromat.
108. The Landlord stated that they had entered the unit in January 2021 and saw the crack on the exterior pane of the washing machine but felt that it was not an issue that needed to be dealt with.
109. The Landlord testified, that like the oven, the Tenant may have received the combo laundry machine appliance directly from a property owner because the Landlord did not replace the washing machine.
110. The Tenant is claiming a 10% rent abatement from February 4, 2020, until October 2021 for both the oven issues and the laundry machine issues, however, seeks further, undefined rent abatement for the allegedly faulty laundry machine up until the date of the last hearing.

#### Kitchen Appliances- Analysis

111. The Landlord was aware of the issues with both appliances when it received the PSO on December 16, 2020. No evidence was submitted that suggested that the Tenant had provided any notice to the Landlord earlier than December 16, 2020, that the appliances were broken.
112. The Landlord's testimony regarding the date the oven was replaced is more persuasive than the Tenant's evidence on this point. The Tenant did not challenge the Landlord's claim that the oven was replaced in May 2021. Furthermore, I find that the Tenant's recall of dates to be somewhat unreliable, in part, because the dates that she testifies to are usually not supported with any evidence, and on multiple times, contradicted the dates on her own application.

113. The Landlord gave no testimony to why the oven was not replaced sooner. Furthermore, I find that the Tenant having to wait 5 months to have the oven addressed to be excessive.
114. I find that a 10% abatement from December 2020 until May 2021 is appropriate for the Landlord's failure to fix or replace the Tenant's oven in a reasonable amount of time.
115. There is insufficient evidence before me to establish that either the washing machine or the combo laundry machine are broken or unusable. I am not satisfied that a crack in the outer window of the exterior pane is anything more than wear and tear on the machine, or that the amount of time it takes to do a cycle of laundry in the combo laundry machine was outside of that appliance's normal operating parameters. Furthermore, the Tenant testified that she only had a washing machine prior to receiving the combo laundry machine, and no evidence was presented that the washing portion of the combo machine was non-functional.
116. Therefore, any claims regarding the washing machine or the combo laundry machine are dismissed.
117. The Landlord shall pay the Tenant \$448.80 for the rent abatement for the oven.

Kitchen- Plumbing

118. The Tenant's application alleges that the Landlord failed to repair a leaking drain under the kitchen sink in a timely manner. The Tenant stated that the Landlord was notified of the issue February 4, 2020. The Tenant's application states that the leak had not been resolved as of the last amendment.
119. The Tenant's application alleges that a flood occurred in the unit on March 23, 2021, however no evidence was presented regarding that issue at the hearing.
120. The Tenant testified that there was a leak under the sink. The Tenant drew attention to Item #15 of the PSO which stated that the sink was clogged and would not drain. The Tenant testified that the leak was repaired in November 2021.
121. The Landlord stated that the drains under the sink had been replaced when the sink itself was replaced on January 16, 2021. The Tenant, in her application, stated that the sink was still leaking after the sink was replaced, however the Tenant did not supply any evidence on this issue at the hearing. Under cross-examination, the Tenant admitted that the drain had been fixed on January 15, 2021.
122. The Landlord also stated that they were called to the unit in March 2021 to deal with a flood, however it was caused by hardened grease that was poured down the drain. At

the hearing, the Landlord did not allege that the Tenant had poured the grease down the drain, as it could have been another tenant in the complex. The Landlord had a contractor clear the drain with a snake.

123. The Landlord testified that there had been no other floods or leaks reported to them since March 2021.

124. The Tenant is seeking a 5% rent abatement from February 4, 2020, to the present.

#### Kitchen Plumbing- Analysis

125. The Tenant presented no evidence that she had contacted the Landlord prior to the release of the PSO about the condition of her drain. Therefore, I find that the Landlord had notice of the state of the drain for the kitchen sink as of December 16, 2020.

126. The Landlord presented no evidence that the drain issue was examined or repaired between December 16, 2020, and January 15, 2021.

127. I am of the view that a kitchen drain requires immediate attention because it is a highly used and integral part of the rental unit. Therefore, I find that the Landlord breached section 20(1) of the Act when it failed to address the drain issues as soon as it had received notice of issues with the drain.

128. The Tenant did not meet the burden of proof required to make a decision in her favour regarding the flooding issue. I find that the Tenant failed to establish when she notified the Landlord of the clogged drain in March 2021. Therefore, it is impossible to ascertain whether the Landlord acted in a reasonable manner when responding to the issue of the clogged drain.

129. Therefore, the Tenant will only receive a 5% rent abatement for one month, or \$44.88. This is for the Landlord's failure to promptly act to the notice received December 16, 2020, regarding the clogged and leaking kitchen drain, that was not addressed until January 15, 2021.

#### Bathroom

130. The Tenant alleged that the Landlord breached section 20(1) of the Act by failing to address the following issues in the bathroom:

- a) Light fixture missing a cover,
- b) Tiles on the floor are cracked and broken,
- c) The sink requires repair or replacement, and

- d) The caulking around the bathtub has deteriorated and requires replacement.
131. During the hearing the Tenant did not present any evidence regarding when she gave notice of these issues to the Landlord. Her application asserts that she gave notice to the Landlord on February 4, 2020.
132. The Tenant alleged that the light cover was missing on the light located above the bathroom sink. The Tenant alleges that this was a safety hazard. The Tenant drew attention to Item #8 in the PSO which states, "light fixture cover missing."
133. The Tenant testified that the light cover was replaced in November 2021, however the application states that the light cover was replaced in October 2021.
134. The Tenant also testified that the ceramic floor tiles were cracked and broken and thus a danger to walk on. The Tenant drew attention to Item #9 of the PSO which stated that "ceramic tiles were broken/cracked and missing."
135. The Tenant testified that the tiles were repaired in November 2021, however her application states that the floor was fixed in April 2021.
136. The Tenant alleges that the sink required replacement. The Tenant claimed that there were issues with the faucet not working properly, the drain did not work properly, and that the vanity that the bathroom sink was fastened to had deteriorated and was in danger of falling apart. The Tenant drew attention to Item #10 on the PSO. It states that "the vanity bathroom sink requires replacement". It did not elaborate any further. Had the Tenant brought the inspector forward as a witness, they may have been able to elaborate further on the issues with the sink.
137. The Tenant testified that the vanity and the sink was replaced in November 2021. The Tenant's application states that the repair was completed April 2021.
138. The Tenant alleges that the caulking around the tub had deteriorated and was causing water damage to the floor and potentially to downstairs neighbours. The Tenant drew attention to Item #11 on the PSO which stated, "caulking deteriorated around the bath tub."
139. The Tenant did not state when the tub was resealed with caulking, however, the Tenant's application states that it was completed in April 2021.
140. The Landlord did not state when notice was given regarding the bathroom other than that the Tenant had verbally asked the Landlord in the summer of 2020 to make repairs to the bathroom when the Landlord had entered to inspect the bathroom for a leak that was occurring in the unit below the Tenant.
141. The Landlord testified that the vanity, and the bathroom tiles had been replaced by October 31, 2020. The Landlord presented an invoice to corroborate this testimony



as well as photos of the completed bathroom. The photo shows the bathroom light before it had been replaced, and the light fixture missing the light bulb cover. It did not show any exposed wiring.

142. The Tenant is seeking a rent abatement 5% for each bathroom issue, from February 4, 2020, until April 2021 for the tiles, bathroom sink and bathtub caulking, and until October 2021 for the missing light fixture cover.

Bathroom- Analysis

143. I am satisfied, based on the evidence presented at the hearings, that the Landlord completed the bathroom renovations necessary to resolve the Tenant's issues by October 31, 2020. The question is whether the Landlord completed these repairs within a reasonable amount of time of being made aware of the issues in the bathroom
144. The Tenant did not provide any evidence to support having given notice of these issues to the Landlord prior to the Landlord having received the PSO on December 16, 2020. However, the Landlord is stating that the repairs were made before having received the PSO. This would suggest that the Landlord had prior notice from the Tenant.
145. However, I am having problems accepting the Tenant's evidence on dates of notice, because throughout this application, the Tenant appears to be embellishing the completion dates of these issues, and each time, it is for the benefit of the Tenant. I find that the Tenant's testimony can vary up to 6 months difference from her own application, let alone the Landlord's evidence in regard to completion dates. I find the Tenant's testimony regarding notice and completion dates to be unreliable.
146. It is up to the Tenant to present on a balance of probabilities, that notice was given at a date that establishes that the Landlord failed to complete the repairs in a timely manner. In this case I find that there is insufficient reliable evidence to establish when the Landlord first became aware of the issues in the bathroom requiring repair. Therefore, I cannot find a breach of s.20(1) with respect to these issues.

Living Room

147. The Tenant alleges that the Landlord failed to repair the laminate flooring in the rental unit in a reasonable amount of time.
148. The Tenant stated that the laminate flooring was wearing out and separating, thus causing gaps in the flooring. The Tenant brought attention to Item #17 in the PSO which stated, "laminate flooring has shifted and exposed sub floor."

149. The Tenant did not supply any photos of the flooring or any other supporting evidence to illustrate the severity of the gaps caused by the shifting laminate flooring.
150. The Tenant alleged at the hearing that the flooring issues had not been repaired, however her application, with the latest amendment having been completed in February 2022, states that the flooring had been fixed as of April 2021.
151. The Landlord did not present any evidence regarding the issue regarding the laminate flooring in the living room.
152. The Tenant is seeking a 1% rent abatement from February 4, 2020, to April 2021.

#### Living Room- Analysis

153. I am satisfied that the Landlord received notice of the shifting laminate flooring on December 16, 2020.
154. I find that the Tenant has not provided sufficient supporting evidence, such as photographs, witness testimony, especially testimony from the city inspector, to meet the burden of proof required to establish a breach of s.20(1) with respect to these issues. Therefore, this claim is dismissed.

#### Interior Stairwell Drywall

155. The Tenant alleges that the Landlord failed to repair the drywall in the stairwell of the common area of the rental unit in a reasonable amount of time.
156. The Tenant brought attention to Item #18 of the PSO, which states that the stairwell had “bulging/cracked plaster”.
157. The Tenant did not present any testimony of how the cracked drywall, which is in the common areas, affecting her tenancy.
158. The Landlord presented two photos (marked “U” and “V”) and stated that the drywall had been repaired however I found the photos to be too faded to be of any use in making any determination.
159. The Tenant is seeking a 1% rent abatement from December 16, 2020 until the present.

#### Interior Stairwell Drywall- Analysis

160. Based on the PSO, I am satisfied that there was some damage to the drywall or plaster in the hallway. However, without any further context, I cannot ascertain the scope of the damage.

161. Therefore, I will award a nominal rent abatement of \$50.00 for the drywall issues in the interior stairwell.

Additional Remedies

162. The Tenant is seeking these additional remedies:

- a) \$300.00 for out-of-pocket expenses
- b) An order for the Landlord to make any repairs not yet completed, pursuant to the PSO,
- c) An Order to Prevent Rent Increase (OPRI) until the Landlord completes all of the necessary work outlined in this application,
- d) General compensation of \$5,000.00 for pain and suffering.

163. The Tenant did not present any evidence of out-of-pocket expenses such as receipts or even proof of work completed. Therefore, this remedy is dismissed.

164. The only substantial repair issue that appears not to have been resolved as of the hearing date is the faucet. As addressed earlier in this order, the Landlord is ordered to repair the faucet by February 28, 2023.

165. I find that since all of the substantial issues on the application have been addressed, there is no reason to apply an OPRI at this point, therefore, this remedy is dismissed.

166. I find that an abatement of rent is an adequate remedy to compensate the Tenant, and as such the Tenant's claim for general damages shall be denied.

167. At the hearing, the Tenant asked that if the Board issues an award to the Tenant that the Tenant be able to deduct a portion of any award from the rent owed in the future.

This request is granted and will be outlined in the order.

**It is ordered that:**

1. The Landlord shall pay the Tenant is \$2,978.61 This amount represents the total rent abatement awarded in this order.
2. The Landlord shall pay the Tenant the full amount owing by February 27, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by February 27, 2023, the Landlord will owe interest. This will be simple interest calculated from February 28, 2023, at 5% annually on the balance outstanding.

4. If the Landlord does not pay the Tenant the full amount owing by February 27, 2023, the Tenant may recover this amount by deducting \$500.00/month from the rent owing for five months starting March 1, 2023, until July 1, 2023, and \$478.61 from the rent due on August 1, 2023.
5. The Landlord shall repair the kitchen faucet by February 28, 2023. If the Landlord fails to make this repair by February 28, 2023, then the Tenant may deduct an additional \$50.00 per month in rent starting March 1, 2023, and until the repair to the kitchen faucet has been completed.
6. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**February 9, 2023**

**Date Issued**

15 Grosvenor Street, Ground Floor  
Toronto ON M7A 2G6

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Robert Brown

Member, Landlord and Tenant Board

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.