



**Order under Section 69  
Residential Tenancies Act, 2006**

**Citation:** Simard v Loxterkamp, 2022 ONLTB 14071

**Date:** 2022-12-09

**File Number:** LTB-L-006020-22

**In the matter of:** B, 1957 CATHERINE ST  
ROCKLAND ON K4K1H6

**Between:** Michel N Simard Landlord

**And**

Babra Loxterkamp Tenant

Michel N Simard (the 'Landlord') applied for an order to terminate the tenancy and evict Babra Loxterkamp (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 18, 2022.

The Landlord and the Tenant and the Tenant's Legal Representative, S. Gauthier attended the hearing.

The Landlord was assisted by his son, B. Simard.

**Determinations:**

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$930.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$30.58. This amount is calculated as follows: \$930.00 x 12, divided by 365 days.
5. The Tenant has paid \$7,320.00 to the Landlord since the application was filed.
6. The rent arrears owing to November 30, 2022 are \$2,910.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.

Section 82 Issues

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9. The Tenant brought up the following issues at the hearing:

- Ceiling leak in Bathroom/bathroom door frame
- Large Bin outside bedroom window
- Carbon Monoxide Detectors/Smoke Detectors

Ceiling leak in bathroom/bathroom door frame

10. The Tenant testified that there was a crack in the bathroom ceiling and a spongy door frame that was a result of a leak that happened in around April 2020. She testified that the Landlord took care of the leak issue but did not repair the crack in the ceiling until the first week of November 2022. She testified that there is no water coming out of the crack, it is a water stain on the ceiling.
11. The Landlord testified that when the Tenant notified him of the leak in the bathroom ceiling, he fixed the issue right way. He testified that he did not know there was a crack, he just saw a water stain and didn't realize it needed fixing. It was fixed the first week of November 2022, by priming and painting the spot.
12. Based on the evidence before me, I find that the Landlord was in breach of their maintenance obligations under section 20 of the Act. While the issue is largely cosmetic in nature, the Landlord is obligated to maintain the unit, notwithstanding their opinion on how minor something may be. I find that the Tenant is entitled to a 1% abatement of her rent from February 2021 to November 2022. The Landlord filed this L1 application in February 2022, I find that the Tenant can go back a year from when the Landlord filed their application. The Tenant is entitled to \$204.60 for the issue with the ceiling.

Large bin outside bedroom window

13. The Tenant testified that there is a large plastic storage bin placed right outside her bedroom window. She testified that she feels this is a privacy/security issue as it makes it easier for someone to get into her unit. The Tenant testified that she wants the chest moved to a different spot.
14. The Landlord testified that the bin has been in that spot for six or seven years and the Tenant did not complain about it, and that it isn't a privacy or security concern cause the window it sits under is a main floor window and the height between the ground and the window, anyone could enter whether a bin is there or not. The Landlord agreed to move the bin to a different location.
15. Based on the evidence before me, I do not find that the location of the bin poses a security or privacy issue. The window it sits under is on the main floor and the location of the bin under the window does not add to a potential security or privacy issue that may arise. However, the Landlord has agreed to move the bin, so that shall be ordered.

Carbon monoxide detectors, smoke detectors

16. The Tenant testified that the Landlord maintains the fireplace yearly. She testified that fire detector is very close to the kitchen and when it went off one day in April 2020, she accidentally knocked it down. She testified that she went and told the Landlord at that time. The Tenant also testified that the Landlord came down to her unit with his wife to see her unit after she rearranged it, and at that time the Landlord asked what happened to the smoke detector. She testified that the smoke detector was replaced in November 2022. The Tenant testified that there was never a carbon monoxide detector ever installed in her unit. One was installed in November 2022, after a fire inspection of the unit.
17. The Landlord testified that the Tenant never advised him about the smoke detector being knocked off the ceiling. He testified that the Tenant lives in the basement unit and he lives on the main level and if she told him, he would have replaced it immediately. He testified that he would not risk his house for a \$20.00 smoke detector. He testified that he first became aware of the absence of the smoke detector after the fire inspection took place in October 2022. He denies the Tenant's assertion that he asked her about the smoke detector when him and his wife went to see the unit. In regard to the carbon monoxide detector, the Landlord testified that when he first bought the place in 2000 and had it inspected, carbon monoxide detectors were not required. As soon as he was advised by the fire inspector that he had to have one, he installed one.
18. Based on the evidence before me, it is unclear if the Tenant ever had a conversation with the Landlord about knocking the smoke detector off of the ceiling. At first she said she went up and told the Landlord about knocking it off the ceiling, and then she testified that he came down and asked her about it. The Landlord testified that had he known, he would have replaced it, and once he did know, in October 2022, he did replace it. The onus is on the Tenant to prove the allegations that she is claiming, and in the case of the smoke detector, I do not find that the Tenant met the onus. Therefore, the issue with the smoke detector is dismissed.
19. Regarding the carbon monoxide detectors, I find that the Landlord was in breach of their obligation under the Act. The Landlord testified that he was not aware of the requirement for carbon monoxide detectors because an inspection in 2000 took place and they were not required at that time. It is now 22 years later, and I find it is the Landlord's responsibility to inform himself of the safety requirements in place for a property he is renting to a Tenant. I find that the Tenant is entitled to a 1% abatement from February 2021 until November 2022 for lack of carbon monoxide detector. The Tenant is entitled to a rent abatement of \$204.60 for the lack of carbon monoxide detector in the unit.

#### Relief from eviction

20. The Tenant testified that she has lived in the unit since 2009. She testified that she has had some recent medical issues, including a stroke, that cause her difficulty with some aspects of her activities of daily living. She testified that her income has recently increased due to receiving a benefit she has become eligible for.
21. The Tenant suggests a payment plan that would see the arrears paid off in approximately 16 months. She expects to get help from a housing stability program in her area with a lump sum payment of at least \$1000.00 towards the arrears and pay the remainder off by paying an extra \$100.00 a month.

22. The Landlord wasn't opposed to a payment plan, but he submits that he would like the lump sum payment to be paid by December 15, 2022. He testified that he is not a big corporate Landlord, and this is his only income property.
23. Based on the evidence before me, I find that the payment plan suggested by the Tenant is reasonable and fair in the circumstances. The Tenant has made payments to the Landlord since the application has been filed and has made monthly rent payments for September through to November. The Tenant has lived in the unit for 13 years. She has experienced some health issues over the last couple of years that have affected her ability to function. Although I am mindful of the Landlord's submissions, I find, in this case, that the prejudice suffered by the Tenant, specifically facing homelessness, outweighs that of the Landlord.
24. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act. The Tenant was advised at the hearing on November 18, 2022 to make the payments contained in this order whether she was in receipt of this order or not.

**It is ordered that:**

1. The Landlord shall move the bin outside the Tenant's bedroom window to another location.
2. The Tenant shall pay to the Landlord \$2,500.80 for arrears of rent up to November 30, 2022. This amount considers the rent abatement of \$409.20 awarded to the Tenant. The Tenant is also responsible for the filing fee of \$186.00. The total amount the Tenant owes to the Landlord is \$2686.80.
3. The Tenant shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:
  - On or before January 15, 2023, the Tenant shall pay \$1000.00 to the Landlord.
  - Starting on December 1, 2022, the Tenant shall pay \$100.00 to the Landlord on or before the first day of every month until March 1, 2024,
  - On or before April 1, 2024, the Tenant shall pay \$86.80 to the Landlord.
4. The Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period December 1, 2022 to April 1, 2024 or until the arrears are paid in full, whichever date is earliest.
5. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the

Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after November 30, 2022.

**December 9, 2022**  
**Date Issued**

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Emily Robb  
, 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.