

Musa v Huang, 2022 CanLII 137667 (ON LTB)

Date: 2022-03-07  
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Order under Section 31

**Residential Tenancies Act, 2006**

**File Number:** TNT-22392-19

**In the matter of:** 52 COBHAM CRESCEN  
T NORTH YORK ON M4  
A1V6

**Between:** Adijatukubra I. Tenants  
Musa Yaw M. A  
yisi

**and**  
Shihui Huang Z Landlords  
hipeng Zeng

Adijatukubra I. Musa and Yaw M. Ayisi (the 'Tenants') applied for an order determining that Shihui Huang and Zhipeng Zeng (the 'Landlords') substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household (T2 Application),

AND

Adijatukubra I. Musa and Yaw M. Ayisi (the 'Tenants') applied for an order determining that Shihui Huang and Zhipeng Zeng (the 'Landlords') failed to meet the Landlords' maintenance obligations under the Residential Tenancies Act, 2006 (the 'Act') or failed to comply with health, safety, housing or maintenance standards (T6 Application).

These applications were heard via videoconference on December 17, 2021, at 9:00 A.M.

The Tenants, the Landlord, Mr. Zhipeng Zeng, and the Landlord's Legal Representative, Rong Wei Yu, attended the hearing.

The Tenants declined an opportunity to consult with Duty Counsel prior to the hearing.

**Determinations:**

1. These applications were submitted to the Board on December 3, 2019.
2. The Tenants moved into the rental unit on April 16, 2012
3. On September 17, 2019, the Board issued consent order TNL-17034-19 and TNL-15144-19 (L1/L2), which terminated the tenancy on October 15, 2019. The relevant portions of that order are as follows:
  - 1) The tenancy between the Landlords and the Tenants is terminated, as of October 15, 2019. The Tenants must move out of the rental unit on or before October 15, 2019.
  - 2) The Tenants shall pay to the Landlords \$7,644.00 on or before October 15, 2019.
  - 3) The Tenants shall also pay to the Landlords \$190.00 for the cost of filing the application.
  - 4) The Landlords shall apply the last month's rent deposit to the monthly rent commencing September 16, 2019.
4. On October 10, 2019, the Tenants received permission from the Landlord to remain in the rental unit until the end of October 2019.
5. The Tenants were issued a Notice to Vacate the rental unit by a Court Enforcement Officer (Sheriff), dated October 16, 2019, providing vacant possession to the Landlord on or before November 4, 2019. I find the tenancy terminated on November 3, 2019, the date the Tenants ceased to be in possession.
6. The rental unit is a detached bungalow with 3 bedrooms, 2 washrooms, kitchen, and an open concept basement with a second kitchen.

**Tenants' evidence and submissions**

7. The Tenants' application concerns incidents that allegedly occurred on October 27, 30 and 31, 2019. Specifically, the ceiling collapse in the kitchen as evidenced by photographs submitted by the Tenants. The Tenants testified that they had sent a letter to the Landlord about this issue in early November 2019.
8. During the hearing, the Tenants were asked to submit the letter of November 3, 2019, advising the Landlord of the collapsed ceiling, and that the Tenant's were

actually leaving the rental unit. After several delays, a letter was eventually submitted to the Board at the hearing. This submission appeared to have a different date of November 1, 2019, and an additional paragraph was added. Also, there was no sent date on the email.

9. The Landlord's Legal Representative had submitted his copy of the Tenants' letter dated November 3, 2019, with containing just one sentence stating, "I have sent your client's keys to you by registered mail". There was an email chain showing dates and receipt of the letter. Additionally, the Tenant's version of the letter claims "I have attached 4 keys to the unit, to be given to your clients". The other differences included information in the

letter including "the kitchen ceiling has caved in due to the recent rains" and "there is a crack in the staircase to the basement. The staircase is next the kitchen".

10. The Tenants' T2 application alleges substantial interference because of roofing problems dating back to 2014, 2015 and more recently March of 2018, with several photographs of previous damage to the rental unit. The Tenants asserted in the T2 application that their concerns were reflected in the T6 application and that the T6 was the guiding application for the T2.
11. The T6 application also alleges that there were kitchen flooring problems emanating from roof leaks, in the basement kitchen and washroom during the tenancy, and a more recent problem with the kitchen pocket-door in October 2019. The Tenants asserted that these problems were evident over an extended period of time during the tenancy. The Tenants submitted photo evidence of these maintenance concerns, but understood that time limitations under s.29(2) of the Residential Tenancies Act, 2006 (the 'Act'), only allows for consideration of the one-year period prior to December 3, 2019.

### **Landlord evidence and submissions**

12. The Landlord's Legal Representative asserted the Tenants did not notify the Landlord of the ceiling drywall collapse when it first happened on October 27, 2019, and that the consent order remedied the maintenance concerns of the Tenants, reflecting the Landlord's understanding of his obligations.
13. Additionally, the Landlord's Legal Representative testified that keys to the rental unit were delivered after November 3, 2019, which was uncontested, as the Tenants provided Canada Post evidence confirming they were delivered on November 5, 2019.
14. The Landlord testified over the course of the tenancy there were numerous visits made to the rental unit to address any maintenance concerns the Tenants had, particularly with reference to maintenance concerns dating back to 2015 through to March 2018. The Landlord also testified he did everything he could do to resolve matters with the Tenants, including waiving previous rent due, and agreeing to the consent order on August 6, 2019.

15. Additionally, the Landlord asserted the applications stem from the fact the Tenants were ordered to pay the amount of \$7834.00 to the Landlord, in accordance with the Board order of September 17, 2019, and the applications submitted on December 3, 2019, were seeking an abatement of \$7329.60. The Landlord's Legal Representative asserted this was purely an attempt by the Tenant's to recoup funds previously paid to the Landlord as a result of the Board's order.

## **Analysis**

16. The *Residential Tenancies Act, 2006* (the 'Act') states:

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.

22 A landlord shall not at any time during a tenant's occupancy of a rental unit and before the day on which an order evicting the tenant is executed substantially interfere with the reasonable enjoyment of the rental unit or the residential complex in which it is located for all usual purposes by a tenant or members of his or her household.

17. While the alleged ceiling incident occurred between October 27-31, 2019, as per s.22, the Landlord's obligation not to engage in substantial interference extends to the date the Tenants are evicted by the Sheriff. Therefore, the fact that the Tenants were supposed to have vacated prior to the date that the ceiling collapsed does not mean that s.22 ceases to apply. In this instance, however, I find the Landlords were placed at a disadvantage, as they were unaware of the alleged collapse prior to November 3, 2019, if at all based on the conflicting Tenant submission as compared to the Landlord's copy.

18. As noted above, the letter the Tenants submitted respecting the ceiling collapse also appeared to be visibly different in style and wording from what the Landlord's Legal Representative appeared to have in his possession. Additionally, the Landlord's copy of the Tenant's letter dated November 3, 2019, clearly shows no reference to a collapsed kitchen ceiling, or cracked stairwell reference next to the kitchen or anything related to a defective kitchen pocket door.

19. Based on this evidence, along with the testimony and submissions of the parties, and on the balance of probabilities, I find the Tenants likely falsified this letter for the purposes of the hearing. I find these inconsistencies, and the delays at the hearing, call into question the Tenants' credibility with regard to what transpired in the final days of the tenancy. I am also not convinced that the Tenants were actually still living in the rental unit during the period October 27-31, 2019, when the ceiling allegedly collapsed as there was no evidence of contact with the Landlord until November 3, 2019.

20. Additionally, while the Tenants asserted, they had sent a registered letter with the keys to the rental unit, along with the email to the Landlord on November 3, 2019, this was approximately one week following the alleged collapse of the kitchen ceiling. This leads me to believe that the Tenants intentionally avoided informing the Landlord of the ceiling collapse until their termination of November 3, 2019.

21. The fact that the Tenant's delayed their response to my direction that they provide their version of the letter notifying the Landlord of the ceiling collapse and termination of the tenancy also calls their credibility into question. When finally submitted, the date and

content was clearly different than the original email provided by the Landlord's Legal Representative at the hearing.

22. As a result, I find that the Tenants have not established that the Landlords substantially interfere with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household, especially during this agreed upon extended period of the tenancy. The Landlord was fully aware the Tenants were vacating the rental unit, with an extension, no later than October 31, 2019, as agreed by the parties, and certainly had a right to know if a ceiling collapse took place in the rental unit prior to November 3, 2019.

23. I also find that the Landlords did not fail to meet their obligations under subsection 20(1) to maintain and repair the rental unit and did not fail to comply with health, safety, housing, or maintenance standards. Many of the concerns in the T6 application predated December 2018, and I am satisfied based on the Landlord's oral testimony and evidence, the Landlord did his best to address any maintenance concerns of the Tenants within the time limitation period dating back to December 2018. It became evident during the hearing that the Landlord was not made aware of the ceiling collapse in their version of the email letter, and could not have attended to the problem without any knowledge of it.

**It is ordered that:**

1. The application is dismissed.



**March 7, 2022**

**Date Issued**

Steven Mastoras  
Member, Landlord and Tenant Board

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M2N5X5

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