



Order under Section 21.2 of the
Statutory Powers Procedure Act
and the **Residential Tenancies Act, 2006**

File Number: CET-94002-20-RV

In the matter of: 230, 1650 DUNDAS STREET E
MISSISSAUGA ON L4X2Z3

Between: Anthony Osagie Tenants
Richard Osagie

and

McCor Management East Inc. Landlord

Review Order

Anthony Osagie and Richard Osagie (the 'Tenants') applied for an order determining that McCor Management East Inc. (the 'Landlord') withheld or deliberately interfered with the reasonable supply of a vital service, care service, or food that the Landlord is obligated to supply under the tenancy agreement.

This application was resolved by order CET-94002-20 issued on June 8, 2020.

On July 7, 2020, the Tenants requested a review of the order.

The Tenants said that they were not reasonably able to participate in the proceedings because they did not receive the notice of hearing.

The request was heard by video conference on February 8, 2021.

Anthony Osagie, on behalf of all Tenants, and the Landlord's employees, Joanne Houlihan, Velda Abreu, and Lindsay Hachey, on behalf of the Landlord, attended the hearing. Lawrence Smither attended the hearing as a witness for the Tenants.

Lawrence Smither was named as a respondent in the original application, however the parties agreed that he should be removed as a respondent.

Determinations:

1. The request to review order CET-94002-20 issued on June 8, 2020 is granted. The Tenants provided the Board with an email address for themselves when they filed their application which had a typographical error in it. In addition, the Board did not email the notice of hearing to the email address provided by the Tenants so the notice of hearing

would not have been delivered even if there was no typographical error in the email address provided. I accept that the Tenants did not receive the notice of hearing and find that they did not have a reasonable opportunity participate in the hearing. As a result, the order dismissing their application is abandoned is cancelled.

2. This application is concerned with inadequate heat at the rental unit. Both parties agreed that this is an ongoing structural problem which has yet to be resolved, although the Landlord has and continues to take steps to address the problem. Because of the extraordinary length of time it has taken to resolve this problem, I find that the Landlord withheld a reasonable supply of a vital service that the Landlord was obligated to supply under the tenancy agreement.
3. The Tenants request a 50% abatement of rent for 19 months prior to March 4, 2020, the date the application was filed. I do not have jurisdiction to award an abatement beyond the 12 month period prior to the date the application was filed. As a result, the abatement will only date back to March 4, 2019. I find it appropriate to order an abatement commencing March 4, 2019 because the Tenants notified the Landlord of the heating issue on January 31, 2019 by email. Having said that, I find that it is only appropriate to order an abatement for the period of the year in which heat is required (September 15 to May 31). I do not find a 50% abatement to be appropriate under the circumstances. This is not a case where there is no heat, but rather a case where the heat is below the lawful minimum required. The temperature in the unit also varies depending on the temperature outside. Having regard to like and similar cases that have come before me, I find it appropriate to award a 15% abatement for the periods March 4, 2019 to May 31, 2019; September 15, 2019 to May 31, 2020; and September 15, 2020 to February 8, 2021. The total abatement being \$4,286.56 (i.e. \$1,756.00 monthly rent × 12 months ÷ 365 days × 495 days of abatement × 15% amount of abatement).
4. The Tenants requested out-of-pocket expenses in the application, but did not pursue this claim at the hearing so this request is denied.

It is ordered that:

1. The request to review order CET-94002-20 issued on June 8, 2020 is granted. The order is cancelled.
2. The Landlord must refrain from withholding a reasonable supply of heat to the rental unit.
3. The Landlord shall pay to the Tenants \$4,286.56 which represents a 15% abatement for the periods March 4, 2019 to May 31, 2019; September 15, 2019 to May 31, 2020; and September 15, 2020 to February 8, 2021.
4. The Landlord shall also pay to the Tenants \$50.00 for the cost of filing the application.
5. The total amount the Landlord owes is \$4,336.56.
6. The Landlord shall pay the Tenants the full amount owing by March 31, 2021.

7. If the Landlord does not pay the Tenants the full amount owing by March 31, 2021, they will owe interest. This will be simple interest calculated from April 1, 2021 at 2.00% annually on the balance outstanding. If the Landlord does not pay the Tenants the full amount owing by March 31, 2021, the Tenants may recover this amount by deducting \$1,000.00 from the rent each month from April 2021 to July 2021 and \$336.56 in August 2021.
8. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.



March 15, 2021
Date Issued

Richard Ferriss
Member, Landlord and Tenant Board

Central-RO
3 Robert Speck Pkwy, 5th Floor
Mississauga ON L4Z2G5

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