



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

**File Number:** TST-06559-19-RV

**In the matter of:** 154 GLEN CEDAR ROAD  
YORK ON M6C3G5

**Between:** Joshua Censor Cohen Tenants  
Jenna Suzanne Cohen

**and**

Chang Li Landlord

**Review Order**

Joshua Censor Cohen and Jenna Suzanne Cohen (the 'Tenants') applied for an order determining that Chang Li (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)

The Tenants also applied for a reduction of the rent charged for the rental unit due to a reduction or discontinuance in services or facilities provided in respect of the rental unit or the residential complex. (T3 Application)

This application was resolved by order TST-06559-19 issued on September 26, 2019.

On October 20, 2019 the Landlord requested a review of the order and that the order be stayed until the request to review the order is resolved.

The matter was stayed and sent to a review hearing. On December 6, 2019 the review hearing was initially heard, the review request was granted, and the matter was sent to a hearing *de novo*. On March 10, 2021 interim order TST-06559-19-IN was issued, staying the order issued on September 26, 2019 and directing the matter to a hearing.

The request was heard by videoconference on May 12, 2021.

The Tenants and the Landlord attended the hearing.

**Preliminary matter:**

At the hearing, the Tenants requested the consent of the Board to withdraw their T3 Application. In accordance with subsection 200(4) of the *Residential Tenancies Act, 2006*, I consented to the withdrawal of the T3 application and the T6 Application proceeded to be heard.

**Determinations:**

1. For the reasons that follow, I am satisfied on the balance of probabilities that the Landlord failed to meet the Landlord's obligations under subsection 20(1) of the *Residential Tenancies Act, 2006*, S.O. 2006, c.17 ('Act') to repair or maintain the rental unit.

*Facts*

2. The rental unit is a house and the Tenants resided in the rental unit from April 29, 2018 to March 31, 2019 and paid a monthly rent in the amount of \$4,400.00.
3. On May 17, 2019 the Tenants filed both a T3 Application for a Rent Reduction and a T6 Application for Maintenance with the Board.
4. The Tenants' T6 Application alleges the following facts:
  - The primary bedroom toilet did not work properly;
  - The Air Conditioning did not work;
  - There were heating issues in the bathrooms and no heat in the basement;
  - The Dishwasher stopped working on January 29, 2019 and did not function properly throughout the tenancy;
  - There were rats in the rental unit;
  - Two windows in the upper bedroom were broken, which the lease stated would be repaired prior to the Tenants moving into the unit; and
  - There was ceiling paint peeling and chunks falling off.
5. The Tenants' application was amended to seek the following remedy: (1) an abatement of rent in the amount of one month's rent (\$4,400.00).
6. The Landlord requested that the application be dismissed as during the course of the tenancy, he had paid in excess of one month's rent to address repair issues in the rental unit.

*Uncontested Evidence*

7. The following facts were undisputed at the hearing:
  - There were cracked windows in the upper level;

- Pest control services were performed to address the issue of carpenter ants in the rental unit;
- Repairs were performed to the Air Conditioning unit in May, June, August, and September 17, 2018;
- Some repairs were performed on the Toilet on January 23, 2019;
- In January and February 2019 a contractor attended at the rental unit to perform work on the heating system;
- On January 31, 2019 a team of contractors attended the rental unit to paint the ceiling, repair the dishwasher and address the door and window hardware. They returned on February 2, 2020 to conduct further repairs;
- On February 16, 2019 dishwasher repairs were performed; and
- The Landlord did not attend at the rental unit to inspect the work performed by his contractors or to confirm the work or quality of work performed for the repairs.

*Legislation & Analysis*

8. Pursuant to subsection 20(1) of the Act, 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.

9. The Tenants testified that there were on-going maintenance and repair issues in the rental unit that were not fully addressed or not addressed at all by the Landlord. They testified that after the Landlord obtained permission from the City to demolish the house, no further repairs were performed during their tenancy. They testified the Landlord refused all work between January and March 2019. (Exhibit 8 – Notice to Demolish)

*The primary bedroom toilet*

10. The Tenants testified that the toilet in the primary bedroom was not functioning properly when they moved into the rental unit. They testified that they advised the Landlord's agent of the issue and the toilet was repaired 3 times during the course of the tenancy, but failed to fully function and required several flushes when used. The Tenants testified that there were three other toilets in the house so there were functioning toilets available for use.
11. The Landlord testified that he was advised the toilet was not working in October 2018 and that he had a contractor address the issue on October 14, 2018. He testified that further repairs were performed and he was not advised again by the Tenants that the toilet was not functioning. He testified that the repairs were done in a reasonable time and fashion.
12. The Tenants submitted into evidence text messages between the parties from September 2018 to February 2019 which stated that the toilet was still not functioning properly. On the evidence before the Board, I find that the Landlord was aware that the toilet was not functioning and did not perform repairs to address the issue.

*The Air Conditioning did not work*

13. The Tenants testified that they immediately found the Air Conditioning was not working when they moved in and contacted the Landlord's agent. They testified that the unit was fixed a few times but it never lasted nor was it fixed properly in order to cool the rental unit. They testified that they advised the Landlord's agent that it was not functioning and that proper repairs were refused. They testified that temporary stop-gap measures were put in place that did not result in working Air Conditioning.
14. The Tenants testified that the rental unit was hot and at times they could not use the unit and had to have their daughter sleep and play in the basement because the upper levels were too hot for use. They testified it impacted them and their guests for the entire summer.
15. The Landlord testified that the Air Conditioning was fixed on several occasions and that he paid for the on-going repairs. The Landlord testified that one of the repairs were arranged by the Tenants and they did not obtain a warranty for the work so additional work was done at a cost that did not need to be incurred.
16. It was undisputed that the Air Conditioner was not fully functioning during the course of the tenancy and that additional work was required in order for proper functioning. Text messages between the parties was ongoing from May 2018 to September 2018 regarding the issue, with the Landlord's response being "I don't find it hot in TO". (Exhibit 3 – text messages)
17. On the evidence before the Board, I find the Air Conditioning was not properly functioning and the Landlord did not address the issue fully or in a timely manner.

*Heating Issues*

18. The Tenants testified that they advised the Landlord that they required full use of the basement for their Nanny to live in year round while they were renting. They testified that there was no heat in the upstairs bathrooms and that there was no heating system or vents in the basement and the basement was cold all winter causing extreme discomfort to their Nanny. The Tenants testified that the lack of heating was never addressed in the basement despite their on-going requests.
19. The Tenants put into evidence photographs they had taken indicating the heat in the basement was at 14 degrees Celsius on February 5, 2019. (Exhibit 2) The Tenants also submitted into evidence text messages with the Landlord which stated that he was not responsible for heat in the basement; "I am not responsible for specific heat in the basement" and "regarding the basement, I cannot do anything about that". (Exhibit 3)
20. Veronica Madlakmela ('VM') testified on behalf of the Tenants and stated that her living space was located in the basement and that she was "freezing" in the winter as there was no heat in the basement at all.

21. The Tenants testified that there was no heat in the upper bathrooms for 6 weeks; the heating system for the bathrooms were eventually repaired. The Tenant Jenna Cohen testified that their heating bills were significantly higher due to the lack of heat and the broken windows.
22. The Landlord testified that he was uncertain of the heating systems in the bathrooms and in the basement. He believed it was radiator heating in the bathroom and did send someone to do repairs. He was unaware of whether there was any heating in the basement.
23. On the basis of the evidence before the Board, I find that there was a lack of heating in the basement of the rental unit and that there was no heat in the 2 bathrooms for 6 weeks. I accept the evidence of the Tenants as their witness and the emails between the parties shows internal and external consistency of the evidence. Further the Landlord was uncertain of the heat in the basement and never attended the rental unit to inspect the heating system to determine whether it was functional.

*The Dishwasher*

24. The Tenants testified that the dishwasher stopped working on January 29, 2019 and the Landlord sent a general contractor to perform repairs. They testified that the repairs were not properly done and the dishwasher did not work properly and then did not work at all for the remainder of the tenancy. The Tenants put into evidence photographs they had taken showing the dishwasher not cleaning the dishes. (Exhibit 4)
25. VC testified that the dishwasher did not work and she did the dishes by hand on a daily basis.
26. The Landlord testified that repairs were performed on the dishwasher during the term of the tenancy.
27. The Tenants submitted into evidence text messages between the parties in which the Tenants listed on-going issues in the rental unit, including the dishwasher not functioning properly to wash the dishes. (Exhibit 3)
28. On the basis of the evidence before the Board, I find that the dishwasher was not fully functional during the term of the tenancy.

*Rats in the rental unit*

29. The Tenants testified that there were rats in the kitchen of the rental unit on September 24, 2018 and throughout the tenancy. They testified that they saw rat feces in the kitchen and got a quote for extermination and to close any entry holes in the rental unit and the Landlord refused to have the work done and did not address the infestation.
30. VM testified that she cleaned up rat feces in the kitchen on a daily basis as the rats kept getting into the kitchen.

31. The Landlord testified that he hired a pest control company and stated he had receipts to show pest control dated July 11, 2018. It was undisputed that the receipts were for pest control for the unrelated issue of carpenter ants and not in relation to rats. (Exhibit 12).
32. The Tenants submitted into evidence text messages between the parties verifying they had notified the Landlord of the rats in the rental unit and his response for the Tenants to get rat poison and close the any holes. No evidence was led to show the Landlord took any action to address the rat problem
33. I find on a balance of probabilities that there were rats in the rental unit and the Landlord did not address the issue.

*Windows*

34. It was uncontested that there were two broken windows in the rental unit and that the lease clearly indicated that the Landlord would repair/replace the windows prior to the Tenants taking occupancy of the rental unit. (Exhibit 5)
35. The Tenants testified that the windows were cracked throughout the tenancy and were never repaired causing cold air to enter into the rental unit. They also testified that windows were painted shut or stuck and could not be opened which caused them to suffer from the heat in the unit when the Air Conditioning unit was not operating.
36. The Landlord testified that the two windows were repaired as he had the cracks filled prior to the Tenants moving into the rental unit. The Tenants were uncertain whether the cracks in the windows were filled and whether this repair was completed, as visually the windows showed cracks so it was assumed they were broken.
37. I find that there was insufficient evidence to demonstrate that the windows were letting in cold air due to existing cracks. I do accept the Tenants' evidence that the cracks were unsightly.

*Ceiling paint peeling and falling off*

38. The Tenants testified that on September 24, 2018 a large piece of ceiling paint fell off the ceiling and onto the stairs and they slipped on the paint piece. They testified they reported it to the Landlord requested it be repaired and repainted and they were advised that if there was no leak to leave it was. (Exhibit 7- text message) They testified that the issue was repaired after 4 months in January 2019.
39. The Landlord testified that the ceiling was repainted in January 2019.
40. On the uncontested evidence before the Board, I find the ceiling was not fixed from the end of September 2018 to January 2019.

*Conclusion and Remedies*

41. On the evidence before the Board, I find on a balance of probabilities, that the Landlord failed to meet the Landlord's obligations under subsection 20(1) of the Act to maintain the rental unit in relation to the toilet, Air Conditioning, heating, dishwasher, rat infestation, and ceiling repair/painting. On a balance of probabilities, I find that the issues impacted the Tenants ability to fully use and enjoy the rental unit during their tenancy. I do not find the response times of the Landlord to address the outstanding repair issues were adequate or that the repairs were done adequately.
42. The Tenants seek an abatement of rent in the amount of \$4,400.00, being one month's rent. An abatement of rent is a contractual remedy based on the principle that rent is charged in exchange for a bundle of goods and services and if a tenant is not receiving those goods and services then the rent should be abated in a sum proportional to the difference between what is being charged and what is being received.
43. Having considered the evidence provided by the Tenants and VM on the impact of the disrepair and the extent of the disrepair in the rental unit, I find that an abatement in the amount of 1 months' rent is reasonable and justified.
44. The Landlord asked that the application be dismissed as he had spent in excess of \$4,800.00 on repairs to the rental unit in the term of the tenancy and that would off-set the Tenants' claimed damages. I find that the amount spent by the Landlord for repairs is not relevant, the relevant consideration before me is whether the outstanding repairs were completed fully and whether the rental unit was maintained in accordance with the Landlord's obligations under the Act. Once a determination is made that the Act was breached, the Act allows for a determination of damages to be awarded to the Tenants for the breach; it is not a determination of the proper amount of costs for a Landlord to spend to perform repairs.
45. The Tenants incurred the cost of \$50.00 for filing the application and is entitled to reimbursement of those costs.

**It is ordered that:**

1. The request to review order TST-06559-19 issued on September 26, 2019 is granted. The order is cancelled and replaced by the following:
2. The Tenants' T3 application is dismissed.
3. The Landlord shall pay to the Tenants a rent abatement of \$4,400.00.
4. The Landlord shall also pay the Tenants \$50.00 for the cost of filing the application.
5. The total amount the Landlord owes the Tenants is \$4,450.00.
6. The Landlord shall pay the Tenants the full amount owing by May 30 2021.
7. If the Landlord does not pay the Tenants the full amount owing by May 30, 2021 the Landlord will owe interest. This will be simple interest calculated from May 31, 2021 at 2.00% annually on the outstanding balance.

8. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.
9. The interim order issued on March 10, 2021 is cancelled. The stay of order TST-06559-19 is lifted immediately.



**May 19, 2021**

**Date Issued**

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Nicola Mulima  
Member, Landlord and Tenant Board

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