



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

**File Number:** SWT-41021-20

**In the matter of:** 21, 21 HOLBORN DRIVE  
KITCHENER ON N2A2E1

**Between:** Kim Stach Tenant  
  
**and**  
  
Holborn Holdings Ltd Landlord

Kim Stach (the 'Tenant') applied for an order determining that Holborn Holdings Ltd (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 December 16, 2020 and April 23, 2021.

The Tenant, the Tenant's Agent, Belinda Devereux, Peter Gamer on behalf of the Landlord, and the Landlord's Legal Representative, Gail Kukor-Lang, attended the hearing.

**Determinations:**

Preliminary Issues:

1. The application is subject to the one-year limitation period contained in s.29(2) of the Residential Tenancies Act, 2006 (Act). The application was filed January 29, 2019; therefore, the Board can only consider issues raised in the application which occurred after January 29, 2018.
2. The pictures sent by the Tenant at 7:18 a.m. will not be relied on at hearing as they were not disclosed in compliance with the Rules and they include the bathroom and carpeting which are not part of the application. Pursuant to Rule 19, the Board has the discretion not to allow evidence not properly disclosed.

Merits

3. For the reasons that follow, I find that the Landlord failed to meet the Landlord's obligations under subsection 20(1) of the Act to repair the unit in a reasonable and timely manner.

*Tenant's testimony*

4. For background purposes, the Tenant testified that flooding began in 2013. The water comes through her kitchen ceiling from the unit above, she believes from the other tenant's washing machine. In early 2019 she was flooded, the Landlord scheduled for someone to investigate, his name was Trevor, but he did not show for the appointment on February 24, 2019.
5. On May 18, 2019, water leaked from the above unit through the ceiling and ceiling light in the kitchen. She contacted the Landlord right away. Two hours after the flood started, the superintendent, Pete, sent a man named Tim over to inspect but nothing was done; he just said "yes, it's wet". The Tenant testified that she had to keep a bucket under where it was leaking to catch the water. It was her understanding that the other tenant was fined. Pictures and a video of the leaking were entered into evidence.
6. At some point in 2019, Paul Davis Contracting was brought in for a quote, but nothing came of it.
7. The application sets out that flooding also occurred on the following dates:
  - August 15, 2019: The flooding reached the living room ceiling, went into the basement and through the electrical panel.
  - September 28, 2019: This time the Landlord removed the upstairs tenant's washing machine.
  - October 18, 2019: The Tenant was told it was the elbow joint of the hot water tank in the above tenant's unit. After this flood, the Tenant called the City; the Landlord was ordered to comply by November 23, 2019, but they did not. The Landlord said they had disconnected the water supply to the upstairs tenant's washer, but the Tenant testified that this still did not solve the problem.
  - December 12, 2019: The Tenant testified that she was not home, but her boyfriend was. He called the Landlord when the leaking started on the 12<sup>th</sup>, but no one came.
  - December 20, 2019 The Tenant was not home, her boyfriend just handled it himself. The Tenant testified that when the water went through the light fixture, all you had to do was touch the wall and the light would go on. Pete told her to just not use the light.
8. The Tenant testified that February and March 2020 there was more leaking. They occurred: early February; February 22; March 5; and approximately March 12. The Tenant testified that she called the property manager each time but did not get a response. On March 22, 2020, the superintendent Pete was coming for an inspection, so she had neighbours attend also to record what she has been living with this entire time. She also wanted someone there because when she spoke to Pete on the phone, he hung up on her, like she was just complaining about nothing.

9. The Tenant further testified that throughout this ordeal she has talked to a number of the Landlord's employees, including the property manager, Daniel Ruse; she just keeps getting excuses as to why it is not fixed or placated with sentiments such as "I'm on it".
10. It is undisputed that the flooding issue was fully addressed on September 26, 2020. The Landlord was ordered by the city to complete the repair. The Tenant testified that there has been no flooding since September 2020.
11. The Tenant submitted that the steps the Landlord has taken are not reasonable, it should not have taken 25-months for the repair to be done. The damage to the galley kitchen ceiling was the size of a drywall sheet, 4 feet by 8 feet. The kitchen could not be used properly, she and her daughter had to eat in the dining room. She had to keep a bucket underneath where it kept leaking and had to constantly move things around so they would not get wet or damaged. The whole ordeal has been very stressful for both of them. Her daughter constantly worried about the ceiling falling on her, and often stayed at her parents. The Tenant also testified she worried about what they were breathing in the whole time due to the wetness; she was sick with pneumonia March 12 through April 7, 2020 and believes this was from what she was breathing in from the unrepaired ceiling.
12. The Tenant's Agent submitted that the Tenant and her daughter have been victimized through this flooding ordeal. There has been continual leaking since well before the limitation period and the Landlord's explanations do not make sense. There is a concrete floor between the units, logically, there has to be constant water flow for it to go not only between the units, but through the Tenant's kitchen and basement ceilings. The property manager never came to the house himself, he sent others; the issue did not seem to be important enough for him to attend. It is only fair the all remedies requested as per the application, and the \$5,000.00 requested as pain and suffering at the previous hearing.

*Landlord's testimony*

13. Peter Gamer (PG) testified on behalf of the Landlord; he is the property manager for several of the Landlord's properties in Kitchener-Waterloo. The Landlord purchased this 80-unit stacked townhouse complex April 4, 2018.
14. The Landlord is not disputing that water has come through from the unit above the Tenant. The above unit has the kitchen and laundry room directly above the Tenant's kitchen. He believed the problem was from the above tenant overloading the washing machine and not cleaning up the water quick enough so that it leaked into the Tenant's unit.
15. PG testified that the Landlord has taken action with respect to the leaking issue. The following invoices were entered into evidence from Parkway Mechanical Services, with respect to investigating the cause of the leaking coming from unit #22 above the Tenant. The invoices only address the timeframe in accordance to the limitation period:

- May 18, 2019: Inspected and snaked all drains; Could not find issue on Drains. Found water behind washer and hot water tank...tenant not being truthful on issue...feel tenant could be reason for flood as tenant kept saying to wife, I don't wan another bill.
  - August 15, 2019: Snaked laundry room drain; could not find issue on Drain; observed water pail on floor, tenant says kids knocked water pail over...believe this could be reason for flood.
  - September 28, 2019: Snaked laundry room drain; could not find issue in Drain; observed water pail on washer, tenant stated adds water to washer for large loads...believe this could be reason for flood.
  - October 18, 2019: Replace burst copper pipe on hot water tank.
  - December 12, 2019: Snaked and cleared blocked kitchen stack; Object stuck I Drain; unsure what object was as did not pull back anything on snake.
  - December 20, 2019: Snaked and cleared blocked kitchen stack; Tenant putting food down kitchen sink.
16. PG testified that apart from calling the plumber, the Landlord: spoke to the above tenant to educate them about plumbing; removed and capped the washer; and, put back flow prevention on the drain pipes in approximately December 2019, and there have been no issues since. The above tenant was also served with a N5 notice of eviction because of all the plumbing calls, which the tenant voided by paying.
17. With respect to the repair in the Tenant's unit, PG testified that the drywall in the kitchen was replaced in September 2020. It took time because of COVID-19 and accommodating the Tenant when it was okay to be there to do work because the Landlord does not have a key to the Tenant's unit. Therefore, they tried to work around the Tenant's schedule to make her happy, but the Tenant's and the Landlord's schedule did not always mesh so the repair took longer
18. PG also testified that in December 2019 the Landlord would touch base with the Tenant about when workers can come, but if there was a snowstorm then it would get delayed. As for the March 22, 2020 conversation with the Tenant, he has no recollection, the only time he would hang up on a tenant would be if he was being yelled at; then he would follow up after emotions had calmed down.
19. PG further testified that he does not have an order from Property Standards, they contacted him through email. The following email form the city dated December 18, 2020 was entered into evidence:

Hey Pete, here is that original order from Oct 2019

The specific actions required to be taken to bring the property into conformity with Chapter 665 are:

CEILING located in the dining room is damaged (cracked) due to leaking water. Investigate cause of concern, eliminate any further leaking into unit and patch, sand and paint the ceiling and repaired to be in good condition. (665.8.2)

WALL - SURFACE- wall surface is bubbled due to a water leak. The wall shall be patched, sanded and painted and shall be repaired to be in good condition. (665.8.2)

All repairs to any property shall be made in a manner that is accepted as good workmanship in the respective building trades concerned and with materials that are suitable and sufficient for the purpose. (665.4.4)

20. On cross examination PG testified that if the Tenant called on February 22, 2020 about it leaking again, he would have sent Trevor out to investigate, and he is not aware if the Tenant called in March 2020 about more leaking. PG also admitted that the city came on June 21, 2019 with a flood restoration company, and again on February 24, 2020 for a bid on what it would take to complete all the repairs. He testified that the Landlord does not get a copy of the quote if it is beyond the completion date, the city does the quote as part of their due diligence.
21. The Landlord's Legal Representative submitted that the Landlord is not denying there was a leaking issue. However, to find the Landlord liable: the Landlord would have to be responsible for the leaks, for example something wrong with the pipes in the upstairs; and, if there was an issue, was the Landlord aware of it and what steps were taken. Here, the problem was with respect to the upstairs tenant's behaviour, and when the Landlord found out about the problem, they kept in contact with the Tenant all along. The leaking problem was resolved in March 2020, and the repair was finished in September 2020. The delay in the repair was due to COVID-19, only emergency repairs were being done during the lockdown. As for the Tenant or her daughter not staying in the unit, there were no specific dates given or evidence showing the unit was uninhabitable. Therefore, an abatement of rent is not warranted.
22. The Landlord's Legal Representative also submitted that, in respect of the damaged property, there were no receipts presented or pictures of the damaged property; the Tenant should be going through her own insurance for these alleged losses. In regard to the Tenant's request for an award for pain and suffering, the Tenant did not amend the application, the Landlord only found out about it at the last hearing. Therefore, this request is prejudicial to the Landlord because there was no notice and should not be allowed. For all these reasons, the Tenant's application should be dismissed.

### *Analysis*

23. This application concerns s. 20(1) of the Act which says:

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.

24. In general, a landlord will not be found liable for breaching its maintenance obligations under subsection 20(1) of the Act where the landlord responds reasonably to a maintenance problem (see *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477). If the Landlord responded to the disrepair in a timely and effective manner, then no monetary remedy will normally flow. (See the Board's Interpretation Guideline 5 Breach of Maintenance Obligations.) I believe this is because some disrepair is within the

reasonable expectation of the parties. Things break down, disrepair happens. So long as the Landlord attends to it promptly, the Tenant may not be entitled to a remedy for it.

25. Here, it is uncontested that leaking has occurred in the Tenant's unit and the water has been coming from the unit above. The leaking started prior to the limitation period in this application of January 29, 2019. Based on the Tenant's testimony, leaks occurred: January/February 2019; May 18, 2019; August 15, 2019; September 28, 2019; October 18, 2019; December 12, 2019; December 20, 2019; early February 2020; February 22, 2020; March 5, 2020; and approximately March 12, 2020. Excluding any flooding prior to the limitation period, this is a total of 11 floods in an approximate 14-month period.
26. PG testified that the plumber was called and attended five times May through December 2019 to address the issue and submitted that the Landlord acted in a timely and reasonable manner.
27. Although this can be considered timely in respect of the leaks that occurred during the period May through December 2019, the Landlord did not address the leak that occurred in January/February 2019 or four others in February and March 2020. Based on the Tenant's handling of the other floods, contacting the Landlord immediately, I find based on a balance of probabilities that she also alerted the Landlord about these floods but for some unknown reason the Landlord did not respond.
28. With respect to the leaking problem in general, I understand that the Landlord would not want to repair the hole in the ceiling until certain the leaking issue had been fixed. However, I do not find the Landlord acted reasonably by leaving the Tenant with a gaping hole in her ceiling, with drywall hanging down from it. It appears, in the pictures, that in places the drywall is hanging at least a foot down from the hole; this is unsafe and unsanitary. It is logical that the Tenant and her daughter worried about it falling on their heads.
29. I also do not accept that due to COVID-19, the repairs being done in September 2020 to be reasonable or timely. The superintendent attended the unit on March 22, 2020 to inspect the damage; this was at the beginning of the provincial lock-down. Therefore, if the Landlord could attend the unit for an inspection, I see no reason why the damages could not have been repaired during the lockdown.
30. Therefore, based on all of the above, I find the Landlord breached its obligation under section 20 of the Act and the Tenant is entitled to some remedy.

#### Remedies

31. The Tenant requested the following remedies: abatement of rent; replacement costs for damaged property; and, pain and suffering.
32. The Tenant requested a rent abatement of \$5,500.00 because for 4 months, September through December 2019 she did not live in the unit because she became ill; they lived at

her parents, but she still paid her rent and all bills associated to the unit. During this time, she had to drive her daughter across town to bring her to school.

- 33. An abatement of rent is designed to address the idea that a tenant is paying for a bundle of goods and services and if the tenant is not receiving them then the rent should be abated proportional to the difference between what is being paid for and what is being received.
- 34. With respect to quantum of abatement, the criteria the Board most commonly consider are related to the impact on the Tenant of the disrepair.
- 35. I find a reasonable abatement of the rent would be 20% of the rent charged for the relevant period, February 1, 2019, as the first leak was January/February 2019, to September 26, 2020, when the repairs were completed. This amount encompasses the Tenant not being able to have full use of the kitchen and having to live with drywall hanging and having to clean up the water during and after each flood. The total amount of the abatement comes to \$4,248.76, calculated as shown below; an order will issue for same:

February 1, 2019 through August 31, 2020 = 19 months  
 Rent \$909.00 X 20% = \$181.80  
 \$181.80 X 19 months = \$3,454.20

September 2020 rent increased to \$929.61  
 \$929.61 X 12 months in a year = \$11,155.32 ÷ 365 days/year = \$30.56 per day  
 September 1 to 26 = 26 days X \$30.56 = \$794.56

\$3,454.20 + \$794.56 = \$4,248.76

- 36. The abatement awarded is not contrary to caselaw. *Beauge v. Metcap Living Management Inc.*, [2012] O.J. No. 1052 (Div. Ct.), says it is not open to the Board to order a remedy that is not claimed in an application. Here, the Tenant claimed an abatement, I, however, did not find her analysis for it reasonable as there was no evidence presented establishing the unit as being uninhabitable. Plus the calculation used by the Tenant was inaccurate as 4 months at \$909.00 per month is \$3,636.00 not the \$5,500.00 requested. Therefore, it is only the reasoning for the award that has changed in this order.
- 37. The Tenant requested \$4,750.00 replacement costs for property damaged by the floods. The articles damaged were:
  - An electric fireplace unit that was plugged in along the wall leading to the living room was damaged in the May 2019 flood; it stopped working. It was only a few months old and cost \$1,000.00.
  - The kitchen table was water damaged by all of the floods. You can still use it, but the tabletop is destroyed. This cost \$600.00.

- The living room sofa set was damaged by all the floods; from getting wet it smelled. The Tenant could not get the smell out. It was 11-years old but had been reupholstered. It was replaced in November 2019; the cost was \$2,700.00.
- The contractors used the Tenant's new vacuum, it was still in the box, to suck up the water and drywall bits. It was \$150.00. On cross examination the Tenant testified that the vacuum had been cleaned through the insurance claim of a previous flood and is in working order now.
- Three area rugs were damaged beyond repair, the Tenant could not remove the musty water smell. One was under the kitchen table, one in the living room and the other in the basement. They were thrown out in November 2019. The replacement cost is \$300.00.

38. The Tenant testified that she did not go through the insurance company this time because she could not afford for them to raise her rates. She could also not afford to have someone come in and give an estimate on refinishing the tabletop.
39. The Tenant did not provide sufficient details, receipts, or any documentation, such as prices taken from an internet search, to support the replacement costs she is requesting for the fireplace, living room set and three area rugs. With respect to the kitchen table, the Tenant testified that the tabletop was destroyed from all the floods and needed refinishing. However, she also testified that she moved things out of the way of the dripping water to avoid damage, and the picture in evidence shows the table covered with a plastic tarp. Therefore, I am not convinced the tabletop incurred such extensive damage from the flood to require refinishing. As the vacuum was addressed outside of this application, it is a moot issue. For all of these reasons, the Tenant's request for replacement costs is denied.
40. The Tenant requested pain and suffering in the amount of \$5,000.00. The Tenant submitted this amount was fair because of all the time she missed from work due to the floods, how they had to live during the flooding, and feeling like the Landlord was not taking the issue serious; the Landlord did not treat the problem as serious, which meant they had to live with continual water leaking and the associated smell.
41. I deny the Tenant's request for pain and suffering for the reasons that follow. Abatement represents the difference between what is being paid for and what is being received. It is the usual remedy awarded in landlord and tenant matters. Damages are generally reserved for those situations where abatement fails to compensate for harm suffered by the tenant. The Tenant did not provide any medical or other impact evidence or supporting documentation about work missed to justify an award for damages.
42. This order does not address the Landlord's Legal Representative's submission that request for pain and suffering is prejudicial to the Landlord because the application was not amended to reflect a specific quantum, as the request has been denied on another basis.



43. As the Tenant was successful in her application, she is also entitled to reimbursement of the application filing fee and an order will issue for same.
44. This order contains all the reasons for the decision within it. No further reasons shall be issued.

**It is ordered that:**

1. The Landlord shall pay to the Tenant a rent abatement of \$4,248.76
2. The Landlord shall also pay the Tenant \$45.00 for the cost of filing the application.
3. The total amount the Landlord owes the Tenant is \$4,293.76.
4. The Landlord shall pay the Tenant the full amount owing by November 15, 2021.
5. If the Landlord does not pay the Tenant the full amount owing by November 15, 2021 the Landlord will owe interest. This will be simple interest calculated from November 16, 2021 at 2.00% annually on the outstanding balance.
6. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**November 4, 2021**  
**Date Issued**

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Diane Wade  
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.