



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

Citation: Ng v Medallion Corporation, 2024 ONLTB 62454

Date: 2024-08-26

File Number: LTB-T-046511-22

In the matter of: 1504, 68 BRAMALEA RD
BRAMPTON ON L6T0H2

Between: Karla Ng Tenant

And

Medallion Corporation Landlord

Karla Ng (the 'Tenant') applied for an order determining that Medallion Corporation(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 August 15, 2024.

The Landlord and the Tenant attended the hearing.

The Landlord was represented by Mr. Kevin Lundy, Barrister & Solicitor.

Determinations:

1. As explained below, the Tenant proved on a balance of probabilities the following allegations contained in the application: the floor to ceiling windows in the two bedrooms and living room of the rental unit were leaking water when it rained, and the Landlord did not act in a reasonable manner to rectify the problem in a timely way.
2. Therefore, the Landlord must pay a rent abatement to the Tenant and complete the repairs.
3. I find that the Landlord failed to meet the Landlord's obligations under subsection 20(1) of the Act to repair or maintain the rental unit and/or failed to comply with health or safety or housing or maintenance standards.

The Issues

4. At the hearing, Counsel for the Landlord, helpfully, did not dispute that the windows were leaking, based on the video evidence provided by the Tenant.
5. As a result, there were only two issues before me:

- (i) Taking a contextual approach, as set out in the case of *Onyskiw* (see below), was the Landlord in breach of their maintenance obligations under the Act or did they fail to comply with health, safety, housing or maintenance standards;
- (ii) Are there any other elements of the unit requiring repair.

The Law

6. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, the Court of Appeal held that the LTB should take a contextual approach and consider the entirety of the factual situation in determining whether there was a breach of the landlord's maintenance obligations, including whether the landlord responded to the maintenance issue reasonably in the circumstances. The court rejected the submission that a landlord is automatically in breach of its maintenance obligation as soon as an interruption in service occurs.
7. A tenant must file their application within one year of the date that the alleged breach occurred. However, where a breach is not a single event but is ongoing or recurring, as in this case where the windows leaked continuously from May 2017 to February 2024, then the breach occurs over a period of time and the one year limitation period starts from the date that the repair is completed or the standard is complied with. Since the windows were fixed in February 2024, the limitation under s. 29(2) of the Act runs for one year to February 2025. As the Tenant's application was filed on August 17, 2022, it is clearly in time.
8. Counsel argued that the any remedy ordered for a breach of s. 20, such as an abatement of rent, can only take into account the one year time period commencing one year before the application was filed up to the time of the application.
9. I disagree.
10. In my view, if an abatement is ordered in this case, since the breach started in May 2017 - which time period is out of time, the remedy must run from one year before the date of the application up to the time the issues are rectified.
11. As to the period of time over which I must consider the reasonableness of the Landlord's responses, in my view, I can have regard to the Landlord's conduct from May 2017, when the first complaint was raised, up to February 2024 – the time of the repairs, when I take the contextual approach demanded in *Onyskiw*.

Background Facts

12. The Tenant and her mother moved into the rental unit on February 1, 2015.
13. On May 5, 2017, the Tenant wrote to the Landlord's property agent Daisy Cannings, telling her that the floor to ceiling window in the living room was leaking, as were the similar type windows in the main bedroom and second bedroom.

14. The Tenant claimed that although the Landlord was generally responsive to requests for repairs, they would only provide band aid/temporary solutions and never really took the necessary remedial action, until February 2024, when the problem was finally fixed.
15. The Tenant testified that she has emails between her and the Landlord from 2017 to 2024 on the leak issue, hundreds of them, but did not file all of them. By way of example, after her email of May 17, she followed up with the Landlord on May 8, May 18, May 19, May 24, May 25 two times. There was a response from the Landlord on May 18, forwarding the emails to the head office.
16. The Tenant testified that as a solution, the Landlord did re-caulking of the windows in 2019.
17. She testified that from 2017 – 2022, the Landlord sent people to the apartment to have a look. All that was done to remedy the issue was caulking.
18. The Tenant would reach out after the heavy rain. The Landlord would then again send someone to have a look, but nothing was done.
19. The issue affected Tenant's reasonable enjoyment because they had to use towels to sop up the water after it rained. The Tenant was pregnant at the time which added to her level of stress.
20. The Tenant wanted a third party independent engineer to look at the issue and provide an independent opinion.
21. In 2020, the Tenant moved out of the unit when she married. But her mother remained in the unit. In December 2020, the Landlord indicated that the Landlord had closed their file on the Tenant's case as they thought there were no more issues with the Tenant's unit. But viewing that email in context, this email was in response to the Tenant's email about an issue with the hydro, and not the leaking issue.
22. On January 21, 2021, the Tenant raised the leaking issue again, expressing frustration at not being able to log into the portal to formally file a complaint.
23. On 28 June 2021, the Tenant sent more emails about the leaks. The spare bedroom was still leaking, after the "**window replacement**" (but the Landlord gave no evidence on this). The Tenant noted the issue had been going on for years. The Landlord replied that another water test could be done. On June 30, the Tenant noted that the master bedroom was leaking as well. By that stage, she gave up on seeking compensation. In an email of July 2021, she asked for an external party to look into the mould issue caused by the leaks. In November 2021, the Tenant asked if the Landlord would send an external water testing engineer, but the Landlord did not confirm who would be sent.
24. The Landlord's senior project engineer, Mr. Shimmy Deutsch became involved in December 2021. Ms. Cannings told him by way of email dated February 22, 2022 that an inspection would be needed of the unit, "**as she (the Tenant) has been having issues since construction**". He attended the unit in December 2021. He noticed evidence of water penetration, in both bedrooms. He noted re-caulking had been done. He had no

knowledge of what the Landlord had done prior to December 2021. He testified that leaks in winter are hard to detect. A water test would be needed, but that would not be done until spring, so that water would not freeze.

25. An infra-red scan was done of the roof above the unit by Thermaco to see where the water was coming from, in February 2022. It was then decided that water testing would be needed, but that would have to wait until spring, when the weather warmed up.
26. A quote was then received to do a blower door test. Strut Building Engineers came to the unit on June 2, 2022, to carry out their water tests. A report was produced on June 10, 2022, noting leaking primarily the living room which may have spread to the two bedrooms. The report noted that caulking had been done to cover drains slots (or weeping holes) in the windows. These drain slots were part of the original design of the windows to absorb water and to act as a conduit to drain the water. The report noted: "*water was unable to drain since the drain-slots had been sealed shut*". The report noted that the windows were not designed to block water from entering the windows, but rather, to allow water to enter the windows and be drained through the drain slots. As a result, it was recommended that no further caulking be done, but rather, that the windows be returned to their original design. The report recommended four repairs, including opening up the blocked drain-slots.
27. The Landlord thought the issue was then a construction defect in the windows. But the caulking would need to come out first to open up the drainage holes. If leaks were noted after that, then the window manufacturer AWD would need to replace the windows. There were no issues with other units leaking in the complex.
28. The Landlord's team opened the window holes in August 2022. The same month, the Tenant filed this T6 application. By September, there were issues of insect infestation and mould due to the leak damage.
29. Mr. Deutsch thought there were no leaks as of October 2022.
30. But the Tenant advised that in 2023 there were still leaks. She sent a follow up request to the portal on March 1, 2023. She did not get a reply back until March 30, to say their contractor was too busy. At this stage, the Tenant hoped the LTB would deal with the matter. Mr. Deutsch was informed of the work order for the leaks in October 2023.
31. AWD was then contacted, who said if there were still leaks after the weeping holes were opened up, then they would repair the windows. AWD came to the unit, took down the window panels, took them to their shop where they were repaired. They were re-installed in February 2024.

Analysis

(i) Was the Landlord in breach of their maintenance obligations under the Act

32. In my view, there are two periods over which to consider the Landlord's response, from May 2017 when the issue was first raised, to December 2021, when Mr. Deutsch became

involved. Then from December 2021 to February 2024 when the repairs/work was completed.

33. Between May 2017 – December 2021, more that 4.5 years had gone by. I accept the Tenant's evidence that hundreds of emails were sent on this issue. The Landlord did not contradict this evidence, and did not really offer evidence of events in 2020, though a few contemporary emails were produced. Mr. Deutsch did not get involved until December 2021. The Landlord's witness offered no evidence about what happened before December 2021 when Mr. Deutsch became involved.
34. The Landlord's act of applying caulking over the weeping holes of windows in 2019, was, in my view, negligent. Mr. Deutsch testified that although it was the common thing to do, in his view, it was wrong thing to do with these specialised windows. The engineering report sets out the design of these specialised windows which were designed to take water in and then channel it out. The management of the building, should have checked with the manufacturer before self help remedies were taken. The caulking set things back and delayed the proper repair.
35. This was not an issue beyond the Landlord's control. The Landlord knew from the Tenant exactly what the issue was in terms of where the leaking was taking place.
36. Although there is no automatic breach when something goes wrong, as per *Onyskiw*, I find that the Landlord was in breach of their obligations to repair the windows, from May 2017 up to December 2021, some 4.5 years. The Landlord was not diligent in getting to the root of the problem. There was repeated delay, procrastination and putting off of remedial action. It must be remembered that the work order in evidence, dated February 8, 2024, was for only \$900 + HST to repair the flashing. Repairing the windows cost only \$3,500 plus HST, to open the window assembly, replace some damaged panels and the flashing. Thus, there was 7 years of chasing the Landlord and raising the issues, for a \$4,400 + HST fix in 2024. Further, reading the work orders, there were just 7 steps involved in the repairs. These were not complex repairs, they were limited to the Tenant's unit, and did not justify 7 years of diagnostic work.
37. Then I must consider the period from December 2021 to February 2024.
38. I find that the Landlord was also in breach of their obligations during this period.
39. Daisy admitted in her email to Mr. Deutsch of February 22, 2022, that the leaking issue **had been going on since construction**. And yet up to that point, despite clear evidence that the windows were leaking, nothing was done besides caulking up the weeping holes.
40. As noted above, the engineer's report was from June 2022.
41. In August 2022, the Tenant sent an email to Ms. Cannings. But by then, Aida had taken over from Ms. Cannings, who had left the company. Aida replied asking what the issue was. The Tenant was discouraged that she had to start all over again with a new staff member after 4 years of chasing.

42. Counsel argued that this is really a case about latent defects, which limits the Landlord's liability to the time when the defect was discovered, which he put at June 2022, the time of the engineer's report.
43. He referred me to the case of McQuestion v. Schneider, [1975] O.J. No. 2279 (Ont. C.A.). In that case, the plaintiff occupied an apartment which was accessed by six or seven steps leading to a porch. The plaintiff wife put her right foot on the top step when the step gave way beneath her resulting in serious injuries when she fell through. Neither plaintiff nor defendant had any knowledge that the step was defective, which the trial judge found. The Court of Appeal found that s. 96(1) of the Landlord and Tenant Act, R.S.O. 1970, c. 236, similar to s. 20(1) of the Act, does not impose absolute liability upon a landlord for any injuries caused by a latent defect of which the Landlord had no knowledge.
44. In my view, this was not such a case.
45. In McQuestion, the landlord did not know the step was faulty until the accident occurred.
46. In this case, the Landlord was told, as early as May 2017, that the windows were leaking.
47. Although the precise nature of the cause of the leak was not identified until June 2022 in the engineer's report, at the very least, the Landlord knew in May 2017 that the windows were not functioning properly. As a result, they were put on notice as of that date. The reasonableness of their response must be measured from May 2017, not June 2022.
48. The Landlord's witness offered no evidence about what happened before December 2021 when he became involved.
49. As early as July 11, 2022, the Landlord was advised by the window manufacturer that the drain holes had to be cut open to allow the drainage system to work. On August 22, 2022, the weeping/drainage holes were opened.
50. On September 6, 2022, Mr. Deutsch noted they need to get AWD back to fix the windows as they had requested to have the weeping holes fixed first, which had now been done.
51. The Landlord told the Tenant by email on 25 November 2022, that after the weeping holes were re-instated, the Landlord was waiting to see if that was a fix. It was not of course in the end. I find the Landlord's approach illogical at this stage. The weeping holes were caulked to fix the original leak. There was a leak **before** they were caulked. By removing the caulking, the Landlord was just reverting to the status quo before the faulty caulking remedy. It makes no sense that removal of the caulking would be a fix as it was simple reversion to the state of the matter when the leak was first noticed.
52. As per the Landlord's email, AWD did not then respond until 11 December 2023.
53. I cannot accept that it took AWD a year and 4 months to reply. I find that the Landlord was not diligent in following up with AWD after the weeping holes were opened in August 2022.
54. On this issue of the control the Landlord had over the issue, in my view, the ball was in the Landlord's court after the issue was raised. The issues persisted, after being raised by the

Tenant in May 2017, up to the time the issues were fixed in February 2024. The Landlord was in full control of the situation because the issue had been identified by the Tenant. The Landlord could have raised the issue with the manufacturer in 2017, but instead, took matters in their own control which merely exacerbated the issue (the caulking).

55. In my view, the Tenant was entitled to a warm and dry unit.
56. But they had to live with a persistent leak from May 2017 to February 2024.
57. In my view, they did not get what they bargaining for and they are entitled to a remedy.
58. The Tenant had to use towels to mop up the water, and this was an all year round issue. There was rainfall in the spring and summer and autumn. In the winter, when the snow melted on warmer days, the issue was still there.
59. There were a few times when the Tenant was not available or when the Tenant suggested delays in testing as there has been no heavy rainfall, but these occasions were the exception and not the rule.
60. As noted in *Onyskiw*, a Landlord ought to provide for the Tenant when there is a significant reduction of services. In this case, the Landlord offered the Tenant another unit in the summer of 2021. But the Tenant's mom was elderly and did not want to move. Also, they would be moved to a less desirable unit, unlike the penthouse they were in. Their unit was a quiet corner unit, which the Landlord did not offer. In my view, unless the Landlord offered a comparable unit, this offer does not absolve them of responsibility. The Tenant was entitled to the premium unit they were paying for. Moving would also have been a hassle for the aged Tenant's mother.
61. Between 2017 – 2024, the Landlord did very little maintenance on the window. The steps they took were the wrong ones. The Tenant was the one who suffered in the end, the consequences of the Landlord's failure to take appropriate action in a timely manner.
62. When I ask whether the Landlord acted in a responsible way, I find they did not. After Daisy left, Aida was not on top of the issue, as she should have been. Nothing was really done until Mr. Deutsch came on board.
63. Other than offering a less desirable unit, the Landlord has not offered anything to the Tenant to compensate the Tenant for this tremendous inconvenience.
64. As the issue had been clearly raised by the Tenant, it was the Landlord's duty to comply and take action.
65. I see no reason why the remedial work could not have been completed the summer of 2022, after the engineering report. Although the caulking needed to be removed, as per the work order, this was completed in just one day.
66. And yet it took another one year and 10 months to complete the work.
67. This was yet another period of excessive delay in my opinion.

68. As a result, I will order an abatement of rent for the delays in repairing the windows.

(ii) Are there any other elements of the unit requiring repair

69. The next issue is the work which remains to be done.

70. Lindsay Faria was called to testify.

71. When asked what needed to be done, she said she did not know, as Aida would be the responsible person.

72. The Tenant testified as to what needed to be done.

73. The Landlord needs to hire a qualified mould specialist to inspect the unit for mould underneath flooring, inside walls and the ceiling.

74. And the Landlord needs to hire a qualified expert to replace all the rotten baseboards, casing, flooring (including carpet), walls and ceiling that were affected by the leak.

75. As the Landlord offered no evidence on this, the Tenant's evidence stands.

Remedies

76. The Tenant seeks a 30% abatement of rent from one year before her T6 application, to August 17, 2022, when her T6 was filed. The total amount is \$5,912.24. I find this reasonable in the circumstances, given the Landlord's lack of action during this period. Therefore, I find that a rent abatement of \$5,912.24 is appropriate in the circumstances. The Landlord was clearly aware of the breach before the application was filed, in accordance with subsection 30(2) of the Act.

77. The Tenant also seeks a rent abatement of 30% until the issue has been completely resolved. This would be from August 2022 to February 2024 and beyond, as the work is still not complete. Given the delays here, I will order an abatement of rent of 30% from August 2022 to February 2024, or over 20 months. But I will reduce this from \$9,853.74 to \$5,912.24, given the detailed engineering report that was done, and since the issue has been largely rectified. The total abatement will therefore be \$11,824.48.

78. I will order the Landlord to do the work set out in paras. 73 and 74 on or before October 30, 2024.

79. If the Landlord does not do the repairs or replacement by the deadline, then the Tenant is authorized to arrange to do the work and deduct the cost from the ongoing rent.

It is ordered that:

1. The Landlord shall:

- (i) hire a qualified mould specialist to inspect the unit for mould underneath flooring, inside walls and the ceiling and take remedial action, if necessary, to eliminate any mould.
- (ii) hire a qualified expert to replace all the rotten baseboards, casing, flooring (including carpet), walls and ceiling that were affected by the leak.

by October 30, 2024.

2. If the Landlord does not do the repairs by October 30, 2024, the Tenant is authorized to arrange for the repairs to be done and may recover the cost of the repairs by deducting the amount from the rent owing until there is no longer any money owing.
3. The Landlord shall also pay the Tenant is \$11,872.32. This amount represents:
 - \$5,912.16 for a rent abatement from August 18, 2021 to August 17, 2022, and \$5,912.16 for the period from August 2022 to February 2024.
 - \$48.00 for the cost of filing the application.
4. The Landlord shall pay the Tenant the full amount owing by September 6, 2024.
5. If the Landlord does not pay the Tenant the full amount owing by September 6, 2024, the Landlord will owe interest. This will be simple interest calculated from September 7, 2024 at 7.00% annually on the balance outstanding.
6. The Tenant has/have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

August 26, 2024
Date Issued

James Campbell
Member, Landlord and Tenant Board

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