



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

Citation: Wyrzykowski v IMH Pool XX LP, 2024 ONLTB 18147

Date: 2024-03-18

File Number: LTB-T-066461-22-RV

In the matter of: 321, 7230 DARCEL AVENUE
MISSISSAUGA ON L4T3T6

Between: Mark Wyrzykowski Tenant

And

IMH Pool XX LP Landlord

REVIEW ORDER

Mark Wyrzykowski (the 'Tenant') applied for an order determining that IMH Pool XX LP (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 resolved by order LTB-L-066461-22, issued on December 11, 2023.

On January 4, 2024, the Landlord requested a review of the order.

The request was heard by videoconference on March 4, 2024.

The Tenant, the Landlord's Agent Oscar Kasmi and the Landlord's Legal Representative Michelle Forrester attended the hearing.

Determinations:

The Review Request

1. The Landlord's request to review is based on the grounds of being not reasonably able to participate in the proceedings held on September 28, 2023.
2. At the review hearing, the Landlord submitted they did not receive a notice of the proceedings that took place on September 28, 2023. The Board's records show the Notice of Adjudicative Case Conference that was mailed to the Landlord was returned undelivered. The address on the mailing does not include a unit identifier.
3. The Board's records also show the Notice of Adjudicative Case Conference was email to the Oscar Kasmi on July 27, 2023. Oscar Kasmi submitted he is the property manager and not the Landlord. He also stated he did not receive this notice and explained that during

the summer of 2023, his office's email was hacked and their IT department spent some time resolving the issue.

4. The Landlord submitted they immediately took steps to request a review of the order when it came to their attention. The order was mailed to Oscar Kasmi and he provided it to the Landlord. The mailing address the order was sent to was labelled "Office" as the unit designation.
5. The Landlord submitted that had they known about the Adjudicative Case Conference they would have attended and participated in the proceedings. Their submissions were they take these matters seriously.
6. The Tenant did not cross examine the Landlord. He was opposed to the request to review and cited the age of the file and the requirement to take time away from his work to attend the hearing.
7. In *King-Winton v. Doverhold Investments Ltd.*, 2008 CanLII 60708, the Divisional Court held that "being reasonably able to participate in the proceeding must be interpreted broadly, natural justice requires no less."
8. Interpreting this situation broadly, I find that the Landlord was not reasonably able to participate in the proceedings. The notice that was mailed by the Board was returned undelivered. The email from the Board containing the notice of the Adjudicative Case Conference was sent to the Landlord's property manager and not the Landlord. I accept Mr. Kasmi's evidence that his office had significant issues with their email in the summer of 2023 that required their IT department to get involved in order to resolve the problem. On a balance of probabilities, I find it most likely the Landlord did not receive notice of the proceedings that took place on September 28, 2023.
9. Lastly, the Landlord did act swiftly in requesting a review of the order shortly after it was issued. I find this supports a finding the Landlord would have attended the Adjudicative Case Conference had they been aware of it.
10. For the reasons above, at the hearing I granted the Landlord's request for review. A hearing of the Tenant's T6 application proceeded *de novo* (anew).

De Novo Hearing

Preliminary Issues

11. At the hearing, the Landlord pointed out that Metcap and Oscar Kasmi are named as the Landlords on the T6 application as filed. They submitted IMH Pool XX LP is the Landlord. The Tenant explained he completed the application with the information he had available to him but did not dispute the submissions of the Landlord's Legal Representative on this point. Both parties agreed IMH Pool XX LP is the Landlord. Ms. Forrester was present representing the Landlord and prepared to proceed. As such, the application was amended to remove Metcap and Oscar Kasmi as the Landlords and IMH Pool XX LP was added.

12. The Landlord submitted the T6 application contained allegations that should have been the subject of a T2 application. The claims related to the repair of the balconies at the residential complex. The Tenant stated he was not raising any issues concerning the balconies and the mention of them in his application was meant to serve as background to the maintenance claims he did intend to raise. Since the Tenant was not intending to raise any issues with the balconies, I did not find there to be an issue.
13. The Landlord also raised an issue with the rent abatement being requested by the Tenant because the application states the abatement sought is for his inability to use the balconies in the rental unit. The application as filed does state this however the Tenant explained the abatement being requested was for the maintenance issues he was claiming. I pointed out to the Landlord the original order stated this. Based on this, I was not convinced the Landlord could be unaware the rent abatement being requested was related to the maintenance issues. Nevertheless, I asked the Landlord if they needed additional time to prepare and they confirmed they did not. As such the hearing proceeded.

T6 Application

14. The Tenant's T6 application concerns the incursion of water into the rental unit and the resulting damage. The application is based on the rights and obligations set out in section 20(1) of the *Residential Tenancies Act, 2006* (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.

15. In *Onyskiw v. CJM Property Management*, [2016 ONCA 477](#), the Court of Appeal determined that a contextual approach should be adopted when considering a landlord's potential breach of [subsection 20\(1\)](#) of the [Act](#) and a breach will not be found if the landlord's response to a maintenance issue was reasonable in the circumstances.
16. The rental unit is two storeys. There are two bedrooms in the upper level of the unit. One of the bedrooms has a balcony attached to it.
17. The Tenant testified that in July of 2021, the Landlord's contractor began doing work on the balconies at the residential complex. His evidence was that during this work, the contractors drilled holes into the concrete ceiling above the bedroom that has a balcony.
18. The Tenant's evidence was that because of these holes in the ceiling, on August 30, 2021, water began entering the rental unit. He testified water again entered the unit on September 7, 2021. When the water entered, it ran down the walls into the closet and den below the bedroom.
19. The Tenant submitted photographs showing the damage to the ceiling. The photographs also show standing water and flooring that had buckled. The Tenant estimated the water was 1 and a quarter inch deep at the time of the incidents. He testified he notified the Landlord of the issue immediately after each event occurred. The Tenant's evidence was

the Landlord came to inspect the damage but nothing was done until the damage was repaired in August of 2022.

20. The Tenant testified the Landlord did not address the problem and the bedroom started to smell quite badly. His evidence was he had to move everything downstairs in the unit because the bedroom was not useable. He also testified his bed was in the den where the water ended up and as a result of the water leaking into this area he had to live in the living room. The Tenant stated the Landlord suggested he sleep in the hallway.
21. The Tenant testified that some of his property was damaged when water entered the unit on August 30, 2021 and September 7, 2021. The damaged items were a vintage video game system, two framing guns, a bed frame, a table, three batteries for his tools, chargers for the batteries and sweater that belonged to the Tenant's late father. He valued these items at \$4,000.00.
22. The Landlord did not dispute the incursion of water into the rental unit or that the Tenant notified them of the problem. The Landlord also did not dispute damage to the rental unit occurred as a result.
23. The Landlord submitted emails showing the site's project manager attended the residential complex with their contractor to assess the leaks and determine accountability. The email to Oscar Kasmi, dated September 14, 2021 states "it cannot be conclusively said whether the damage was related to the ongoing construction (to the balconies) or not" The email goes on to say there was evidence of mould that suggests the issue predates the work of the balcony contractor, however it also acknowledges the contractor's work may have made the issue worse. Lastly, the email states a sealant will be applied to the unit to reduce any further risk. It is clear from this email and others submitted by the Landlord, that several units were affected in addition to the Tenant's.
24. The Landlord's property manager, Oscar Kasmi, testified there were two distinct issues that had to be resolved. The first was exterior work to prevent further incidents of water entering the rental unit. Mr. Kasmi stated the unit was inspected on August 30, 2021 and scoped on September 7, 2021 and the exterior work was completed by September 14, 2021.
25. The second issue to resolve was the damage to the interior of the unit. The interior work involved mould remediation and repairs to the drywall. Mr. Kasmi testified that the exterior work was done by September 14, 2021 however the repairs to the interior were not completed until July of 2022, 11 months after the problems were reported to the Landlord.
26. Mr. Kasmi testified the delay in repairing the rental unit was caused by the Tenant's refusal to allow entry into the unit. His evidence was the Tenant had refused entry a few times, the last time being in October of 2021. Mr. Kasmi was unable to provide specific dates for when repairs were attempted by the Landlord.
27. Mr. Kasmi also testified the Tenant had changed the locks to the rental unit in April of 2022 and the Landlord was not provided a key to the new locking system. The Landlord submitted a letter into evidence written by Mr. Kasmi to the Tenant on April 26, 2022. The

letter states himself and two team members attended the unit on April 22, 2022 advising the Tenant they were not able to enter because the locking system had been changed. The letter goes on to request the Tenant provide the Landlord with a key to the unit by April 29, 2022.

28. In May of 2022, the Landlord changed the doors to all of the units in the complex and this restored access to the rental unit.
29. Mr. Kasmi's evidence was the City of Mississauga issued an order requiring that the repairs be done at which point the Tenant provided access to the unit. His evidence was the repairs were completed within two weeks of being given access.
30. The Tenant disputed he ever denied access to the rental unit although acknowledged that someone else may have.
31. The acting resident manager at the time, Kaneez Fatima, testified she was aware of the Tenant's complaints about water leaking into the unit. She stated she scheduled an inspection of the unit with a contractor. She did not recall when this occurred but that it was shortly after the Tenant's complaint was received. Her evidence was the unit could not be inspected because the Tenant would not allow them inside. She stated the Tenant was yelling and chased her and the contractor to the elevator making a scene in the hallway.
32. Ms. Fatima stated the Tenant refused entry to the unit multiple times but provided no specific dates as to when this was. The Landlord submitted emails showing she advised the customer service department that the Tenant's had refused entry to the unit. This email is dated November 28, 2021.

Analysis

33. Based on the evidence presented, I find it most likely the incursion of water into the rental unit was caused by the work being done to the balconies by the Landlord's contractor. The email from the site's project manager does not exclude this possibility and at the very least acknowledges the work being done had made issues worse.
34. No evidence was presented that convinced me an otherwise dry unit could begin taking in significant water without a preceding event causing this. I find it far more likely the contractors caused the problem than it having occurred spontaneously. I also find the necessity for repairs to the exterior support a finding the exterior of the building was damaged by the Landlord's contractors.
35. I am also not convinced the Landlord repaired the resulting damage within a reasonable period of time. The Landlord was concerned with mould and damaged drywall. The Tenant was concerned with the smell the conditions created. It took until July of 2022 to repair the damage which is 11 months after the first incursion of water.

36. I am satisfied the Tenant did contribute to some of this delay by changing the locks. This period of time, based on the Landlord's evidence, took about one month to rectify since they changed the doors in May of 2022.
37. It was clear from the evidence the Landlord was permitted into the unit after the water entered. Mr. Kasmi did an inspection with a contractor on August 30, 2021 and the unit was scoped for damage on September 7, 2021. The Landlord knew what needed to be done to repair the unit and, in my view, could not have this information without being inside the unit.
38. The Landlord's evidence amounted to generalized statements and estimates of how frequently the Tenant denied them access to the rental unit. I did not find these undated statements of "a few times" to be convincing evidence the Landlord did all they could. The Landlord has options to enter a rental unit and failing to exercise their right of entry to ensure they comply with their maintenance obligations falls on them.
39. For these reasons, I am convinced on a balance of probabilities the Landlord has breached section 20 of the Act by failing to ensure the repairs required to the unit were completed in a reasonable period of time.
40. I find the Landlord had 9 months to address the damage. I say this because I am deducting the month in which the Tenant changed the locking system without providing the Landlord a replacement key. I am also not considering the month of September 2021 since the problem had just begun and a Landlord cannot be expected to have an issue resolved immediately.

Remedies

41. The Tenant requested a rent abatement in the amount of \$724.00. The Tenant is seeking an abatement of rent because of the smell in the unit and his inability to use the entire unit. Abatement of rent is a contractual remedy based on the principle that if you are paying 100% of the rent then you should be getting 100% of what you are paying for and if you are not getting that, then a tenant should be entitled to abatement equal to the difference in value.
42. At the time the application was filed, the monthly rent was \$1,449.00. The abatement being sought amounts to \$80.44 for each of the nine months I have found the Landlord failed to address the damage to the unit. This is less than 6% of the monthly rent paid for these 9 months and I find this amount is reasonable and it will be ordered.
43. The Tenant also sought \$4,000.00 for the cost of replacing his property that was damaged by the incursion of water into the rental unit. The Tenant submitted photographs of the unit showing a number of belongings contained within it. I was unable to observe the property claimed by the Tenant in the photos he submitted. The Tenant did not submit any specific evidence showing he previously owned any of the items he wanted to be reimbursed for.
44. The Landlord asked the Tenant if repair was considered for any of the items and the Tenant responded that no attempt was made to repair the items and he threw them away.

In my view, prior to disposing of these items, the Tenant could have taken photographs of them showing he owned them and that they were in such a condition that they needed to be thrown away.

- 45. The Tenant supported his valuation of \$4,000.00 by a combination of his personal knowledge of the cost of things and his perusal of websites and stores. The Tenant submitted absolutely no evidence in the form of an estimate, receipt, website screen shot or any other evidence that would support the amount being requested by the Tenant.
- 46. Based on the lack of any supporting evidence I am not convinced the Tenant has proven on a balance of probabilities the property claimed for reimbursement was damaged or that he has proven the value of it is \$4,000.00. In the absence of any evidence showing the Tenant had these items in the unit, that they were damaged beyond repair and nothing showing the value of these items, this remedy is denied. In my view, all of this substantiating evidence was easily available to the Tenant and yet none of it was presented.

It is ordered that:

- 1. The Landlord’s request to review order LTB-L-066461-22, issued on December 11, 2023, is granted.
- 2. Order LTB-L-066461-22, issued on December 11, 2023 is cancelled and replaced by the following:
- 3. The Landlord shall pay the Tenant is \$777.00. This amount represents:
 - \$724.00 for a rent abatement.
 - \$53.00 for the cost of filing the application.
- 4. The Landlord shall pay the Tenant the full amount owing by March 29, 2024.
- 5. If the Landlord does not pay the Tenant the full amount owing by March 29, 2024, the Landlord will owe interest. This will be simple interest calculated from March 30, 2024 at 7.00% annually on the balance outstanding.
- 6. If the Landlord does not pay the Tenant the full amount owing by March 29, 2024, the Tenant may recover this amount by deducting the amount from the rent owing until there is no longer any money owing.
- 7. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

2024 ONL TB 18147 (CanLII)

March 18, 2024
Date Issued

John Cashmore
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

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

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