



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

**Citation:** Lokuwaduge v Wang, 2023 ONLTB 77094

**Date:** 2023-11-23 **File Number:** LTB-T-077044-  
22(SWT-39457-19)

**In the matter of:** 538 Lilith Street  
Ottawa Ontario K2J6M1

**Between:** Saman Kumara Alwis Lokuwaduge Tenant

**And**

Demin Wang Landlord

Saman Kumara Alwis Lokuwaduge (the 'Tenant') applied for an order determining that Demin Wang (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 Tenant also applied for an order determining that the Landlord substantially interfered with the Tenant's reasonable enjoyment of the rental unit. (T2 application)

These applications were heard together by videoconference on August 9, 2021. The Landlord and the Tenant attended the hearing. Charindu Lokuwaduge represented the Tenant at the hearing.

The Landlord and the Tenant's representative, Charindu Lokuwaduge< attended the October 7, 2022 hearing.

The application was amended to remove the name of Charindu Keshala Alwis Lokuwaduge as a Tenant.

**Determinations:**

1. The allegations in the T2 and the T6 applications are based on the same facts, and the Tenant requests identical remedies in both applications.
2. In their T6 application the Tenant alleges that the Landlord took an excessive amount of time to repair damage due to a flood in the Tenant's unit.
3. In their T2 application, the Tenant alleges that the Landlord substantially interfered with the Tenant's reasonable enjoyment of the rental unit in connection to the delay in repairs, and the end of the tenancy.
4. The Tenant sought remedies for out-of-pocket expenses, which will be considered under the T6 application, and a rent abatement for the increase in rent at the Tenant's new unit, which will be considered under the T2 application.

### *The Facts*

5. The Tenant entered a rental agreement with the Landlord on January 1, 2019. The unit is a new row house and the Tenant and his family were the first occupants of the rental unit.
6. The rent was \$1,690.00.
7. The Landlord's main point of contact with the Tenant was the Tenant's son, Charindu Lokuwaduge (CL), who represented the Tenant at the hearing. The Landlord and the Tenant submitted email and text correspondence in support of their testimony.
8. It is not disputed that there was a flood on the property on August 9, 2019, which caused extensive damage to the basement, main floor, and basement of the property. The Tenant and his family moved out of the unit while it was to be repaired. On August 16, 2019, the Landlord arranged for the builder's employees to conduct repairs to the property. It was discovered that there was a more substantial problem than anticipated and significant repairs were required to the plumbing and all three floors of the rental unit. The Landlord informed the Tenant that the repairs would take about 3 months.
9. CL contacted the Landlord because his mother was concerned that the Tenant's belongings were in the house, and the builder's contractors had used their towels to clean up after the flood, had not covered their belongings to protect them from dust, had left the windows open, and had left a toilet seat on the bed in the master bedroom. The Landlord contacted the builder, and gave CL contact information to follow up if required.
10. The Landlord testified that he had encouraged the Tenant to find another place to live, as the house was not fit for habitation and the repairs would take some time. The Landlord made repeated offers of compensation if the Tenant would move out of the house in the

fall. CL replied that the Tenant and his family wanted to return to the house when the repairs were complete.

11. It is not disputed that at some point in September, 2019, the Landlord offered the use of another of his properties for the Tenant to use. CL testified that the property in question was too far from his brother's school, and as the family had recently arrived as refugees, they were concerned about moving his brother to another school, just as he had been becoming adjusted to life in their new home and was making friends. CL had understood that the Landlord had offered to allow the family to stay with him, while the Landlord testified that it was a vacant house he had recently moved from.
12. On October 23, 2019, the Landlord informed CL that his insurance company had engaged contractors to conduct the major repairs, and that all of the Tenant and his family's belongings would have to be removed from the house for the repairs. The Landlord followed up with CL on November 18, 2019, informing CL that the repairs would begin on November 27, 2019. The Tenant did not remove their belongings at that time.
13. On November 29, 2019, the Landlord's legal counsel sent a letter to the Tenant, informing him that the Tenant was required to remove all of their belongings from the unit by December 6, 2019, and requested that the Tenant sign an N11 Agreement to End the Tenancy as of December 14, 2019.
14. The Tenant did not sign the N11 Agreement and asked for an extension to December 14, 2019 to remove their belongings. The Landlord agreed to the extension on the condition that the Tenant agree to terminate the tenancy. The Tenant removed most of their belongings on December 14, 2019, but left some furniture and landscaping equipment in the garage. The Tenant did not agree to end the tenancy.
15. The Landlord testified that he had decided to terminate the tenancy because his relationship with the Tenant had deteriorated, because the Tenant's had caused a delay in the start of the repairs by failing to remove their belongings by the November 27, 2019 start date, and the Tenant and CL were contacting him too frequently. The Landlord also noted that the Tenants had removed their belongings from the unit, which the Tenant had done at the Landlord's request. The Landlord did not apply to the Board for an order to terminate the tenancy, and the Tenant had not agreed to end the tenancy.
16. The Tenant secured a new apartment for the beginning of January, 2020, and returned the key to the Landlord on January 12, 2020. The Landlord informed the Tenant on February 9, 2020 that the repairs would be complete on February 21, 2020, and asked the Tenant to collect the remaining items from the garage by February 23, 2020, and returned the Tenant's last month rent deposit at that time.

**T6 application**

*Flood*

17. 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.
18. In the present case, based on the evidence before me, I find, on a balance of probabilities that there was a maintenance and repair problem in the rental unit. The Landlord was constrained in his ability to begin major repairs more quickly as a result of a requirement to deal with the builder and insurance companies before the repair could begin, and the Tenant's contributed to the delay by failing to move their belongings out of the rental unit by November 27, 2019. Therefore, I am satisfied that the Landlord's actions with respect to the timeliness of the repair were reasonable under the circumstances.
19. The Landlord provided the Tenant with a 100% rent abatement, by not collecting any rent for the period from August 9, 2019, until the Tenant gave vacant possession of the unit to the Landlord.

*Out-of-pocket expenses*

20. The Tenant sought reimbursement for out-of-pocket expenses they incurred while the unit was not fit for habitation in the amount of \$13,521.48, which costs they incurred in excess of a tenants' insurance payout of \$12,000.00 for hotels between August 9, 2019 and October 9, 2019.
21. The Tenant claims amounts for airbnb's and a stay in a house after August 9 during the period during which the unit was uninhabitable. To award this would be double recovery. As noted above, the Tenant did not pay rent after August 9, 2019, and therefore has already been awarded a remedy, for not having use of the unit during the time that the unit was uninhabitable.
22. The Tenant claimed \$2,750.00 to replace items because of the actions of the Landlord's contractors, including: linens which came in contact with the toilet seat, towels which were used to clean up after the flood, clothing, and non-perishable food items which were stored in the basement bathroom. Although, I heard testimony that the Tenant's wife was particularly concerned about the potential contamination of the items, the Tenant did not provide sufficient detail as to why the items could not be cleaned or laundered, and did not provide a detailed list of items or any receipts. Therefore, I have insufficient information to award the Tenant reimbursement for the cost of these items.

23. The Tenant also claimed \$7,200.00 for food \$1,500.00 for gas. The Tenant did not provide receipts to prove these costs, and I do not have sufficient information to determine whether these were costs which were related to the maintenance issue, and not costs that would have been incurred in the normal course.

24. Therefore, the Tenant's T6 application must be dismissed.

## **T2 application**

### *Repairs*

25. I found above that the Landlord's actions with respect to the timing of the repairs were reasonable under the circumstances. Therefore, I cannot find that the Landlord substantially interfered with the Tenant by causing an undue delay to the repairs.

### *Termination of tenancy*

26. As noted above, the Landlord did not seek a board order to evict the Tenant. The Tenant had a valid lease and was entitled to move back into the rental unit once the repairs were complete. The Tenant had notified the Landlord of their intention to stay in the rental unit.

27. However, the Landlord testified that he intended to terminate the tenancy and would not allow the Tenant to move back in, and the Landlord had repeatedly requested that the Tenant agree to a termination of the tenancy. CL testified that the Tenant understood that they would not be allowed to move back in, and found another unit in the neighbourhood.

28. Therefore, based on the evidence before me, including the Landlord's own testimony, I find, on a balance of probabilities, that the Landlord substantially interfered with the Tenant's reasonable enjoyment of the rental unit, and that the Tenant moved out because of the interference.

29. The Tenant testified that he could only find a suitable, comparable unit at a rent of \$2,200.00 for a similar sized house in the area. The Tenant requested an abatement in the amount of one month's rent differential of \$510.00, which I have determined to be appropriate under the circumstances.

30. The Tenant incurred an application filing fee of \$50.00 and the Tenant is entitled to reimbursement of this cost.

31. The total amount owing to the Tenant is \$560.00.

**It is ordered that:**

1. The Landlord shall pay to the Tenant \$560.00.
2. The Landlord shall pay the Tenant the full amount owing by December 3, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by December 3, 2023, the Landlord will owe interest. This will be simple interest calculated from December 4, 2023 at 7.00% annually on the balance outstanding.
4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**November 23, 2023**  
**Issued**

\_\_\_\_\_ **Date**

**Kathleen Wells**

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.