



## **Order under Section 69 Residential Tenancies Act, 2006**

**Citation:** Chow v Murray, 2023 ONLTB 66046

**Date:** 2023-10-04

**File Number:** LTB-L-049266-22

**In the matter of:** 214 MCANULTY BLVD  
HAMILTON ON L8H3J1

**Between:** Anita Chow and Sunny Leung Landlord

**And**

Trevor Murray and Nicole Murray Tenant

Anita Chow and Sunny Leung (the 'Landlord') applied for an order to terminate the tenancy and evict Trevor Murray and Nicole Murray (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also applied for an order to terminate the tenancy and evict Yucheng Mao (the 'Tenant') because the Tenant has been persistently late in paying the Tenant's rent (L2 Application).

Both these applications were heard by videoconference on September 20, 2023 at 09:00 am

The Landlord Representative Pui sze (Cynthia Cheung) the Landlords and the Tenants attended the hearing.

**Determinations:**

L1 Application

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. As of the hearing date, the Tenant was still in possession of the rental unit.

3. The lawful rent is \$1,900.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$62.47. This amount is calculated as follows: \$1,900.00 x 12, divided by 365 days.
5. The Tenant has paid \$16,700.00 to the Landlord since the application was filed.
6. The rent arrears owing to September 30, 2023 are \$9,900.00.
7. The Tenant Nicole Murray didn't dispute arrears of \$9,900.00. It was her position that the Tenants were owed an abatement of rent because of the maintenance issues addressed below.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$1,900.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
10. Interest on the rent deposit, in the amount of \$100.49 is owing to the Tenant for the period from February 1, 2021 to September 20, 2023.

### L2 Application

11. On August 4, 2022, the Landlord gave the Tenant an N8 notice of termination deemed served on the same date. The notice of termination alleges the Tenant failed to pay their rent in full or on time from April 1, 2021 until May 1, 2022.
12. The Landlord Representative also submitted that following service of the N8 notice the Tenants failed to make any payments towards the rent for the period of June to August 2022 resulting in further arrears.
13. The Tenant Nicole Murray didn't dispute the late payments. As discussed below, it was her position that the Tenants were owed an abatement of rent because of the maintenance issues addressed below.

### Section 82 Issues

14. The Tenant raised several maintenance issues pursuant to section 82 of the *Residential Tenancies Act, 2006* ("Act").

#### Sewage backup

15. The Tenant Nicole Murray testified that upon moving into the rental property on February 1, 2021, they noticed sewage backing up in the basement. After the notifies the Landlord, sent Reliance Plumbing within a week to clean the pipes. However, this problem would persist despite several visits by Reliance over the course of the last two years, with the last visit being in July 2023. This forced the Tenants to notify the City of Hamilton who ordered the Landlord to fix the issue. This was supported by emails between the Landlord and City of Hamilton entered in evidence.
16. The Landlord Sunny Leung didn't dispute the Tenants testimony, testifying that he had contracted Reliance for continued plumbing service upon purchasing the property and had provided the Tenants with the contact information, leaving it to them to deal with Reliance directly. This was supported by the contract and a report of 4 service calls between February and December 2021 entered in evidence. He further testified that it was his understanding the issue had been rectified as of March 23, 2023, based on a text message from the Tenants entered in evidence.
17. He also testified that due to the ongoing nature of the issue, prior to receiving the order from the City of Hamilton, he had already engaged Reliance in determining the root cause and developing an effective and lasting solution. However, the repairs recommended cost \$29,000.00 and due to the Tenants failure to pay rent he was required to secure a financing plan through Reliance which took additional time. This was supported by emails between the Landlord, Reliance and the City of Hamilton confirming the request for financing began on August 13 and was secured August 30, 2023.

#### Mould

18. The Tenant testified that on October 27, 2021, they informed the Landlord of mould in the basement to which the Landlord responded by having "Mould Buster" coming to inspect within a week. Following that assessment, they were forced to stay in a hotel for 3 days. They also testified that they believe the issue will reoccur as the Landlord had not addressed the underlying issue, referring to the report from Mould Busters, entered in evidence, where it indicated there was evidence of water intrusion.
19. In response the Landlord testified that Mould Busters conducted their assessment on November 4, that he had paid for the hotel stay, entering the receipt into evidence, and that the remediation was complete as of December 20, 2021. As to the evidence of water intrusion he testified that he hadn't done anything yet to resolve it besides getting quotes.

#### Leak in roof

20. The Tenants testified that on September 1, 2022, they noticed that there was a leak in the bedroom ceiling and upon investigating determined the roof was in disrepair as determined by the Tenant Trevor Murray, a retired roofer. They called to inform the Landlord and then, having not received word, sent an email on October 14, 2022, advising the Landlord that the Tenant Trevor Murray could complete the repairs and would only charge cost of

materials. The Landlord refused this offer, forcing them to include the issue as part of their complaint to the City of Hamilton in July 2023.

21. In response the Landlord testified to not being aware of any leak until the city of Hamilton order. It was his position that the roof was indeed in need of repair, but the Tenants never informed him of the leak and that his refusal was due to his desire to hire a licensed and insured contractor to fix the roof and he had sought out quotes to do so when the weather was better. This was supported by emails between the Landlord and Tenant Nicole Murray dated May 2, 2023.

### Remedies

22. The totality of the remedies sought by the Tenants is \$13,110.00 broken down as follows:
- a. Sewage back-up 15% rent abatement for the entirety of the tenancy or \$8,835.00;
  - b. Mould in basement -15% rent abatement for October to December 2022 or \$855.00; and
  - c. Leak in roof -15% rent abatement for September 2022 to September 2023 or \$3,420.00

### Analysis

23. Section 20(1) of the Act provides that the Landlord is responsible maintaining and repairing the rental unit:

**20 (1)** 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 *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, the Court of Appeal held that it is necessary to take a contextual approach to determining whether a landlord has breached its maintenance obligations under section 20(1) of the Act and a landlord will not be found liable for such a breach if the landlord responded to the maintenance issue reasonably in the circumstances.

25. Applying this test to the circumstances here, I am satisfied that the Tenant has proven that the Landlords failed to maintain the rental unit in a good state of repair. More specifically, the Landlord did not address the following items in a timely or adequate manner despite the repeated occurrences.

- a. Sewage back-up; and
- b. Leak in roof.

26. The testimony and evidence before me clearly establish that the Landlord was aware of an ongoing issue with sewage backing up into the basement. By his own testimony, he admitted that all efforts had failed to provide a lasting solution. I accept that he contracted plumbing repair through Reliance, however maintenance is ultimately a Landlord responsibility pursuant to s. 20 of the Act. Furthermore, I cannot overlook the length of time this issue has been ongoing nor that it took an order from the City of Hamilton for him to find an effective solution. Specifically, the emails between himself, Reliance, the City of Hamilton and his insurance company clearly show he didn't actively seek financing until after July 27, 2023, and receipt of the City Order contrary to his own testimony.
27. As to the roof, again I cannot overlook the time from which the Landlord was made aware of an issue, and to when he acted. Regardless of whether or not the Tenants explicitly stated there was a leak its clear by the email correspondence that as of Oct 14, 2022 the Landlord was aware of issues with the roof. Furthermore, although I can accept wanting to engage a licensed and insured contractor and not the Tenant, and the desire to wait for better weather I cannot accept that the issue is still ongoing and took an order from the city to be addressed.
28. That said, regarding the mould, I am satisfied that the Landlords actions were reasonable and given the time that has passed without incident effective. Further, the Tenants led no evidence to the contrary.
29. Based on the determinations above, including consideration of the impact of the Landlord's breaches upon the Tenant's ability to use and enjoy the rental unit, I am satisfied that the Tenants are entitled to the following remedies:
- a. An abatement of rent equal to 15% of the rent payable during the period of February 2021, to February 2022 (\$3,420.00) due to the Landlord's failure to address the sewage back-up. I'm capping the abatement period at a year as that would have been the maximum period in which the Tenants could have claimed if they had brought forth their own application. As noted above I am satisfied that the Tenant's ability to enjoy the full use of the rental unit, particularly the basement was significantly impaired by the Landlord's failure to address the maintenance issues in a timely and efficient manner.
  - b. An abatement of rent equal to 15% of the rent payable during the period of June to September 2023 (\$1,140.00) due to the Landlord's failure to address the roof. As noted above I am accepting of the Landlord's desire to engage a licensed contractor and wait for good weather, however I am not accepting of the fact that the entire summer 2023 has passed without it being addressed.

Relief from eviction

30. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to grant relief from eviction pursuant to subsection 83(1)(a) of the Act.
31. Specifically, given the Landlord's breach of their maintenance responsibilities, as noted above, I'm satisfied that the Landlord has not proven a case for eviction.

**It is ordered that:**

1. The Tenants shall pay to the Landlords \$5,340.00. This amount consists of the rent owing by the Tenants for the period up to September 30, 2023 plus the filing fee, less the following amount the Landlords owe the Tenants:
  - \$3,420.00 for failure to address the sewage back -up; and
  - \$1,140.00 for failure to address the issue of the roof.
2. If the Tenants do not pay the Landlords the full amount owing on or before October 15, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 16, 2023 at 6.00% annually on the balance outstanding.

**October 4, 2023**

**Date Issued**

\_\_\_\_\_ Kelly Delaney

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.