



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

**Citation:** Moore v Ojisua, 2023 ONLTB 45676

**Date:** 2023-09-12 **File Number:**  
LTB-T-031764-22-RV

**In the matter of:** 287 Parkdale Avenue North  
Hamilton Ontario L8H5X6

**Between:** Tiffany Moore Tenant  
Wallace Moore

**And**

Mafu Ojisua Landlord

### Review Order

Tiffany Moore and Wallace Moore (the 'Tenants') applied for an order determining that Mafu Ojisua (the "Landlord") has substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of the Tenants' household; harassed, obstructed, coerced, threatened or interfered with the Tenants and withheld or interfered with their vital services or care services and meals in a care home (T2 Application).

The Tenants also applied for an order determining that the Landlord has 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)

This combined application was resolved by order LTB-T-031764-22 issued on February 7, 2023.

On February 7, 2023, the Landlord requested a review of the order and that the order be stayed until the request to review the order is resolved.

On February 9, 2023, interim order LTB-T-031764-22-RV-IN was issued, staying the order issued on February 7, 2023.

The Landlord's request to review was heard on March 7, 2023 and on May 5, 2023



On May 16, 2023, the Board issued an order granting the Landlord's request to review, cancelling the order LTB-T-031764-22 issued on February 7, 2023, and ordering that the Tenants' application be heard de novo.

The Tenants' application was heard de novo by tele/videoconference on June 14, 2023.

The Landlord and the Tenant, Tiffany Moore, attended the hearing. Tiffany Moore attended the hearing on behalf of both Tenants. She will be referred to as the Tenant singular in this order.

### **Preliminary Issue:**

1. The Tenant wished to rely on evidence that she had filed with the Board on June 12, 2023, that is two days before the hearing. This evidence was not filed with the Board and disclosed to the Landlord in accordance with Rule 19 of the Board's Rules, that is, at least 7 days before the hearing. This evidence included photographs of the rental unit allegedly taken during renovations of the rental unit in 2022 and a "Request for Property Standards Voluntary Compliance" issued on May 6, 2022.
2. This was the fourth attendance of the Tenant at the Board with respect to this application. The first hearing was on January 12, 2023. The Tenant provided no reasonable explanation as to why she did not disclose this evidence to the Landlord and to the Board in compliance with the Rules. As such, I did not accept the Tenant's photographic and documentary evidence not properly disclosed; however the Tenant referred to this evidence in her oral testimony, and relied on photographic evidence filed with the application on December 2, 2021.

### **Determinations:**

3. The rental unit is 3-bedroom bungalow.
4. The Tenants moved into the rental unit on September 28, 2019, and vacated the rental unit on or about August 30, 2022, pursuant to an eviction order SOL- 2735-22-SA issued on August 16, 2022.
5. The Tenants' T6 and T2 applications are based on essentially the same facts.
6. Section 29(2) of the Act governs tenants' T6 and T2 applications with respect to maintenance and tenants' rights. Section 29(2) states that no application may be made under this provision more than one year after the day the alleged conduct giving rise to the application occurred. In *Toronto Community Housing Corp. v. Vlahovich*, [2010] O.J. No. 1463, the Divisional Court held that a remedy cannot go back further than the one-year limitation period in subsection 29(2).



7. Since the Tenants filed their T2 and T6 applications on December 2, 2021, only issues that were in existence on December 2, 2020 may be considered in this application and remedies may be awarded as far back as December 2, 2020.
8. The Tenants raised the following issues:

Tenants' Evidence:

Hole in the bathroom floor:

9. The Tenant testified that on September 28, 2019, when the Tenants moved into the rental unit, there was a hole in the bathroom floor approximately 4 inches wide. The hole grew to the size of a basketball over time. The Tenant testified that her husband's foot went through the washroom floor. The Tenants informed the Landlord of the problem, the Landlord responded that he would have somebody come to the rental unit and address this issue. The Tenant claimed that the Landlord did not address the issue.
10. The Tenant further claimed that this disrepair issue impacted the Tenants as they were afraid the bathtub would fall through the floor due to the wood rot and they were concerned for their safety.

Heat:

11. According to the Tenant, the heat issue was resolved in December 2019, that is before the period that may be considered in this application. Thereafter, there was no evidence that there was insufficient heat during the relevant period.

Stove-top:

12. Tenant purchased a stove for \$200.00 in October 2020; however, she did not claim a remedy because, according to the Tenant, she lost the receipt.

Driveway:

13. The Tenant submitted that there were chunks coming off the driveway, which made shovelling difficult, and the Tenants could not use the snow blower. Moreover, it was a trip hazard. According to the Tenant, they informed the Landlord in June 2020 and nothing was done. The Tenants did provide photographs of the driveway in the application. The photographs showed unevenness and cracks in the driveway.

Basement flooding:



14. According to the Tenant, a flood occurred in the basement in October 2019. This occurred before December 2, 2020, that is, before the relevant period as set out by subsection 29(2) of the Act. According to the Tenant, some flooding occurred thereafter, during the relevant period, when it rained heavily; however, the Tenant could not provide any specific dates. The Tenant further submitted that there was not much heavy rain during the relevant period.

Washing Machine:

15. The Tenant stated that the washing machine shook violently when in use, and it eventually broke. As such, the Tenant washed the laundry at a laundromat or at a friend's house. The Tenant could not provide a specific date when the machine broke. The Tenant said it broke maybe in February or March 2020, or 2021, after the application was filed. The application, however, was filed on December 2, 2021, and the break down of the washing machine was not set out in the application.

Dishwasher:

16. There was a dishwasher in the rental unit when the Tenants moved in; however, it was not working. The Tenant said she had informed the Landlord on the move-in date, but the Landlord did not fix it. The Tenant used it for storage only. The Tenant did not bring it up with the Landlord later, because she was not too concerned about not having the dishwasher and did not want to bother the Landlord with "trivial things".

Toilet:

17. According to the Tenant, in the summer of 2021, the water tank in the toilet failed to fill up. The Tenant did not inform the Landlord, but, according to the Tenant, the Landlord should have known, because during an inspection of the rental unit, the Landlord noticed the lid was off the toilet, inquired about it and then walked away. The Tenants had to use a bucket to fill the tank. The toilet was replaced in May 2022.

The Landlord's evidence:

18. The Landlord denied all of the Tenant's allegations. According to the Landlord, all the damage in the rental unit was caused by the Tenants. The Landlord supported his testimony with photographic and video evidence and also with an order of the Board SOL-27350-22-SA issued on August 16, 2022. In that order the Board found that the Tenants caused extensive damage to the rental unit.



19. The photographic evidence presented by the Landlord showed an immaculate rental unit before it was rented to the Tenants in September 2019, and significantly damaged unit at the end of the tenancy in August 2022. It took the Landlord \$26,000.00 to repair the damage to the rental unit.
20. The Tenants' position was that the photographs of the alleged damage to the kitchen were taken during the renovation of the kitchen, which was ordered by the Property Standards inspector. However, the photographs provided by the Landlord did not show only damage to the kitchen, but also damage to the whole house. Moreover, the photographs of the damage taken by the Landlord appear to have been taken before any renovations commenced.

**Conclusion:**

21. On an application to the Board, the person who alleges that a particular event occurred has the burden of proof to establish that it is more likely than not that their version of events is true. In this case, the burden of proof rests on the Tenants to establish that the Landlord was in breach of his obligations to maintain the rental unit under the Act and that the Landlord's failure to maintain substantially interfered with reasonable enjoyment of the rental unit by the Tenants, the Landlord harassed the Tenants and interfered with the supply of vital services.
22. For the most part, the Tenant could not recall the specific dates of the alleged incidents, or when the Tenants informed the Landlord of them. When asked why she could not recall the dates, the Tenant answered that the legal clinic drafted the application and as such she could not recall the dates of the alleged incidents.
23. The Landlord stated that he had communicated with the Tenant by text and email. However, the only text messages between the parties submitted into evidence were messages about the Tenants' failure to maintain the outside of the premises and keep it in a reasonable states of cleanliness.
24. As the Tenant's testimony was vague and shifty at times, the Tenants could not recall specific dates, and the Tenant failed to provide sufficient corroborating evidence, or any witnesses to support her testimony, I find that the Tenant led insufficient evidence to establish that the Landlord has substantially interfered with the reasonable enjoyment of the rental unit the Landlord harassed, obstructed, coerced, threatened or interfered with the Tenants, the Landlord withheld or deliberately interfered with the reasonable supply of a vital service, and that the Landlord failed to meet the Landlord's maintenance obligations under the Act or failed to comply with health, safety, housing, or maintenance standards.
25. As a result, the Tenants' application must be dismissed.

**It is ordered that:**



1. Order LTB-T-031764-22 issued on February 7, 2023, is replaced by the following order:
2. The Tenants' application is dismissed.

**September 19, 2023**  
**Date Issued**

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Jana Rozehnal  
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.