



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

**Citation:** Vilvarasa v Choudary, 2022 ONLTB 10715

**Date:** 2022-11-07

**File Number:** LTB-T-015859-22

**In the matter of:** 2317 ALLANPORT RD  
ALLANBURG ON L0S1A0

**Between:** Brian Keyes, Tenants  
Mohana Vilvarasa

**And**

Almassa Inc. Landlord

Brian Keyes and Mohana Vilvarasa ('BK' and 'MV' or collectively, the 'Tenants') applied for an order determining that Almassa Inc. ('Alnc' or 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)

This T6 application was heard by videoconference on May 31, 2022.

The Tenants, the Landlord's Legal Representative, Shikha Kapoor ('LLR'), and the Landlord's Agent, Shahroz Choudary ('LLA'), attended the hearing. The Tenants consulted with Tenant Duty Counsel prior to the commencement of the hearing.

As a preliminary matter raised by LLR, the name of the Landlord was corrected to Almassa Inc. with two owners of the company being Muhammad Munir Choudhary and Zahida Choudhary. It was submitted and accepted by the parties that LLA is not the Landlord, but the Landlord's property manager and therefore an agent of the Landlord.

**Determinations:**

1. The T6 application was filed on March 19, 2022. In the T6, the Tenants claim the Landlord breached its responsibility in attending to a number of maintenance problems, namely: a kitchen sink not draining; a dryer not working; a cracked kitchen window; various lights not working and a septic tank problem/leak. If successful with their application, the Tenants are seeking the following remedies: an abatement of rent (\$5,148.00); the cost to replace/repair (\$6,606.00) and an order to have the Landlord repair the septic tank (including foundation and removal of contaminated soil).
2. As explained below, the Tenants have proven on a balance of probabilities the grounds relating to septic tank maintenance problem. Therefore, I am awarding an abatement of

rent and will order the Landlord to make full and final repairs to resolve the maintenance problem.

3. The following is presented in summary fashion, addressing only those items adduced as evidence during the hearing, and does not focus on any other documented disclosures submitted prior to the hearing but were not led into evidence during the hearing.
4. BK testified concerning the maintenance problems the Tenants were faced with, and which they alerted the Landlord to, specifically LLA. BK covered the problems with the kitchen sink (2 weeks to repair), the clothes dryer (2 weeks to replace with another dryer [used]), the crack in the kitchen window (1.5 months to repair) and the non-functioning lights in the washroom, hallway & rear entrance stairwell (all but rear light repaired within 3 months). With regard to the rear light, BK said this is still a safety issue in his opinion, because his wife is pregnant and no light in that area poses a safety risk to her.
5. The Tenants then focused most of their submissions on the septic tank maintenance problem, which is still an outstanding issue at the time of this hearing. I note that the Tenants attempted to raise a new issue not covered in the T6 application, namely an issue with the painting of the unit. However, this painting issue was not properly raised in the T6 application, and the Landlord was unaware of the issue until this hearing. I directed the Tenants to focus only on the claims contained in the T6, leaving any other issues to perhaps another application the Tenants might file against the Landlord.
6. BK led two exhibits into evidence. TT#1 contains photos taken on about December 31, 2021 of the unsealed lid to the septic tank, which leaked into the ground and the rental unit. TT#2 is a copy of the Niagara Region's Order to Comply issued April 4/22, based on an inspection of the septic tank on March 23/22. This Order to Comply was the result of a request made by the Tenants on or about March 22, 2022 for an inspection. The Landlord was given two deadlines by the Region to resolve the sewage (confirmed by the Region) seeping from the septic tank system.
7. During cross-examination of the Tenants, it was confirmed that they did not provide any supporting invoices or bills to evidence the claims they made to damaged items, due to the septic tank problem.
8. In his testimony, LLA confirmed that he responded to each of the claimed maintenance issues raised by the Tenants in their application. He explained briefly the work done and when, which corroborated in most part the Tenants' submissions. He stated his belief that for all but the septic tank problem, the Landlord reasonably and timely attended to and repaired the maintenance problems.
9. LLA identified the license to operate the rental unit as a rental (LL#1a -issued March 8/22) to evidence the rental unit was approved by City of Thorold. LLA also identified the originally signed lease between the parties (LL#1B).
10. With regard to the septic tank issue, LLA testified that the Tenants initially complained on December 31, 2021 about a plumbing problem in the unit. As problems with leaking and odours continued to persist, LLA stated that the contractors hired to address the problems led to a conclusion that the septic tank was the source of all problems. This happened around the March 2022 timeframe.

11. For the initial complaint, LLA stated a plumber attended the unit on January 3, 2022 and identified LL#2 (Jan 3/22 invoice-bath tub drain leak into basement repair) as evidence the Landlord responded in a timely way.
12. LLA testified that another basement leak problem became apparent and he despatched the same plumber on January 25, 2022 to repair the wall where the leak seemed to originate (LL#3-Jan 25/22 invoice-hydraulic cement to wall). However, LLA sent another plumbing company into the basement in early February, to inspect the building drain (LL#4-Feb 7/22 invoice-camera inspection/drain cleanout). At that time, the company first raised the possibility that the septic tank might need to be cleaned out.
13. When the Tenants complained about a bad smell in the rental unit, LLA then testified he hired a septic services company and on February 8, 2022, the septic tank was cleaned out (LL#5-Feb 8/22 invoice-septic cleaning completed).
14. As a continuance to the Landlord's efforts to rectify the persistent leak and odour issues, LLA sent a plumbing company on February 13, 2022, to inspect the problem and provide recommendations. However, the Tenants refused the serviceman's entry as they did not believe the serviceman was qualified/licensed. LL#6 is a February 14, 2022 invoice to evidence the incident, for which the Landlord was billed.
15. LLA stated he then sent a different company's serviceman to the rental unit on February 18, 2022 (LL#7-Feb 18/22 invoice-inspection, recommendations). In that invoice, the company indicated that septic tank and foundation repairs were necessary.
16. LLA testified that sometime between February 15-25, 2022, BK asked LLA if the Tenants could help repair the foundation crack issues and LLA agreed to BK's offer to help. LL#8 is a copy of the February 26, 2022 invoice issued by a company that BK is a director of. LL#8 indicates that BK's company completed foundation crack repairs on February 18<sup>th</sup> and on February 25<sup>th</sup>, 2022.
17. LLA then testified concerning his subsequent efforts in March and April 2022 when he sought quotations to excavate, repair the septic bed and replace the septic tank. LLA indicated it would cost the Landlord 20-30 thousand dollars to complete the full repair. He confirmed that he contracted 6M Contracting (owned by Norm Bean) to complete the full repair, which is scheduled for the week of August 3, 2022. LLA indicated the contractor will also secure the required permit for the work.
18. During cross-examination, LLA confirmed that as each problem of leaking and odour was dealt with, he did become aware that it was sewage that was seeping and leaking around the property and into the rental unit basement. LLA said he reacted at all times quickly and responsibly, also weighing in the fact that covid restrictions and cold/wet weather impacted the Landlord's abilities, and as well noting that there "are only so many septic tank" companies in the area that could be contacted. In closing submissions, the Landlord stated they are committed to the August 2022 date when the full repair/replacement of the septic tank and area will be completed.
19. The Tenants submitted they are committed to cooperating fully with the Landlord and their contractors, so that the much needed repairs can be completed.
20. Both parties also made final submissions including statements about the need for cooperation by the Tenants, rents not being paid, no rent receipts being issued, and the

Landlord appearing sometime without notice --- I note them here only as a matter of record.

Analysis

21. As the applicants, the Tenants have the onus to prove on a balance of probabilities that the Landlord breached their obligations under section 20 of the Act.
22. I am also mindful of both parties' duty to mitigate found in section 16 of the Act. Specifically, section 16 imposes an obligation on each party to mitigate or minimize their losses.
23. The applicable provisions under section 20 of the Act are as follows:
 

*“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.*

*20(2) Subsection (1) applies even if the tenant was aware of a state of non-repair or a contravention of a standard before entering into the tenancy agreement.”*
24. A landlord's maintenance obligations and the irrelevance of fault has been referred to in court cases and was upheld by the Divisional Court in 1994 in *Offredi v. 751768 Ontario Ltd [1994] O.J. No. 1204 (“Offredi”)*. In that case the Divisional Court stated: *“The question of fault on the landlord's part is not the issue... What the tenants claim is a breach of contract. The tenants were paying full rent for premises which the landlord was under an obligation... to keep in a good state of repair and fit for habitation. The landlord failed to do that. That is the basis for the claim for an abatement ...”*
25. A landlord's strict contractual liability for maintenance breaches set out in *Offredi* has been balanced or offset by another more recent case in 2016 in *Onyskiw v. CJM Property Management Ltd., 2016 ONCA 477 (“Onyskiw”)*. In *Onyskiw*, the Court of Appeal for Ontario rejected the position that a landlord is automatically in breach of its obligation to maintain and repair under subsection 20(1) as soon as an interruption in service occurs or the unit is in need of repair. The Court addressed the competing approaches taken to section 20 maintenance applications and preferred the contextual approach. While a lease is properly treated as a contract, breach of the terms/duty to maintain/repair will not automatically result in a finding of liability. The Appeal Court found that the reasonableness of a landlord's response and conduct to the maintenance issue(s) is a factor in deciding breach and/or remedy and that this is consistent with the Board's Interpretation Guideline No. 5. This Appeal Court decision in *Onyskiw* is the guiding legal authority here.
26. Using the contextual approach for this case, therefore, I find that on a balance of probabilities the Landlord did breach their maintenance obligations under subsection 20(1) of the Act, specifically in respect of the leak/odour/septic tank maintenance issue.

27. With regard to the other maintenance claims under the T6 application, I find the Landlord did not breach their maintenance obligations under the tenancy. Both parties made summary submissions on these other claims and as shown in the paragraphs above, the Landlord attended to and repaired all maintenance issues reported in a reasonable and timely fashion. The one “straggling” issue is the lighting in the rear entrance stairwell. I am not altogether certain whether the problem still exists, but I will simply address this in my order below, by ordering it to be repaired, if not already done.
28. While I am of the view that the Landlord reacted timely, responsibly and reasonably to each leak/odour/septic problem as they were alerted to it, it remains a fact that the overall problem was first reported on December 31, 2021 and that to the date of this hearing, the problem has not been at all resolved.
29. The Landlord stated that the full repair can be expected to be completed during the week of August 3, 2022. I accept the Landlord’s commitment to complete the repairs in August 2022 and will hold the Landlord to that commitment. Also, I note that the Landlord is required to comply with the Niagara Region’s order (TT#2), which is still outstanding.
30. So, in real effect, the Tenants have had to endure a leak/odour/septic problem for the past five months, and will continue to live with the problem at least for three months more, until August 2022 (accepting the assumption that the Landlord’s contractor – 6M Contracting -- will be able to completely repair the problem). In my view, this problem is a serious one as it extends beyond a “simple” maintenance problem to a potential health concern that could result from septic leaks or discharge.
31. Consequently, the Tenants’ request for a rent abatement is to be granted.
32. A rent abatement under a Tenant Application About Maintenance Form T6 is intended to reflect the fact that a tenant did not get full value for the rent paid. The abatement should represent an appropriate diminution in the value of the tenancy.
33. In determining how much of rent abatement to award the Tenants, I have considered two factors in particular, that is, duration and impact.
34. As I was given more evidence about the duration and frustrations experienced from the duration rather than about the impact, I believe that the Tenants are entitled to a monthly rent abatement of 20% over the 5 month period to May 31, 2022. Based on monthly rent being \$1,800.00, this equates to a \$1,800.00 in rent abatement. In reaching this abatement amount, I did consider as well the Landlord’s ongoing efforts and the Tenants’ involvement (contacting the Niagara Region, level of cooperation with the Landlord’s contractors, and helping with foundation repairs).
35. This 20% abatement of rent will be ordered to continue up to August 31, 2022, and then afterwards at a higher percentage until such time that the full repairs are completed. The completion of the work will be evidenced by the Landlord’s contractor (6M Contracting) providing a final report that the repair/replacement work was successfully completed and by the Niagara Region providing the Landlord with a letter (or equivalent) that the Landlord has complied with the Region’s order.

36. Finally, with regard to the Niagara Region's work order, I was never really given much information to consider about the Region's involvement. Nevertheless, what matters is the Region's work order was served on the Landlord and the Landlord must complete all items in that work order (realizing that the deadlines provided in that order have already passed).

**It is ordered that:**

1. The Landlord shall pay to the Tenants a rent abatement of \$1,800.00 which represents the total amount of abatement awarded for the breach of the Landlord's maintenance obligations from January 1, 2022 to May 31, 2022 in respect of the leak/odour/septic maintenance problem.
2. The Landlord shall also pay to the Tenants \$48.00 for the cost of filing the T6 application.
3. The total amount the Landlord owes to the Tenants is \$1,848.00.
4. If the Landlord does not pay the Landlord the full amount of \$1,848.00 owing on or before November 14, 2022, the Landlord will start to owe interest. This will be simple interest calculated from November 15, 2022 at 4.00% annually on the balance outstanding.
5. WORK:- Upon giving proper prior notice(s) of entry to the Tenants, the Landlord shall clean away all sewage from the rental unit property, and repair and replace as necessary the rental unit property's septic system (tank, tile bed, piping/connections), the building/basement foundation and any other construction work (including plumbing and electrical work) that will completely resolve the leaks, odours and septic tank problems set out in the T6 application (the 'Work'). The Landlord shall ensure all required work permits are secured for the Work to be done. The Work shall be completed so that the Landlord is in full compliance with the Niagara Region's Order to Comply issued on April 4, 2022 under order no. PSS-22-0089. All the Work shall be completed by the Landlord on or before August 31, 2022.
6. Upon completion of the Work, the Landlord shall provide the Tenants proof of completion by furnishing the Tenants with a copy of the Contractor's completion report and a copy of the Niagara Region's confirmation that the Landlord has satisfied/met the Order to Comply (issued April 4, 2022, order no. PSS-22-0089).
7. Upon serving proper valid notice to the Tenants in accordance with subsection 27(1) of the Act, the Tenants shall admit the Landlord, the Landlord's contractors and/or representatives into the rental unit and property, and not in any way impede their ability to enter the unit or property, whether or not the Tenants are present in/at the rental unit during the entries.
8. If the Landlord does not comply with paragraph 5 above by the deadline given, the Tenants are authorized to deduct 50% from monthly rent as an additional abatement of rent, for each month the Work remains incomplete, until the Landlord fully complies with paragraph 5 of this order above.
9. In only the case of incomplete Work, the additional 50% monthly abatements shall commence on September 1, 2022. To be clear, if the Landlord completes the Work, say, anytime in September 2022, even if it happens to be September 1st, the Tenants shall be entitled to a full 50% abatement for that month of September 2022. This approach will be

applied for any subsequent month until the Landlord fully complies with paragraph 5 above.

10. Finally, the Landlord shall repair and replace as necessary the rear stairwell lighting so that the lighting works properly and the area can be properly lit. If this repair is not completed by June 30, 2022, then on July 1, 2022 onwards, the Tenants are authorized to make the repairs themselves and have any incurred cost billed back to the Landlord, up to a maximum of \$300.00. In order for reimbursement to occur, the Tenants must present the Landlord with a paid invoice/bill for said repair work, and the invoice/bill must be issued by an arms-length repair person or company (not someone related to the Tenants in any way).
11. In case the Tenants must repair the rear stairwell lighting themselves, the reimbursement of monies paid can also be effected by the Tenants deducting the paid invoice/bill dollar amount from the next month's rent that will come due for payment.
12. In any event, the Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**November 7, 2022**  
**Date Issued**

Alex Brkic  
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.