



Order under Section 30 Residential Tenancies Act, 2006

Citation: LIU v HUCULAK, 2025 ONLTB 86347

Date: 2025-11-10

File Number: LTB-T-070361-25

In the matter of: 321, 39 UPPER DUKE CRES
markham ON L6G0B8

Between: Ye Liu
Channing Shi
Tenants

And

Catherine Huculak
Landlord

Ye Liu (the 'Tenant YL') and Channing Shi ('SC') (together, the 'Tenants') applied for an order determining that Catherine Huculak (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.

The hearing of this application commenced by videoconference on September 29, 2025. The Tenant YL, on behalf of both Tenants, and the Landlord attended the hearing. A. McHale ('AM') and G. Bard ('GB') attended portions of the hearing as witnesses for the Tenants and Landlord respectively. The matter was adjourned to be continued on November 3, 2025. Interim Order LTB-T-070361-25-IN, issued October 6, 2025, confirmed the Landlord's undertaking to return to the Tenant the rent payment made for September 2025 and to defer receipt of payment for the month of October.

The hearing of the application continued to completion on November 3, 2025. Only the Tenant YL, on behalf of both Tenants, and the Landlord attended the hearing.

Determinations:

1. The Tenants sought remedies for the Landlord's alleged failure to meet the Landlord's maintenance and repair obligations associated with a persistent water leak or leaks in the unit.
2. The Tenant CS is the 10 year old son of the Tenant YL. CS was not involved in the hearing of this application and, for simplicity, references in this order to testimony and positions of the 'Tenant' are references to the Tenant YL.

3. It was uncontested that the Tenant first complained of the leak early in the morning of June 19, 2025 and that the problem was not fully resolved and unit restored until October 12, 2025.
4. Subsection 20(1) of the *Residential Tenancies Act*, 2006 (the 'Act') provides that 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.
5. The Landlord acknowledged her responsibilities further to the Act and submitted that she did everything reasonably possible to address the issue in the unit in a timely manner. She submitted that delays and difficulties in identifying and addressing the problem were outside her control. Further, notwithstanding the fact that she does not consider herself liable for any contravention of the Act, she has not taken or kept rent for the time that the Tenants moved out of the unit pending full restoration of the unit.
6. The Tenant takes the position that the Landlord's responsibilities under subsection 20(1) of the Act necessarily render the Landlord liable to the Tenant for all the remedies sought. In effect, the Tenant takes the position that the Landlord is liable to the Tenant regardless of the actions taken by the Landlord subsequent to being advised of the problem at the end of June.
7. I am governed, in determining the Landlord's liability for non-compliance, by the ruling of the Court of Appeal in *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477 (*'Onyskiw'*). The court held that the Board, in determining whether a landlord has breached maintenance and repair obligations under the Act, should take a contextual approach and consider the entirety of the situation. Importantly, for the purposes of my determinations in this application, the court rejected the argument that a landlord is automatically in breach of its maintenance obligations as soon as a maintenance or repair problem occurs. The court stated,

“[59] The tenants' position that the landlord is automatically in breach of its statutory obligation to maintain and repair even while something is being repaired also offends the legal maxim *lex non cogit ad impossibilia*: that the legislature does not intend compliance where, for all practical purposes, it is impossible...”

8. At the initial hearing, in September, the Tenant testified about the situation from her perspective. She understood that significant periods of time passed without action on the part of the Landlord in response to the water issue in her unit. Specifics of her testimony are as follows (Exhibits referenced in the Tenant's Brief are found in TOP Doc-6472003):
 - a) The Tenant first notified the Landlord with a photo of a water leak in the unit, from an unknown source, early in the morning on June 19, 2025 by way of a text message and photo to the Landlord's husband (Refer Exhibit 1 at page 1 of Tenant Brief);
 - b) The Landlord arranged for someone to check the unit within a day or two but took no action except to tell the Tenant to monitor the situation;

- c) The unit became very humid. The Tenant got a dehumidifier but the floor remained sufficiently wet that it 'squished' when stepped on;
- d) She reported the issue to the Landlord's husband on July 9th and again on July 27th that the problem was getting worse. (Refer Exhibit 2 at page 2 of the Tenant Brief) Nothing had been done by that point to address the issue;
- e) Mould developed in the unit and she obtained a doctor's report confirming that she had expressed concern about a link between her coughing and the presence of mold in the unit (Refer exhibit 3 at page 4 of the tenant Brief);
- f) The Tenant and her son left the unit to stay elsewhere as soon as the Tenant saw the mould, on July 27th;
- g) The Landlord emailed the Tenant on July 31st to explain that the present damage was of a type which, for the first time, required the involvement of property management and insurance. She said that she was acting with urgency to resolve the issue. She outlined the nature of work to be conducted – being remediation of the wetness and mold and the replacement of the hardwood floor and affected baseboards and walls. The Landlord suggested that, while the unit would be habitable during the remediation, it would be best for the Tenant to move out temporarily for the replacement of the hardwood floor. She indicated that she had been actively working with insurance, trades, property management and inspectors to address the issue and provided a rough anticipated timeline for the work (Refer Exhibit 4 at page 5 of the Tenant Brief);
- h) The Landlord did not provide the Tenant with specific timelines for the completion of work, although the Tenant was made aware that the Landlord had found, in August, that the leak was coming from the air conditioner in the unit above the Tenant's unit;
- i) By August 24th, when the Tenant filed the subject application, the Landlord told the Tenant that sufficient work had been done in the unit to allow the Tenant to move back into the unit (Refer Exhibit 5 at page 12 of the Tenant Brief). The Tenant did not agree that the Unit was habitable at that point and continued to stay with her son in temporary accommodation in a friend's basement;
- j) The Landlord then informed the Tenant, on September 2nd, that while the Tenant could return to the unit a new problem had been discovered. It had been discovered, a few days earlier, that there was a leak through the balcony of the unit above. She outlined the steps which were being taken to address the new issue and informed the Tenant that the walls in the unit could not be replaced until the source of this new issue was identified and addressed;
- k) As of September 22nd the unit was still undergoing construction. The Tenant did not want to return to the unit as it was missing floorboards and, in the opinion of the Tenant, still showed visible signs of mould. The Tenant was concerned that the missing floorboards would create a tripping hazard where the missing boards transitioned to boards which were still in place.

9. The Landlord submitted that she had acted promptly and reasonably to the Tenant's complaints. There was no question that the ultimate repair and renovation work took longer than could have originally been anticipated, but that the delays were due to circumstances and events outside the Landlord's control. She testified, in the September appearance, to the following:
 - a) The Landlord and Tenant had historically had a good relationship. The Landlord or her husband had always responded promptly to any problems reported by the Tenant;
 - b) When the Tenant initially reported the leak problem in June, the water was attributed to a leaking HVAC in the Tenant's unit. This problem was addressed but subsequent other problems became apparent. It was not until August 24th that the Landlord and contractors discovered that there was a leak in the balcony of the unit above the Tenant's unit;
 - c) The balcony issue was no longer an issue confined to the Tenant's unit. It involved not just the owner of that other unit but also involvement of insurance and of the condominium's management. The majority of the leak was from outside the building. Repair involved getting multiple repair quotes and follow-up by the Landlord with the condominium's management to get approval for the work;
 - d) Management approved the repairs as of September 23rd following the Landlord's follow-up on the basis of urgency; and
 - e) As of the September 29th hearing appearance the work on the balcony was ready to go. Once that work was completed the Landlord would be in a position to give the Tenant a clear timeline for finalization of the repairs inside the unit.
10. To address the Tenant's concerns about returning to the unit in advance of full completion of the work inside the unit, the Landlord offered at the September 29th hearing to have the remaining flooring removed, to create an even (subfloor) surface and to arrange for a full cleaning of all dust and any mould.
11. AM, a contractor who is a friend of the Tenant, appeared as a witness for the Tenant. He has conducted full home renovations and has some experience with mould remediation and insurance claims work. He became involved in mid-July when he met with the Landlord and the Landlord's insurance adjuster in an attempt to move matters along. At that point the unit was being subjected to further moisture testing.
12. There was no conflict between AM's testimony and that of the Landlord. AM supplied further details about the challenges encountered by the Landlord in identifying and addressing the true source of the problem. The problem was initially attributed to a drain problem leading to an HVAC leak. Subsequently, mould was found higher up in the unit and water was found to be dripping from above. Further investigation led to the condominium management contacting the owner of the unit above, who was on vacation. It was subsequent to this that the balcony issue in the upper unit was confirmed. He noted

that until the source of the water was identified and addressed the damaged drywall and flooring in the Tenant's unit could not be addressed. He described the delays but I heard nothing in his evidence to attribute those delays to any wrongdoing or lack of response on the part of the Landlord.

13. In the opinion of AM the unit would be not be unsafe to return to, as of the September 29th hearing appearance, if the floor were to be completely removed to eliminate any tripping hazard and if the presence of mould were addressed.

14. The Landlord provided a status update at the continuation of the hearing on November 3rd as follows:

- a) Since the September 29th hearing the condominium management had approved the balcony work on the unit above the Tenant's unit. The work, and the testing of the work, was completed October 1st. The Landlord informed the Tenant of that status;
- b) Repairs in the Tenant's unit recommenced October 8th. Drywall in the unit was patched and the floor fully removed and replaced. After letting the dust settle the Landlord arranged for the unit to be thoroughly cleaned. It was handed back to the Tenant as of October 12th; and
- c) The rent paid by the Tenant for the month of September was fully refunded and the Tenant was charged only a prorated rent amount for October – for October 20th to 31st.

15. I find that the Landlord acted reasonably and responsibly to what proved to have been a situation more challenging than originally anticipated. It is likely that better communication from the Landlord to the Tenant of details of steps being taken throughout the process may have been helpful, but I note that the Tenant's friend, AM, became involved in the process only weeks after the initial complaint.

16. The fact that the ultimate satisfactory return of the unit to the Tenant took significantly longer than what might reasonably have been originally expected was not due to any wrongdoing on the part of the Landlord. The Tenant was mistaken in her understanding that the Landlord was necessarily liable, despite the best efforts of the Landlord, for the difficulties encountered by the Tenant as a result of the leak.

17. I note that the Landlord has already provided compensation to the Tenant in the form of rent rebate from September 1st through to the date she returned to the unit. I recognize these refunds as gestures of good will rather than as payments for which the Landlord would be liable under the Act.

It is ordered that:

1. The Tenants' application is dismissed.

January 12, 2026

Date Issued

Lynn Mitchell

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.