



Order under Section 30,31
Residential Tenancies Act, 2006

File Number: LTB-T-074760-22
(TNT-22864-19)

In the matter of: 28 BENDAMERE CRESCENT
MARKHAM ON L3P6Y2

Between: Aartie Seegobin / Di Rosa
Enzo Di Rosa

and

Jiaying Zheng

I hereby certify this is a
true copy of an Order dated

DEC 16 2022

Landlord and Tenant Board

Tenants

Landlord

Your file has been moved to the Landlord and Tenant Board's new case management system, the Tribunals Ontario Portal. Your new file number is LTB-T-074760-22

Aartie Seegobin / Di Rosa and Enzo Di Rosa (the 'Tenants') applied for an order determining that Jiaying Zheng (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 Tenants also applied for an order determining that the Landlord harassed, obstructed, coerced, threatened or interfered with them and withheld or deliberately interfered with the reasonable supply of a vital service, care service, or food that the Landlord is obligated to supply under the tenancy agreement.

This application was heard by video conference on July 25, 2022

The Tenants and the Tenant's Legal Representative, R. Mahavalirajan and the Landlord attended the hearing.

C. Wang attended as a witness on behalf of the Tenants.

Determinations:

1. For the reasons detailed below, the Tenants have proven the following claims contained in their application:

- Mold
 - Railing
 - Mice issue
 - Heat
2. Therefore, the Landlord shall pay \$5,458.00
 3. The Tenants moved into the rental unit on October 1, 2019 and moved out on September 30, 2020. This application was originally filed on December 2, 2019, and was amended on October 21, 2021.
 4. The T2 application sets out the following issues:
 - Interference with vital services- no heat in the 2nd floor rooms
 - Substantial Interference and Harassment- Threatening to evict the Tenant, not addressing maintenance concerns in a timely manner, condition of the unit upon move in.
 5. The T6 application sets out the following issues:
 - Mold
 - Stair case railing
 - Mouse excrement/pest control
 - No heat on 2nd floor

T2 Application

6. At the start of the hearing, I explained to the Tenants that the interference with vital services portion of their T2 would not be considered as the issue the Tenants had with the heat in the upstairs rooms was plead on their T6 application as a potential furnace disrepair issue.
7. Interference with vital services for the purpose of a T2 application is considered when a landlord intentionally interferes with the supply of a utility, such as heat, by not paying the bill. The Heat issue will be considered on the T6 application.

Harassment

8. The Tenant testified that on September 30 2019, he was at the unit to do a walk through of the property before moving in. He noted a lot of deficiencies within the unit and advised the Landlord of them. He testified that the Landlord was not happy that the Tenant pointed out the issues and in a conversation between her and her agent, she shouted that she just wanted to terminate the tenancy.

9. The Landlord denies that she said she wanted to terminate the Tenancy, she testified that she said she didn't want to terminate the Tenancy.
10. The Tenant submitted a video of the conversation. The conversation is in Mandarin, so the Tenant provided an interpreter to testify to the contents of the video.
11. C. Wang, the interpreter, listened to the video and testified that the Landlord did not say she wanted to terminate the tenancy, he testified that she said she did not want to terminate the contract in the conversation with her agent.
12. Section 23 of the *Residential Tenancies Act*, 2006 says that a Landlord shall not harass, obstruct, coerce, threaten, or interfere with a tenant.
13. There is no definition of "harassment" under the *Act* but generally speaking harassment is usually considered to be a course of conduct that a reasonable person knows or ought to know would be unwelcome.
14. Based on the evidence before me, through an interpreter the Tenant provided, I find that the Landlord did not harass the Tenant on September 30, 2019. The interpreter clarified that in the conversation with her agent, in front of the Tenant, she did not say she wanted to terminate the tenancy, she said she did not want to terminate the contract. The onus to prove an allegation belongs to the person making the allegation, and the Tenant has not met that onus in this case. This portion of the Tenant's T2 application is dismissed.

Substantial Interference

15. The Tenants allege that there were items, including garbage, left behind from previous tenants and this interfered with their reasonable enjoyment of the unit.
16. Items left behind include patio slabs outside, a bowl under the sink, a picture in the fireplace, a broken bench, a glass vase, a running shoe, and some garbage bags. The Tenant submitted pictures of the items.
17. The Tenant testified that he works 13-hour days and didn't have time to clean it.
18. The Landlord testified that the stuff the Tenant is alleging is garbage is just regular household items, she testified that the bench was left there to sit on, the garbage bins were for yard waste. She testified in a conversation that took place after the walk through on September 30, 2019, the Tenant brought forward 2 concerns, one of which was the cleanliness of the unit. The Tenant provided a list to the Landlord outlining the cleanliness issues. A cleaner was contacted to take care of all the issues on the list.
19. Section 22 of the *Act* states: A landlord shall not at any time during a tenant's occupancy of a rental unit and before the day on which an order evicting the tenant is executed substantially interfere with the reasonable enjoyment of the rental unit or the residential complex in which it is located for all usual purposes by a tenant or members of his or her household.

20. Based on the evidence before me, I do not find that the items that the Tenant alleged were left behind substantially interfered with the Tenants reasonable enjoyment of the unit. It is undisputed that there were some items left behind, however I do not find that the items left rise to the level of substantial interfere with the reasonable enjoyment of the unit. Most of the items where regular miscellaneous small items, such as spray bottles, or a bowl under the sink. It was the Tenants own testimony that despite alleging that the impact was such that it “really disrupted our lives”, he did not clear the items himself. This portion of the Tenant’s application is dismissed.

T6 Application

Mold

21. The Tenant testified that he notified the Landlord at their walk through in September 2019, and again through email about mold. He testified that there was mold in the bathroom, on the trim of the windows in the basement, in the shower upstairs, and in all 3 bedrooms. The Tenant submitted an interaction record from calling public on December 6, 209 regarding the mold. He testified that they told him to speak to the Landlord.
22. The Tenant testified that he gave the mold a light wipe and didn’t want to disrupt the mold. He testified that the Landlord did nothing about the mold.
23. The Landlord testified that she cannot recall when the mold issue was brought up to her. She testified that her agent was dealing with the Tenant regarding some issues and if the agent was told, he didn’t tell her. She testified that she became aware of the mold issue in preparation for this hearing.
24. Section 20 of the Act states 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.
25. Based on the evidence before me, I find that the Landlord is in breach of their maintenance obligations with respect to the mold issue. I find that the Tenant informed the Landlord of the issue at the walkthrough, and again through email communications. I find that even if the Tenant was dealing with the Landlord’s agent, the agent had a duty to bring it to the attention of the Landlord. The Landlord did nothing about the mold.

Railing

26. The Tenant testified that the railing between the main and upper level was loose. It moved from side to side. He testified the Landlord was notified at the walk through and also through email.
27. He testified that the Landlord was going to send someone on the day the Tenants moved into the unit, however the tenants felt inconvenienced as they were busy moving into the unit.
28. He testified the Landlord scheduled someone to fix the railing again, but the person did not show up.

29. The Landlord testified that she knew about the railing and had a contractor booked for October 1, 2019 and understands why the tenants did not agree with that date. She testified that On Oct 4, 2019, she emailed the tenant asking when would be a good time for a contractor to repair the railing. She testified that the Tenant did not reply.
30. She testified that on October 17, 2019, she emailed the Tenant asking if the contractor contacted the him as she gave the contractor the Tenant's contact info. She testified she later realized she gave the contractor the wrong information for the Tenant.
31. She emailed the Tenant again on October 24, 2019 asking the Tenant if there are any updates on the railing repair as she didn't hear anything.
32. On November 19, 2019, she received an email from the contractor advising that the Tenant scheduled an appointment for that evening. She testified the Tenant ultimately refused entrance to the contractor on the 19th.
33. She emailed the Tenant on November 20, 2019, advising the Tenant that the contractor had availability for the following Sunday, and the Tenant said he was available.
34. She testified that the contractor arrived about 20 minutes after the agreed upon time and the Tenant did not let him in to do the work because he was late.
35. After that, the Landlord emailed the Tenant one more time about the staircase and the Tenant did not reply.
36. Based on the evidence before me, I find that the Landlord was in breach of their maintenance obligations with respect to the issue with the railing. The Landlord did have someone lined up to fix the issue on the day the Tenant moved into the unit, however, understandably, this was an inconvenience to the Tenants. The next time the Landlord sent someone, the Tenant's refused entry as the contractor was 20 mins late. The Landlord attempted to follow up with the Tenant in November 2019, and the Tenant did not respond. The Landlord did not attempt to remedy the issue with the railing after that.

Pest issue

37. The Tenant testified that there were mouse feces in the garage, and they saw a mouse in the foyer. He testified that there were centipedes crawling on their comforters and in the sink and in the vents. He testified that the Landlord was notified of these issues, and nothing was done except the Landlord offering the Tenant \$75.00 to lay down traps.
38. The Landlord testified that on November 13, 2019, the Tenant emailed the Landlord about the mice issue. The Landlord emailed the Tenant back asking for his consent for a pest control company to come in. She testified that she wanted his consent as he has children and pest control would probably require the use of chemicals. She did not hear back from the Tenant, so she offered giving the Tenant money to purchase traps.
39. She testified that in April 2020, she received a complaint from the Tenant regarding the centipedes. She contacted pest control and they advised her that they can do a treatment, but the Tenants would have to be out of the unit for 4 days. Before she could

relay this to the Tenants, The Tenant advised the Landlord that he used raid to take of the centipedes and it is ok.

40. Based on the evidence before me, I find that the Landlord was in breach of her maintenance obligation with respect to the mouse issue. The Landlord was aware of the issue with mice in November 2019. The Landlord does need the consent of the Tenant to have pest control go in to inspect the unit, which would be the first step before deciding what treatment modality is required. It is incumbent upon the Landlord to deal with issues as they are raised, and although I understand the Landlord believes she was extending a courtesy when giving the Tenant options, her responsibility is to ascertain the nature of the problem and affect the proper remedy, if required. In this case, having a pest control company inspect the unit would have been a prudent starting point. With regard to the issue with the centipedes, the evidence before me is that the Tenant notified the Landlord in April of 2020, and then addressed the issue with raid himself in April 2020. The issue with the centipedes is therefore dismissed.

Heating/furnace issue

41. The Tenant testified that there was no heat reaching the 2nd floor of the house. The Tenant testified that the Landlord was notified on November 18, 2019 by email. He testified that the average temperature on the second floor of the house was 15 degrees during the winter, and because of that, his family slept in the living room from November to April. He was unsure if this was a furnace issue or a duct issue. Nothing was done about this issue.
42. The landlord testified that the Tenant notified her of the heat issue. The Landlord testified that the tenant emailed again suggesting that it may be an issue with the ducts. The Landlord testified that she offered to split the costs of the duct cleaning with the Tenant. The Tenant did not respond to the offer. She testified that the furnace was last checked by professionals in February of 2019, and everything was fine. The Landlord testified that she purchased 2 portable heaters from amazon and shipped them to the Tenant. Nothing else was done about the heating issue.
43. Based on the evidence before me, I find that the Landlord was in breach of her maintenance obligations with respect to the heat issue. Once notified of the issue, the Landlord did not actively try to find a cause for the heating issue. Even if the furnace was fine in February 2019, the last time it was inspected, that doesn't mean that there was not an issue when the Tenant notified the Landlord about a heat issue in November 2019. It is not the Tenant's burden to split the costs of duct cleaning service with the Landlord if that is a potential cause for a heating issue. It is the Landlords responsibility to maintain the unit.

Remedies

Mold

44. The Tenants are seeking a 25% abatement for the mold issue. The Tenant testified that the mold issue made him unhappy but did not elaborate further on the impact of the mold. The mold was in the bathroom, the window trims in the basement and bedrooms. I find

that the Tenant is entitled to a 5% abatement of rent for a 12-month period from October 2019 to September 2020 for this issue. This works out to \$1175.

Railing

45. The Tenants are seeking a 10% abatement for the railing issue. When I consider remedy for this issue, I am taking into consideration section 16 of the RTA which states that the Tenant has a duty to mitigate their losses. The Landlord arranged for someone to come and fix the railing twice and both times, the Tenant did not allow for the repair to take place, once because they were moving in that day, and then because the contractor was 20 minutes late. I find that the Tenants are entitled to a 3% abatement of rent for a 12-month period from October 2019 to September 2020. This works out to \$846.00

Mice issue

46. The tenant is seeking a 10% abatement for this issue. The testimony of the Tenant is that this issue was largely limited to the garage. I find the Tenant is entitled to a 2% abatement for 12 months from October 2019 to September 2020. This works out to \$564.00

Heat issue

47. The Tenants are seeking a 25% abatement for this issue. The Tenant testified that because it was so cold on the second level of the house, where the bedrooms are, his wife, 6-month-old, 4 year old and himself had to sleep in the living room from November to April. I find that the Tenants are entitled to a 20% abatement for 6 months from November 2019 to April 2020. This works out to \$2,820.00

It is ordered that:

1. The Landlord shall pay to the Tenants a rent abatement of \$5,405.00.
2. The Landlord shall also pay the Tenants \$53.00 for the cost of filing the application.
3. The total amount the Landlord owes the Tenant is \$5,458.00.
4. The Landlord shall pay the Tenants the full amount owing by December 28, 2022.
5. If the Landlord does not pay the Tenant the full amount owing by December 28, 2022, they will owe interest. This will be simple interest calculated from December 29, 2022, at 4.00% annually on the balance outstanding.

6. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

December 16, 2022
Date Issued



Emily Robb
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.