

Order under Subsection 87(1)
Residential Tenancies Act, 2006

File Number: TSL-01360-09

In the matter of: 3307, 219 FORT YORK BOULEVARD
TORONTO ON M5V1B1

Between: James Bainton Landlord

and

I certify this is a true copy of the order

Eileen Flood

J. Samuels

Tenant

Dated MAR 05 2010 Landlord and Tenant Board

James Bainton (the 'Landlord') applied for an order requiring Eileen Flood (the 'Tenant') to pay the rent that she owes.

This application was heard in Toronto on February 2, 2010.

The Landlord and the Tenant attended the hearing. The Landlord was represented by Howard Levenson and Robert Besunder appeared on behalf of the Tenant.


Determinations:

1. The Tenant was in possession of the rental unit on the date the application was filed.
2. The Tenant did not pay the total rent she was required to pay for the period from September 1, 2009 to October 2, 2009.
3. The Tenant alleged that the Landlord represented to her that the unit did not have a noise problem and that it was dark at night, but the unit did not meet those conditions. She sought an abatement of rent for lack of quiet enjoyment of the unit and compensation for hotel bills and taxis and limousines used to access alternative accommodation.
4. The Landlord did not warrant that the rental unit met the unusual requirements of the Tenant. The Tenant is not entitled to an abatement of rent or compensation for assuming that the rental unit suited her needs.
5. The Tenant paid \$150.00 towards the last month's rent deposit and this is to be applied to the arrears of rent.

It is ordered that:

1. The Tenant shall pay to the Landlord \$1,020.90, which represents the amount of rent owing up to October 31, 2009 and less the last month's rent.
2. The Tenant shall also pay to the Landlord \$170.00 for the cost of filing the application.
3. If the Tenant does not pay the Landlord the full amount owing on or before March 16, 2010, the Tenant will start to owe interest. This will be simple interest calculated from March 17, 2010 at 2.00% annually on the balance outstanding.

March 5, 2010
Date Issued



Egya Sangmuah
Member, Landlord and Tenant Board

Toronto South-RO
79 St. Clair Avenue East, Suite 212, 2nd Floor
Toronto ON M4T1M6

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

REASONS

In the matter of: 3307, 219 FORT YORK BOULEVARD
TORONTO ON M5V1B1

Between: James Bainton Landlord

and

Eileen Flood Tenant

Reasons to Order TSL-01360-09 issued on March 5, 2010 by Egya Sangmuah.

James Bainton (the 'Landlord') applied for an order requiring Eileen Flood (the 'Tenant') to pay the rent that she owes.

The Tenant and Landlord signed a tenancy agreement on August 3, 2009 for a tenancy commencing on August 16, 2009. Previously, the Tenant was subletting a unit on the 22nd floor of another tower in the same complex. The Tenant testified that prior to signing the tenancy agreement she disclosed to the Landlord that she was in pain as a result of an accident and was scheduled to undergo surgery. The Tenant alleged she inquired from the Landlord whether the unit was dark and quiet and that the Landlord assured her that there was no noise problem and that the unit was dark at night. The Tenant testified that she soon discovered that the blinds blocked only 60 per cent of light from the surrounding buildings lights on the lake front and from the Toronto Island Airport. She also found the noise from traffic on the Gardiner Expressway disturbed her sleep. Furthermore, the bed in the unit was close to the kitchen and the noise from the fridge in the unit was prevented her from sleeping. The Tenant claimed that she disconnected the fridge, stopped eating and developed an ulcer.

There is not much dispute about what happened after the Tenant discovered that the unit did not suit her needs. She could not sleep. The Landlord offered to replace the blinds and temporarily put blankets over the existing blinds. Before the Landlord could order the blinds the Tenant stated her intention to vacate the premises. The Landlord offered to let the Tenant out of the lease as he had found someone willing to rent the apartment as of September 1, 2009, but the Tenant declined the offer because she did not have enough time to find a new place. The Tenant vacated the unit on October 2, 2009. In the interim she stayed at various hotels and the Quaker house.

The main area of dispute concerns alleged representations by the Landlord. From the Tenant's own testimony, she requires almost total quiet and a pitch black unit in order to sleep. These conditions are more readily created in a sleep lab. She found the noise from the Gardiner

Expressway was unbearable to her even though she was 33 floors up, with the windows closed. The Landlord lived in the unit just before he rented the unit and found the noise to be normal city noise. The Landlord cannot be expected to know that the Tenant required the conditions she insists upon simply because the Tenant is recovering from an accident. The Landlord testified that the Tenant only inquired whether the unit had blinds and he said yes. Even if the Landlord stated that the unit was dark at night, it cannot be interpreted to mean that he warranted that the unit was pitch-black at night. The Tenant viewed the unit and did not check the blinds or ask any questions about the location of the bed in relation to the fridge. Having assumed that the unit met her particular needs, the Tenant cannot claim that the Landlord contracted to provide her with the extraordinary conditions that she needed in order to sleep.

Having found that the Landlord is not liable for the inability of the Tenant to sleep during her occupancy of the unit, it follows that an abatement of rent is not justified and that the Tenant is responsible for the expenses she incurred living elsewhere.

March 5, 2010

Date Issued



Egya Sangmuah
Member, Landlord and Tenant Board

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