Order under Sections 31 & 30
Residential Tenancies Act, 2006

Citation: Bartosiewicz v Green Valley Properties, 2024 ONLTB 13466
Date: 2024-03-20
File Number: LTB-T-039195-22

In the matter of: 1, 68 CLIFFORD AVE
WELLAND ON L3C2G1

Between: Kiera Bartosiewicz
Andrew Bartosiewicz — Tenant

And
Green Valley Properties
Mike Petkovich
Elkin Dario Florez — Landlord

I hereby certify this is a true copy of an Order dated
MAR 20 2024
Landlord and Tenant Board

The term "Landlord" refers to all persons or companies identified as a Landlord and "Tenant" refers to all persons identified as a Tenant, within the order.

Kiera Bartosiewicz and Andrew Bartosiewicz (the 'Tenant') applied for an order determining that Green Valley Properties, Mike Petkovich and Elkin Dario Florez (the 'Landlord'):

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.
- did not give the Tenant a written tenancy agreement for their care home unit or the agreement did not include information about care services and meals and the charges the Tenant agreed to pay for them.
- This is the T2 application.

Kiera Bartosiewicz and Andrew Bartosiewicz (the 'Tenant') also applied for an order determining that Green Valley Properties, Mike Petkovich and Elkin Dario Florez(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. **This is the T6 application.**

These applications were heard by videoconference on February 12, 2024.

Only the Tenant attended the hearing. The Tenant was represented by Angela Smith.

As of 2:04pm, the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenant's evidence.

Determinations:

1. **As explained below, the Tenant proved some of the allegations contained in the application on a balance of probabilities. Therefore, the Landlord shall pay to the Tenant $7,193.66 on or before March 31, 2024.**

Preliminary Issues

A. Written Submissions

2. At the hearing, I gave the Tenant the opportunity to provide written submissions with respect to their application. The deadline for these submissions was February 14, 2024.

3. I confirm receipt of these submissions and while I may not refer to each submission in this order, they have been considered.

4. I note that the submissions with respect to the Landlord withholding vital services and harassment are dismissed as they are not part of the Tenant's application and, pursuant to Beaugé *v. Metcap Living Management Inc.*, 2012 ONSC 1160, I cannot order any remedy that has not been claimed in the Tenant's applications and that has not been raised at the hearing.

B. Care Home Unit?

5. At the hearing, it came to my attention that the rental unit is not a care home unit where the Tenant is being provided with care services and meals.

6. Thus, this claim on the T2 application is dismissed.

C. Were all parties served?

7. The Board's records show, on November 29, 2023 and December 29, 2023, the notices of hearing packages were returned to the Board for the Landlords: Mike and Elkin.

8. The Tenant's representative's uncontested evidence was, the notice of hearing and disclosure package was sent to all of the named Landlords by e-mail correspondence on February 7, 2024. This email did not return back to the Tenant's representative.

9. The Tenant's representative explains that Green Valley Properties was the former Landlord (for the period August 2021 – April 2022) who advised the Tenant that Elkin Dario Florez is the new Landlord. Mike Petkovich was and continued to remain the superintendent of the premises.

10. Based on the submissions before the Board, I am satisfied the parties were served by the Tenant's representative. I proceeded to hear the Tenant's applications, uncontested.

T2/T6 APPLICATIONS

11. By way of background, this tenancy began on August 1, 2021 and ended on June 30, 2023 when the Tenant moved out of the rental unit. The lawful monthly rent was $1,720.34 and was due on the first of the month.

12. The residential complex was a triplex that had three units: the basement occupied by other tenants, the main level three-bedroom unit occupied by the Tenants; and the upper level occupied by the superintendent, Mike. Each unit had its own electricity meter located at the exterior of the house.

13. The Tenant's T2 and T6 applications were filed with the Board on July 13, 2022; pursuant to subsection 29(2) of the *Residential Tenancies Act, 2006* and the principles found at paragraph 9 of *Toronto Community Housing Corporation v. Allan Vlahovich*, 2010 ONSC 1686, the limitation period cannot extend beyond July 14, 2021 with respect to any remedy. However, since the tenancy began on August 1, 2021, the limitation extends to this date as there was no landlord tenant relationship prior to this date.

> [9] …In light of the one-year limitation period in s.29(2), the Board can only make a determination that a landlord has breached an obligation under s.20(1) during the one year period before the making of the application. Accordingly, the remedy that may be granted may only be granted in relation to breaches during that one-year period. While evidence of events prior to the commencement of the one-year period may be admissible at a hearing before the Board, for example, to enable the Board to understand the cause of the disrepair, this does not permit the Board to extend the remedy back to a time prior to the commencement of the statutory limitation period.

Substantial interference

a. Standard Lease Agreement not provided

14. The Tenant testified that on July 9, 2021, they signed an OREA-generated lease agreement for the rental unit; their tenancy was to commence August 1, 2021. To secure the unit, they also provided 6 months of rent paid in advance. The Tenant testified that they moved into the rental unit on August 21, 2021.

15. When the Tenant asked the Landlord to provide them with a standard lease, the Landlord failed to do so until March 18, 2022. As a result, the Tenant withheld March 2022's rent.

16. The Tenant testified that on April 22, 2022, they were notified that the new Landlord would take over, however, no contact information was provided for the new Landlord. The Tenant confirmed that the superintendent remained employed at the premises for both Landlords.

Analysis

17. Effective April 30, 2018, a standardized lease was instituted in the Province of Ontario and was required to be used for most new tenancies born thereafter. This tenancy began on August 1, 2021, so I find the Landlord was required to use the new standard lease.

18. Subsection 12.1(5) of the *Residential Tenancies Act, 2006* states:

> **12.1 (5)** The tenant of a rental unit who is a party to a tenancy agreement described in subsection (4) may, once during the tenancy, demand in writing that the landlord provide to the tenant, for the tenant's signature, a proposed tenancy agreement that,
>
> (a) complies with subsection (1);
> (b) is for the occupancy of the same rental unit; and
> (c) is signed by the landlord.

19. The problem here is that the Tenant did not provide any evidence to the Board that they had made this request in writing, nor did they provide the date of this request. Thus, it is unclear whether the Tenant was entitled to withhold one month's rent since the Act requires a tenant to wait 21-days after the request is made before withholding the maximum amount of one month's rent.

20. Further, I find the evidence was insufficient to establish the Landlord substantially interfered with the Tenant's reasonable enjoyment as there was no evidence of the impact on the Tenant for not receiving a standardized lease. While the Tenant stated that they did not have the contact information for the new Landlord, the Landlord's agent (superintendent) remained onsite, employed and accessible to the Tenant.

21. As such, this claim for substantial interference must be dismissed.

b. Basement tenant's interferences

22. The Tenant testified that on August 24, 2021, the power to their fridge had been shut off and restored on September 3, 2021. The Tenant lost their groceries in the fridge valued at $141.00.

23. When they told the Landlord of the issue, the Landlord sent someone the following week and without making any repairs, the fridge randomly started working again. The Tenant complained to the Landlord that the downstairs tenants are the only ones with access to their electrical panel but the Landlord did not do anything to restrict their access or stop the interference.

24. The next time the power was turned off in their unit was for the period between September 9-13 and 14-17, 2021. It was only on investigation that it was discovered the tenants in the basement had turned it off again. The Tenant complained to the Landlord who did not take any action to stop the basement tenant's behaviour. Instead, the Landlord encouraged the Tenant to sort it out between themselves and live amicably without involving the Landlord.

25. The Tenant testified that on September 7-8, 2021, they received aggressive and hostile texts from the basement tenants because of their dog barking in the unit. Effective September 9, 2021, the dog went to their parents' home during the day, but the Tenant continued to receive threats from the basement tenants that they would kill them.

26. When the Tenant complained to the Landlord, the Landlord's response was, it was not their concern, and that the Tenant should contact the police – which they did; they arrived 27 hours later.

27. The Tenant testified on June 27, 2022, the basement tenants began to block the use of their second parking space, which was included in the lease agreement, by plugging in their radio using an extension cord.

28. When the Tenant told the Landlord of this issue, the Landlord said they would bring the issue to the basement tenant's attention and ask them to refrain from this behaviour, however, the issue was not rectified.

29. The Tenant submits the basement tenant's behaviour continued to get worse; on November 2, 2022, the Tenant complained again of the noise and partying that would take place outside their kitchen windows; the cigarette smoking that would come into their unit; their inability to go outside to their storage unit in fear of being confronted by the basement tenants or their guests.

30. The Tenant submits the Landlord's response remained inadequate and they only apologized for the Tenant's frustration.

Analysis

31. What we have here is essentially a dispute between two tenants: the basement tenants and the main floor tenants.

32. Section 22 of the Act states:

> **22** 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.

33. The wording of section 22 of the Act makes it clear that it is concerned with the behavior of landlords. In the case before the Board, the behaviour of the Landlord, which the Tenant claims caused a substantial interference with their reasonable enjoyment of the unit, is the Landlord's failure to take reasonable and effective steps to address the Tenant's complaints about the basement tenants impacting the power supply to their unit, smoking, and yelling and threatening the Tenant, and thereby failing to provide the Tenant reasonable enjoyment of the unit.

34. A landlord's duty to address substantial interference with the reasonable enjoyment of a tenant by another tenant was affirmed by the Divisional Court in *Hassan v. Niagara Housing Authority,* [2000] O.J. No. 5650 (hereinafter "Hassan"). The Court held:

> "It is not that the other tenant's actions are imputed to the landlord, but, rather, the landlord's legal responsibility to provide the tenant with quiet enjoyment that gives

> rise to the responsibility on the landlord to take reasonable steps to correct the intrusion of the neighbouring tenant on the tenant's right to quiet enjoyment."

35. In other words, a landlord has the positive obligation to provide the tenant with quiet enjoyment and take the reasonably necessary action against any tenant that denies a neighbouring tenant quiet enjoyment of his premises.

36. In the *Hassan* case, there was no evidence that justified the finding of the tribunal that the landlord took reasonable steps within a reasonable length of time to restore to the tenant the quiet enjoyment to which he was entitled. The Court found the landlord had to do something effective, even make application to terminate the tenancy of the offender, if necessary.

37. *Hassan*, was cited in *First Ontario Realty Corp. v. Appelrouth, 222 A.C.W.S.* (3d) 790, wherein the Divisional Court stated, in part, as follows:

> "The Board's statement that a landlord can be held liable for the actions of a third party is a misstatement of the law. In order to provide a remedy under s. 29(2), the Act requires the Board to find that the landlord is itself responsible for causing interference with a tenant's reasonable enjoyment. For example, a landlord may be liable for failing to take reasonable steps to stop a tenant from making noise that disturbs other tenants (indeed, the Board correctly stated this proposition earlier at para. 51 of the Reasons). Notably, the landlord in such a situation is not "liable" for the actions of the noisy tenant. Rather, the landlord would be responsible because of its own failure to take reasonably necessary actions to ensure that all tenants could reasonably enjoy the rental premises (*Hassan v. Niagara Housing Authority* (2001), 48 R.P.R. (3d) 297 (Div. Ct.) at paras. 16-18)."

38. It follows, then, from *Hassan* and *First Ontario Realty Corp*., that a landlord, faced with complaints about offending conduct by one tenant against another tenant, must take reasonable steps, within a reasonable amount of time, to investigate the offending conduct, appropriately address the conduct and, where the conduct does not cease, issue a notice of termination to the alleged offending tenant(s). The service of a N5 notice of termination by a landlord is a significant, and an often effective, first step when the offending conduct does not cease as is alleged here. If the offending conduct continues even after the N5 step is taken, a next step might be the filing of an application with the Board to terminate that tenancy.

39. In this T2 application, it is unclear what steps, if any, were taken by the Landlord. I say this based on the Tenant's uncontested evidence that the Landlord's response was essentially "I am not getting involved – sort it out yourselves."

40. Therefore, I find on a balance of probabilities that the Landlord substantially interfered with the Tenant's reasonable enjoyment of the rental unit or residential complex by not taking effective and timely steps to investigate and ultimately resolve the Tenant's complaints in respect to the basement tenants.

Maintenance & Disrepair

c. Stove

41. The Tenant testified that when they moved into the rental unit, there was a crack on the stove top; they had informed the Landlord who replaced the stove with another, who's display wasn't working. They informed the Landlord of this issue on August 24, 2021 to which the Landlord responded, that the Tenant could return it and purchase another one at the same price. A copy of this text message was submitted into the Board in support.

42. It is unclear whether this issue was resolved and by whom, as there were no further complaints submitted to the Landlord about the stove display issue.

43. As such, I find the evidence is insufficient to establish that the Landlord was in breach of subsection 20(1) of the Act and this claim must be dismissed.

d. Electrical outlets

44. The Tenants testified on September 9, 2021, the electrical outlets in the master bedroom were not working. When they informed the Landlord at that time, the Landlord did not rectify the issue. When they followed up in October and December 2021, no action was taken by the Landlord until the property changed hands in April 2022.

45. Case law concerning maintenance applications holds that if a landlord does not complete necessary repairs in a timely and effective manner, then an abatement of rent may be awarded. I am satisfied that the Landlord was aware of the issue with the electrical outlet as early as September 9, 2021. The Tenant's uncontested evidence was that the issues remained unresolved to April 2022.

46. Given all of the above, I am satisfied the Landlord breached section 20(1) of the Act. The rental unit was not in a good state of repair, fit for habitation or in compliance with housing or safety standards. I also find that the Landlord did not complete the repairs in a timely and effective manner. Thus, I find the Tenant is entitled to a remedy for this issue.

e. Mould

47. The Tenant testified that on December 6, 2022, she told the Landlord of the mould she saw in the bathroom window and asked that an exhaust fan be installed; the Tenant submits they would clean the mould with bleach every few days.

48. While the former Landlord told her they had no money to install the fan, when the property changed hands, the new Landlord ended up installing the fan, but the Tenant continued to see the mould growth in her bathroom.

49. Based on the evidence before the Board, I am satisfied the Landlord breached section 20(1) of the Act. The rental unit was not in a good state of repair, fit for habitation or in compliance with housing or safety standards with the presence of black mould in the Tenant's bathroom. While the Landlord installed the exhaust fan, this did not resolve the issue and was therefore not an effective fix. Thus, I find the Tenant is entitled to a remedy for this issue.

f. Ceiling Bubble burst

50. On January 5, 2022, a soft spot bubble was visible on the ceiling wall; the Tenant informed the Landlord and requested that they come take a look. The Landlord's superintendent attended their unit the following day and poked a hole in the soft spot.

51. The Tenant testified that this only made the situation worse as, every time the upstairs tenant would flush their toilet, the raw sewage would come through the hole. The Tenant submitted photographs to show the hole and the bubble.

52. The Tenant submits the Landlord's employee performed a temporary fix to the issue by sticking drywall in the hole and plastering it. They confirm there were no further issues thereafter.

53. Based on the evidence before the Board, I am not satisfied the Landlord breached section 20(1) of the Act. I say this based on the Tenant's own evidence that the superintendent's fix of the drywall and plaster rectified the issue. There was no evidence before me that the Landlord did not act in a timely manner. While the Tenant's submit the fix was temporary, there were no photographs submitted to show the nature of the fix. Further, the Act does not require the fix to be to the Tenant's satisfaction.

54. As such, I find this portion of the Tenant's claim for disrepair must be dismissed.

Remedies

55. In their submissions, the Tenant seeks a 20% rent abatement for a 12-month period for the issues they've endured. They also seek reimbursement of the $141.00 loss of groceries as a result of the Landlord's failure to control other tenants' access to their electrical breaker panel; finally, the Tenant seeks $1,500.00 in loss of wages.

56. I find the remainder of the remedies sought in the Tenant's application that have not been mentioned in the submissions to be abandoned.

57. Abatement of the rent is the most common remedy awarded to tenants. It is intended to reflect the idea that if a tenant is paying rent for a bundle of goods and services and not receiving everything being paid for, then the tenant is entitled to abatement of the rent proportional to the difference between what is being paid for and what is being received.

58. While the evidence was limited with respect to the impact on the Tenant, I find it appropriate to grant the Tenant a 10% rent abatement for the period Septemebr 9, 2021 to April 30, 2022 for the issue of the electrical outlets that did not function in the master bedroom. I say this based on the evidence tendered by the Tenant of the constant follow up with the Landlord to have the issue resolved. This amount is calculated as follows: [($1,720.34 x 12 months/ 365 days) x 0.10] x 233 days = $1,318.78.

59. With respect to the issue of the mould in the Tenant's bathroom, I find that the Landlord was aware of this issue effective December 6, 2022 and that this issue did not rectify prior

to the Tenant moving out. I find it appropriate to award the Tenant a 15% rent abatement for the period December 6, 2022 – June 30, 2023 or $1,746.88.

60. Finally, with respect to the Landlord's inaction regarding the Tenant's complaints surrounding the behaviour of the basement tenants, I find it appropriate to award the Tenant a 20% rent abatement for this issue, for the period commencing September 9, 2021 to June 30, 2023.

61. However, given the amount sought by the Tenant in their application is $4,080.00 and less than $7,464.60, the amount sought by the Tenant shall be awarded.

62. With respect to the $1,500.00 in wages, I do not find it appropriate to award this amount as the Tenant chose to take time off work to be present when the Landlord's agents attended – this was not a requirement under the Act as the Landlord is entitled to enter and is liable for their agents once proper notice has been provided – with or without the Tenant's presence.

63. Finally, with respect to the request for the reimbursement of $141.00, since there was no evidence submitted such as receipt for the groceries or an inventory of the items that had to be thrown, I find the evidence is insufficient to establish this claim and therefore it must be dismissed.

64. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is $7,193.66. This amount represents:

    - $4,080.00 for a rent abatement regarding the T2 application;
    - $3,065.66 for a rent abatement regarding the T6 application; and
    - $48.00 for the application filing fee.

2. The Landlord shall pay the Tenant the full amount owing by March 31, 2024.

3. If the Landlord does not pay the Tenant the full amount owing by March 31, 2024, the Landlord will owe interest. This will be simple interest calculated from at 7.00% annually on the balance outstanding.

4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

March 20, 2024
Date Issued

Sonia Anwar-Ali
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor

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