



Order under Section 30
Residential Tenancies Act, 2006

File Number: TNT-30825-21

In the matter of: 502, 1530 VICTORIA PARK AVENUE
TORONTO ON M1L4R9

Between: Jamal Shanghie Tenant

and

Oxford Properties Landlord

Jamal Shanghie (the 'Tenant') applied for an order determining that Oxford Properties (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 application was heard by videoconference on October 14, 2021. The Tenant was present at the hearing. The Landlord's agent, Edgardo Diwa, and the Landlord's representative, Martin Zarnett, were also present at the hearing.

Determinations:

T6 Application

1. On February 16, 2021 the Tenant filed a T6 application (T6) seeking a rent abatement and a termination of his tenancy as a result of the Landlord failing to meet maintenance and safety obligations under the Act. I am satisfied that the Tenant's T6 complies with s.29(2) of the *Residential Tenancies Act, 2006* (the 'Act').
2. Section 20 of the Act holds the landlord 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.
3. In *Onyskiw v. CJM Property Management, 2016 ONCA 477* (CanLII), the Court of Appeal determined that a contextual approach should be adopted when considering a landlord's potential breach of subsection 20(1) of the Act and a breach will not be found if the landlord's response to a maintenance issue was reasonable in the circumstances.
4. I must also apply subsection 30(2) of the Act and consider whether the Tenant advised the Landlord of the alleged breaches before applying to the Board, and the parties' duty to mitigate found in section 16 of the Act.

Background

5. The rental unit is a fifth-floor apartment within a multi-unit residential complex. The Tenant moved into the rental unit on June 1, 2020 and vacated the unit on April 29, 2021.
6. The Tenant alleges that the Landlord failed to maintain the unit in a good state of repair, specifically regarding the following:
 - Heating;
 - Drinking water;
 - Mould; and
 - COVID 19 cleaning
7. The Tenant also alleges that the Landlord failed to meet safety standards through the provision of inadequate security in the parking garage of the residential complex.
8. The Tenant is seeking a rent abatement of \$4800.00 representing rent for the two and a half months that his unit had insufficient heat. The monthly rent for the unit was \$1920.00.
9. On the date of his application the Tenant was also seeking a termination of his tenancy. Given that the Tenant vacated the rental unit on April 29, 2021, I find that the tenancy terminated on April 29, 2021.

Heating

10. The Tenant testified that on November 18, 2020 he issued a complaint to the Property Manager regarding insufficient heat in his unit. He acknowledged that building staff responded within a day to this complaint, as well as three additional complaints, on January 29, 2020, February 1, 2021, and February 5, 2021. The Tenant noted that he had to purchase a space heater and extra blankets to endure the cold at night. The Tenant testified further that when building staff visited his unit on November 18, 2020, they advised him to remove a window air conditioning unit that was causing some heat loss. He acknowledged removing the air conditioner in early February 2021. The Tenant stated that on February 5, 2021 a contractor flushed the heating pipes in his unit and the heating was then acceptable.
11. Ronnie Manaois, the Building Manager of the residential complex, responded within one hour to the Tenant's heat complaint on November 18, 2020. Mr. Manaois testified that he measured the unit temperature at 21.4 degrees Celsius, and also advised the Tenant that the portable air conditioning unit in the window was a source of heat loss and should be removed. Jethro Joaquin, a building staff member, responded within a day to the Tenant's second heating complaint on January 28, 2021. Mr. Joaquin testified that he measured the unit temperature at 21.1 degrees Celsius in the living room and 21.3 degrees in the bedroom. He also noticed that the air conditioning unit was still installed in the window.

12. The Property Manager of the residential complex, Edgardo Diwa, testified that the Tenant's air conditioning unit remained in the window on a third visit to his unit on February 1, 2021, but was removed when contractors flushed the heating pipes of the unit on February 5, 2021 – the date that the Tenant indicated that he was satisfied that the unit heat was acceptable. The Landlord's representative submitted documentary evidence of the Landlord's response to each heating complaint by the Tenant.
13. On the basis of the Landlord's prompt response to the Tenant's heating complaints, the three temperature measurements in the rental unit that exceeded the City of Toronto minimum temperature of 21 degrees Celsius, and the Tenant's two month delay in removing the air conditioning unit to mitigate heat loss, I find that the Landlord did not breach their obligation under s. 20(1) of the Act.

Drinking Water

14. The Tenant testified that the water in the unit was cloudy and white and not drinkable from July 3, 2020, the date he issued his first complaint to the Landlord, to the day he moved out of the unit on April 29, 2021. The Tenant also complained to the Landlord regarding the water on February 1, 2021 and provided a photo of a glass of cloudy water, taken on February 1, 2021. The Tenant testified further that he had to purchase a Brita water filter and bottled water as a result of the water quality.
15. The Property Manager, Edgardo Diwa, testified that the Tenant's first complaint of cloudy water was responded to immediately in July of 2020 by briefing the Tenant that a cloudy glass of hot water was not abnormal, and that if the Tenant waited 30 seconds the cloudiness would dissipate. Mr. Diwa stated that at no time did he or his building staff advise the Tenant that he had to boil his unit water, adding that the water in the residential complex was always safe and potable. After the Tenant's second complaint on February 1, 2021, Edgardo Diwa testified that water quality specialists Safe Tech were engaged to test the unit water. Safe Tech checked the water quality on March 31, 2021, and their report, submitted as evidence, concluded that the water was safe to drink.
16. On the basis of the Landlord's Safe Tech water quality report, and no professional water analysis submitted by the Tenant to challenge it, I find that the Landlord did not breach their obligation under s. 20(1) of the Act to provide the Tenant with potable drinking water.

Mould Smell

17. The Tenant testified that on February 1, 2021 he complained of a mouldy smell in the bathroom, and that the Property Manager (PM) responded with a visit to his unit on February 2, 2021. The Tenant testified further that the PM noted a foul smell and suggested that a flap in the exhaust vent may need repairs. The Tenant stated that these repairs did not occur during the remainder his tenancy.
18. The Property Manager, Edgardo Diwa, testified that during his February 2, 2021 visit to the Tenant's unit he noticed a fragrant smell – not a foul mouldy smell. He added that he did not see any physical evidence of mould in the unit; however, he engaged a mould specialist to investigate the issue further. The resulting indoor air quality assessment of

the unit, completed on March 31, 2021, and submitted as evidence, identifies mould levels in the unit air to be normal, and even less than the level of mould in the surrounding outside air.

19. I am satisfied that the Landlord responded to the Tenant's complaint of a mouldy smell in his unit in a timely and comprehensive manner. On the basis of the Landlord's indoor air quality assessment of the unit showing acceptable levels of mould particulate, and no third-party air analysis submitted by the Tenant to challenge it, I find that the Landlord did not breach their obligation under s. 20(1) of the Act.

COVID-19 Cleaning

20. The Tenant testified that he did not observe an increase in janitorial services in the residential complex as a result of the pandemic. He also noted that the name of a building staff member who had COVID was not disclosed to the Tenant to enable the Tenant to take precautionary measures.
21. The Property Manager, Edgardo Diwa, testified that additional cleaning in the residential complex as a result of COVID started in March 2020, before the Tenant moved into his unit on June 1, 2020, and that is the reason that the Tenant may not have observed any changes in janitorial services. Mr. Diwa stated the additional cleaning focuses on high traffic areas, and touch points, using the product Germ Guard, and that this increased cleaning frequency continues to this day. Mr. Diwa testified further that any staff members who contract COVID are removed from work immediately, and Tenants are advised immediately; however, the names of staff members are not released to respect their privacy.
22. On the basis of the Landlord's enhanced COVID cleaning protocols implemented in March 2020, the Tenant's failure to identify specific COVID cleaning deficiencies, and the Landlord's policy with respect to staff members who contract COVID, I find that the Landlord did not breach their obligation under s. 20(1) of the Act.

Physical Security

23. The Tenant testified that on February 7, 2021 at 2:00 pm he noticed that his vehicle had an obscenity drawn in the dust on the vehicle's hood, and that there was a dent in the back-passenger door. He notified the police and the Property Manager (PM), and provided a photo of his vehicle that showed the obscenity, but no photo evidence of the damaged passenger door. The Tenant testified further that the PM advised him that there are no security cameras that cover the location of his parked vehicle. Consequently, the Tenant did not feel safe in the garage when using his vehicle.
24. The Property Manager, Edgardo Diwa, testified that the Tenant complained to him on February 7, 2021 regarding the obscenity drawn in the dust on his vehicle; however, there was no complaint or a photo from the Tenant regarding damage to the vehicle. The Landlord's representative submitted that the drawing on the vehicle was an obscenity issue and not an issue of vandalism, and the Landlord was not responsible for the drawing.

25. The Tenant has not established that the lack of a video surveillance camera near his vehicle in the parking garage constitutes a breach of the Landlord's maintenance obligations under s. 20(1) of the Act. In addition, the Tenant did not provide any evidence to support his claim of damage to his vehicle or proof that any damage was sustained through vandalism in the parking garage of the residential complex. For these reasons, I find that the Landlord did not breach their obligation under s. 20(1) of the Act.


Conclusion

26. As noted in the preceding paragraphs, I find that the Landlord did not breach their obligation under s. 20(1) of the Act. Accordingly, the Tenant's application must be dismissed.

It is ordered that:

1. The tenancy is terminated on April 29, 2021, the date that the Tenant vacated the rental unit.
2. The Tenant's application is dismissed.

November 1, 2021
Date Issued



Frank Ebner
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.