Order under Section 30
Residential Tenancies Act, 2006

File Number: TNT-30188-21
TNT-32956-21

In the matter of: 409, 22 TINDER CRESCENT
NORTH YORK ON M4A1L6

Between: Crystal Powell — Tenant

and

22 Tinder Inc. — Landlord

Crystal Powell (the 'Tenant') applied for an order determining that Elena Karguina and 22 Tinder Inc (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 'T6' application).The Tenant also applied for an order determining the Landlord Canada Inc. (the 'Landlord') interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant.(The 'T2' application).

These applications were heard together, along with the Landlord's application, TNL-324425-21, by video conference December 9, 2021.

22 Tinder Inc. was represented at the hearing by its owners Steven Bloom and Michael Langer. Elena Karguina attended the hearing. The Tenant attended the hearing along with her representative Yasmin Van Maurik.

Determinations:

1. This matter consists of two applications brought by the Tenant. Application TNT-30188-21 alleges several maintenance issues. Application TNT-32956-21 alleges that the Landlord interfered with the Tenant's reasonable enjoyment of the rental unit. Both applications are based on the same substantive allegations regarding various issues with the rental unit's condition.

Preliminary Issue

1. Prior to the hearing commencing Ms. Kargunia advised she was not a Landlord, but rather an employee of the Landlord. The Tenant did not disagree. As a result, the application is amended to remove Elena Kargunia as a party.

Health, Safety and Maintenance Standards

2. Section 20 (1) of the *Act* states:

> 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.

3. In *Onyskiw v. CJM Property Management Ltd*., 2016 ONCA 477 (CanLII), the Court of Appeal rejected the idea that any service interruption amounts to an automatic breach of the Act. Instead, the Court held that the Board must undertake a "contextual analysis" in each case, looking at all the facts before finding whether a landlord has breached its maintenance obligations. As part of the analysis, the Court directed the Board to examine the essential nature of a tenant's complaints and what steps, if any, were taken by the landlord. A landlord will not have breached the Act if, after a contextual analysis, the Board determines that the Landlord's response was reasonable in the circumstances. For the reasons that follow, I find that the Landlord breached its maintenance obligations in respect of four distinct issues.

4. The Tenant's first complaint relates to bedroom and living room wall cracks. The Tenant supplied photos showing the cracks in the wall.

5. Michael Langer, on behalf of the Landlord, did not disagree that cracks in the wall exist. He attempted to justify the non-repair by stating the cracks were cosmetic and were there when the tenancy commenced. I reject the Landlord's submission on this point.

6. First, the photos establish that cracks in the wall are beyond cosmetic. Second, section 20(2) states that a landlord's maintenance obligations apply even if the tenant was aware of the state of non-repair. Thus, regardless of when the cracks first appeared, it is the Landlord's obligation under the *Act* make sure the unit is in a good state of repair. Mr. Langer's testimony indicates he knew about the cracks as early as 2019, and they have not been repaired. I am satisfied the Landlord is in breach of section 20 (1) of the *Act* in relation to the cracks in the wall—they are not in a good state of repair.

7. The second allegation involves the wooden floor. The Tenant supplied photographs showing the cracking and discoloration of the wooden floor. The Tenant testified that she would get slivers in her feet due the floors state of disrepair.

8. Again, Mr. Langer did not disagree with the Tenant. Instead he tried minimizing the impact to the Tenant. He submitted that the floor is not in a state of disrepair and it is more of an inconvenience to the Tenant. I do not agree.

9. The photographs establish that the floor is in a state of disrepair. The Tenants testimony is she can not walk around with bare feet without getting slivers. While section 20 of the *Act* does not require perfection, the floor of a unit must be in a state of repair such that its occupants can walk with bare feet without risking injury. I find that the floors are in a state of disrepair. I am satisfied the Landlord is aware of state of the floor. This is more than an inconvenience.

10. The third allegation involves the kitchen faucet. The Tenant has no (hot) water. She must use the hot water in her bathtub to the do dishes. The Tenant testified she let the Landlord know her faucet was broken November 19, 2020.

11. Mr. Langer acknowledged that the faucet is broken. He stated that it would be no problem to get someone into the unit to replace it. Based on Mr. Langer's admission, I am satisfied the Landlord is in breach of its obligations related to the kitchen faucet. While not every maintenance problem is an automatic breach, I find in this case that the that the faucet was broken, and their failure to take reasonable steps to repair the issue is unreasonable. Accordingly, I find that the Landlord breached its maintenance obligations under the *Act* in relation to the kitchen faucet.

12. The fourth issue relates to a leak in the bedroom ceiling and living room. The Tenant testified she first advised the Landlord of the leak on April 26, 2019. The Tenant supplied several photographs showing the leaks. As a result, of the leaking, the Tenant had to put her belongings in waterproof containers. The Tenant acknowledges the Landlord did make the necessary repairs, but not until March 30, 2021.

13. Mr. Bloom acknowledges the leaks. He states he could not a get contractor to repair the problem sooner because of the Covid-19 pandemic.

14. A rental unit with a leaky roof is not in a state of good repair, particularly where it is significant enough that the occupant must place their belongings in waterproof containers. It is uncontested by the parties that the leaking has resolved. However, I find the Landlord's response to be unreasonable in the circumstances. I accept the Tenant's evidence that they notified the Landlord of the problem in April 2019, which I note predates the onset of the pandemic by a number of months. The problem was first brought to Landlord's attention in 2019. The Landlord had plenty of time to fix the leaks prior to the pandemic. Any delays in fixing the leaks result from the Landlord not addressing the problem sooner. According I find the Landlord was in breach of its obligations regarding the leaking from April 26, 2019 until March 30, 2021.

Remedy

15. Subsection 30(2) of the Act states: "In determining the remedy under this section, the Board shall consider whether the tenant or former tenant advised the landlord of the alleged breaches before applying to the Board." This section of the Act was intended to reflect case law basically stating that if a landlord does not know about a particular disrepair problem then the landlord cannot and should not be held financially liable for failing to address it.

16. Additionally, in accordance with section 16 of the Act, when a landlord becomes liable to pay any amount because of a breach of subsection 20(1), the tenant has a duty to take reasonable steps to minimize the loss.

17. The Tenant requested an order requiring the Landlord to remedy the ongoing maintenance issues. The Tenant also requested a 20% rent abatement as a remedy for the various breaches.

18. The Landlord submitted that they were willing to replace the faucet but was unwilling to repair the cracks in the wall or the floor. Mr. Langer and Mr. Bloom believe they have been prudent landlords. They have spent a lot of money to repair the roof and the brickwork. They also note that the Tenant refuses to pay her rent.

19. The Tenant's non-payment of rent does not relieve the Landlord of its maintenance obligations under the *Act.* I have found there to be several longstanding and ongoing breaches of the Act dating back to 2019. Numerous photographs entered into evidence established that the issues regarding the floor, faucet and cracks were not addressed in a timely or reasonable manner. The Tenant's testimony was largely unchallenged. I find the Tenant continues to be impacted be the Landlord's breaches of the *Act.*

20. Accordingly, given that the maintenance issues giving rise to the breaches I have found are still, except for the leaky roof, ongoing, I will order the Landlord to remedy those issues.

21. Abatement is a contractual remedy. It reflects the idea that rent is for a bundle of goods and services, and if a tenant is not receiving all services that they contracted for, he or she is entitled to an abatement that is proportional to the difference. Assessing quantum is something of an art and will vary based on several factors including the nature of the problem, the length of time or frequency of the breach, and the impact on the Tenant.

22. In terms of the time period for which the Tenant is entitled to a remedy, in *Toronto Community Housing Corp. v. Vlahovich*, [2010] O.J. No. 1463 (*Vlahovich*), the Divisional Court, confirmed that a remedy under s. 30 cannot go back farther than the one-year period prior to the filing of the application. The Tenant filed their application on January 21, 2021.

23. At first glance, therefore, the Tenant is limited to a remedy covering the period as far back as January 21, 2020. However, on March 20, 2020, pursuant to an order under the *Emergency Order Management and Civil Protection Act*, Ontario suspended limitation periods established under Ontario legislation. The suspension commenced on March 16, 2020 and ended on (and included) September 13, 2020. Following the Court's reasoning in *Vlahovich*, I find that the period for which a Tenant may seek a remedy before the Board was extended by the Emergency Order as well. This finding is consistent with well-established jurisprudence that the Act is remedial legislation, and that its provisions ought to be interpreted broadly and liberally to ensure that residential tenants are protected in accordance with the Act. As a result, I find that the "clock stopped running" on the Tenant's remedial period during the suspension of limitation periods.

24. According to my calculation, therefore, the Board may grant a remedy covering the period as far back as July 21, 2019 Despite numerous complaints to the Landlord and the Landlord's agents, the disrepair issues were not and mostly have not been addressed The Tenant has had to live in a rental unit with multiple maintenance issues as a result. While most of the issues may have had little impact on the Tenant's ability to normally reside in the rental unit, the totality of the issues and the length of time the Tenant has had to live the issues, in my view, warrant a 15% abatement in rent. I have ordered the outstanding repairs to be completed by January 31, 2021. Accordingly, the Tenant is entitled to a rent a 15% rent abatement from July 21, 2019 until January 31, 2021.

25. The Tenant also seeks $157.21 for out-of-pocket expenses for the purchase of the waterproof totes. Given that the Tenant purchased these bins as a direct result of the Landlord's failure to fix the roof in a timely way, I find them to constitute reasonable out-of-pocket expenses. The Landlord shall reimburse the Tenant accordingly.

The T2 Application

26. The grounds raised in the T2 application are substantively the same grounds that formed the basis for this application, which alleges that the maintenance issues established above substantially interfered with the Tenant's enjoyment of the rental unit. In arriving at the remedies, I have awarded above for the maintenance issues, I have accounted for the impact those breaches had on the Tenant's enjoyment of the rental unit. As a result, I need not consider this application.

It is ordered that:

1. Elena Karguina is removed as a party to these applications.

2. Tenant application, TNT-32956-21, is dismissed.

3. On or before January 31, 2022, the Landlord shall repair or replace as necessary the following items to ensure they ate in a good state of repair: the kitchen faucet, the wooden floor, and the cracks in the living room and bedroom walls.

4. The Landlord shall pay the Tenant a rent abatement of $4,779, which represents a 15% rent abatement for the period of July 21, 2019 to January 31, 2022.

5. If the Landlord does not complete the work required by paragraph 3 of this Order by January 31, 2022, the Tenant is authorized to arrange for the repair or replacement of the listed items to bring them into a good state of repair, and may recover the reasonable cost of any such repair or replacement by deducting it from the rent paid after in the month(s) after the repair(s) or replacement(s) are done until there is no longer any money owing.

6. The Landlord shall pay to the Tenant $157.21 for the reasonable out-of-pocket expenses the Tenant has incurred because of the Landlord's failure to repair/maintain the rental unit.

7. The Landlord shall also pay the Tenant $48.00 for the cost of filing the application.

8. The total amount the Landlord owes the Tenant as a result of this Order is $4984.21 The amount owning to the Tenant shall be applied to the rent arrears owed to the Landlord as found in corresponding application TNL-32425-21, which was heard at the same time as these applications.

January 07, 2022
Date Issued

Bryan Delorenzi

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.