



Order under Section 69 and Section 30
Residential Tenancies Act, 2006

File Number: NOL-38299-19
NOT-37851-19

In the matter of: 36 CRYSTAL PLACE
SAULT STE. MARIE ON P6B5Z7

Between: Crystal Heights SSM Inc. Landlord

and

Matthew Recker Tenants
Tracy Lariviere-Recker

Crystal Heights SSM Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Tracy Lariviere-Recker and Matthew Recker (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe. (L1 Application – NOL-38299-19)

Tracy Lariviere-Recker and Matthew Recker (the 'Tenants') applied for an order determining that Crystal Heights SSM 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. (T6 Application – NOT-37851-19)

These applications were heard together by videoconference on May 5, 2021.

The Landlord and the Landlord's Agent Rahul Brahmhatt and the Tenants attended the hearing. The Tenants spoke with Duty Counsel prior to the hearing.

Determinations:

1. The rental unit is row house and the Tenants have resided in the rental unit from June 1, 2018 to September 20, 2020.

L1 Rent Arrears Application

2. The Tenants have not paid the total rent the Tenants were required to pay for the period from January 10, 2019 to September 20, 2020. Because of the arrears, the Landlord served a Notice of Termination.
3. The Tenants vacated the rental unit on September 20, 2020 and were in possession of the rental unit at the time the application was served.
4. The monthly rent rate as of January 1, 2020 was \$1,073.10.

5. The Tenants paid \$8,584.80 after the application was filed.
6. The Landlord testified that the total amount of rent outstanding is \$4,223.10. The Tenants did not dispute the arrears amount once they considered that the last month's rent deposit would be deducted along with outstanding interest owing to them; they agreed that approximately three months' rent was owing.
7. On the basis of the evidence before the Board I find that the Tenants owe rent arrears in the amount of \$3,870.30 to the September 20, 2020.
8. The Landlord collected a rent deposit of \$1,050.00 from the Tenants and this deposit is still being held by the Landlord.
9. Interest on the rent deposit is owing to the Tenants for the period from May 18, 2018 to May 17, 2020, in the amount of \$37.80.
10. The Landlord paid a \$175.00 filing fee and is entitled to reimbursement of those fees.

T6 Application about Maintenance

11. On September 4, 2019 the Tenants filed an Application about Maintenance (T6 application), which alleges the following facts:
 - Gaps around exit doors;
 - Roof leaks causing inability to use 4 rooms in the rental unit and no use of dining room and living room for 3 months;
 - Mould on living room walls;
 - Exterior steps are improper height;
 - Windows;
 - Rats on the property and found in the rental unit;
 - Heating costs were increased due to gaps around doors causing out of pocket expenses for elevated heating bills;
 - 12 inch pot holes in the backyard; and
 - Dog feces in back yard.
12. The Tenants' application seeks the following remedies: (1) an abatement of rent in the amount of \$7,450.00. Comprised of the following: 6 months rent, heating costs of \$2,800.00 and inconvenience and property damage of \$1,500.00, (2) an order for the Landlord to repair or replace the windows, repair the front door and comply with outstanding City work orders.
13. The Tenants testified that they had Work Orders and a Notice of Breach from City Inspectors that had been issued. However, they did not have the documents with them at the hearing. The Tenants were provided until May 7, 2021 to provide the documents to the Board as post hearing submissions, as of the date of this order no post hearing submissions were received by the Board.

Lease Waiver

14. The Landlord submitted into evidence the Lease Agreement which states the following in its Additional Clauses (Exhibit 4)
 - s. 4 Maintenance and Repair
 - c. The Tenant agrees that the Landlord shall not be liable for any inconvenience, noise, discomfort or annoyance however caused resulting from such repairs or improvements, provided the same are performed in a reasonable manner having regard to all circumstances.

S10. Liability

 - a. The Landlord shall not in any event be liable or responsible in any way for...
 - ii any loss or damage to any property...
 - iii ...any damage to any such property caused by water, rain or snow which may leak into ... the rented premises...
15. The Landlord submits that the above noted clause absolves them of liability for the Tenants' claims, including the claim for necessary capital repairs to the roof, and as a result the application should be dismissed.
16. Although I find that the Lease clause is similar to section 8(3) of O. Reg 516/06, that section of the Regulation relates to substantial interference pursuant to section 22 of the Act. The Tenant makes no claim under section 22 of the Act. Further, even had the section of the Regulation applied to the application, which it does not, the Landlord provided no evidence in relation to the mandatory conditions to be met pursuant to subsection 8(4) of the Regulation, to demonstrate that the requirements of the Act were met.
17. Further, the Act prevails over the clause of the Lease as section 3 of the Act states that the Act applies despite any agreement or waiver to the contrary and section 4 of the Act states that any provision in a tenancy agreement that is inconsistent with the act is void.
18. I find that the Lease terms do not bar the Tenants from their claim for an abatement of rent as the terms of the Lease are contrary to the Act and the Act prevails over any lease term that is contrary to the Act.

Legislation and Analysis

19. Pursuant to subsection 20(1) of the Act, 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.

Maintenance Issues

Gaps around exit doors - security

20. The Tenants testified that there were 2 ½ to 3 inch gaps around the exterior doors causing heat or cold air to enter the house and also causing the house to be unsafe as doors could not properly lock. The Tenants Testified that they advised the Landlord on June 1, 2018, the doors were partially repaired in April 2019, and there were still issues until with the doors until June 2020.
21. The Landlord testified that the Tenants notified him of the issue by email in June 2018 and advised that they would fix the door. He testified that materials were purchased for \$57.95 and provided to the Tenants and he believed repairs were completed at that time. (Exhibit – Home Depot receipt dated June 29, 2018)
22. The Landlord further testified that the front and back doors were later removed and re-installed with new frames and insulation and trim on June 7, 2019 and a new front door was purchased and installed. (Exhibit 5 – Wilson Home & Cottage Invoice)
23. On the basis of the evidence before the Board, I find on a balance of probabilities that the doors were not in a state of good repair and that the Landlord provided a partial response in June 2018 with temporary repairs and that further repairs were required which resulted in new doors installed the next year. I find that the doors were repaired in June 2019 and that delay in addressing the issue was not reasonable.
24. On the balance of probabilities, I find the Landlord failed to meet their maintenance and repair obligations in relation to installing doors that sealed and locked securely.
25. Based on the nature of the problem, the continuation of the doors not being fully secure and the impact on the Tenants, I find that the Tenants are entitled to a 5% abatement of rent for the for the insecurity of the doors for one year, for a total amount of \$630.00.

Roof leaks

26. The Tenants testified that from the start of their tenancy, every time it rained the roof leaked. They testified that the roof leaked in the living room, dining room, 2 bedrooms, the hallway and over the stairs. They testified that on January 19, 2019 they came home and found the ceiling had collapsed due to snow in the front entrance. They testified that they texted the Landlord and advised him of the roof collapse. (Exhibit 1 – text message)
27. The Tenants testified that repair work was performed on the roof but full repairs to stop leaks were not completed until September 2019. They testified that it rained as follows: 7 times in June, May on full week, July 12 day and August 14 days and water entered the unit at those times.
28. The Tenants testified that as a result of the flooding they did not have use of the following rooms:

- Half of the main floor (living room and dining room) - was unusable from March to July 2019;
 - Primary bedroom – work began in February and was not completed until April 2019; and
 - Had no use of the basement as furniture from upper floors was required to be stored there during the extended repair period (4 months).
29. The Tenants testified that their property was damaged or destroyed from the flooding in the rental unit including their curtains, this claim was included as part of the abatement request. The Tenants testified that they believed they replaced the following items: living room rug \$285.00; bedroom rug \$165.00; living room curtains and bedroom curtains. They had no receipts for the items and no estimate for the curtains other than they were purchased at Walmart.
30. The Landlord testified that he was advised of the leak by the Tenants on February 4, 2019 and that there were several leaks happening in several of the row houses that needed to be addressed. He testified that they determined capital repairs were required to address the roofs of the connected properties. He testified that due to the amount of snow at the time, roof repairers could not perform the scheduled work on February 17, 2019. He testified that temporary roof repair work was performed on February 27, 2019.
31. The Landlord testified that the capital roof repair for the complex was approved on March 13, 2019, quotes were received for the work on April 9, 2019, and the contractors selected on April 26, 2019. He testified the roof replacement began July 4, 2019 and was fully completed by August 14, 2019. (Exhibit 6 – Roof repair Invoice Aug 18/19)
32. The Landlord testified that repair work was performed on the interior of the rental unit and completed prior to May 28, 2019 when he was billed for the following work: Living room wall removed; bedroom drywall removed, replaced 4 studs, reinstalled drywall and insulation, mudding/sanding. (Exhibit 7 – Invoice B & B Home Improvement)
33. Based on the evidence before the Board, I find that the roof repair work was extensive and was completed in late May 2019, rather than July. I make this finding on the basis of the Landlord's evidence which I preferred as there was external confirmation of the work in the receipts and invoices and documented dates of work.
34. On the balance of probabilities, I find the Landlord failed to meet their maintenance and repair obligations in relation to addressing the on-going leaks in the rental unit and the roof repairs.
35. Based on the nature of the problem, the Tenants records of 20 rain and leak days, the lack of use of space in the rental unit due to leaks, on-going repairs and forced storage of furniture (ranging from 2 to 4 months for the different areas of the house) and the impact on the Tenants, I find that the Tenants are entitled to an abatement of rent for a total amount of \$2,000.00.

Mould on living room walls

36. The Tenants testified that there was mould in the living room walls when they moved in; they advised the Landlord at that time.
37. The Landlord testified that he was advised of the mould issue by text message on February 17, 2019, subsequent to the roof leak, and that he was advised that the roof was required to be fixed prior to addressing the mould. He testified that contractors attended at the rental unit for an inspection on March 13, 2019, April 11, 2019 a contractor attended to perform work, and May 28, 2019 a contractor replaced the affected drywall. (Exhibit 7)
38. On the basis of the evidence before the Board, I find on a balance of probabilities the Landlord was advised of the mould in February 2019 and fully addressed the issue by May 28, 2019. I find that three months to address the mould issue was not a reasonable amount of time and that the issue could have been addressed earlier by the Landlord.
39. Based on the nature of the problem, the continuation of the mould and the impact on the Tenants, I find that the Tenants are entitled to a 5% abatement of rent for the delay in addressing the mould for a total of 60 days, for a total amount of \$103.56.

Exterior steps are improper height

40. The Tenants testified that the maximum height/distance for steps is 12 inches and the front steps had a 42 inch drop. They testified that they advised the Landlord the day they moved into the unit. and he did not conduct repairs, so the Tenants repaired the steps in August 2019.
41. The Tenants testified that the back steps were falling apart and were 18 inches in height. They testified they could not exit the back door to use the backyard and had to walk around from the front of the house. They testified that the back stairs were never repaired by the Landlord.
42. The Landlord testified that it was his belief that the steps were built to code at the time they were installed. He testified that the front steps were fixed by the Tenants in July 2019 and he repaid them for the cost of the repair work (Exhibit 8, receipts July 19 and July 27, 2019). The Tenants' texts of July 27, 2019 state: "we need 1 more stringer for the steps"; I will get it to you tomorrow" and included a picture of the stair repair as of July 27, 2019. (Exhibit 3) The Landlord also submitted into evidence the Home Depot receipt dated July 17, 2019 to support the purchase of materials for the step repairs. (Exhibit 9)
43. The Landlord testified that the back steps required permission for construction from the Conservation Authority, which was received November 21, 2019 and the stairs were repaired within the permit's required completion period prior to December 20, 2019. (Exhibit 10 – Authority Letter) The Landlord did not provide evidence regarding when the request to construct the stairs was made and whether it was made within a reasonable period of time of the Tenants taking possession of the rental unit and making their complaint.

44. Based on the evidence before the Board, I find that the front steps took 1 year to have repairs completed and the back steps were not completed until at least the end of November 2019. Based on the nature of the work to be completed, I find that the delay in completing the repairs was not reasonable. The Landlord gave no evidence as to when approval for the back steps was sought and failed to demonstrate any delay was on the part of the Conservation Authority.
45. Based on the nature of the problem, the continuation of the stairs being unusable or a hazard and the impact on the Tenants ability to use the rental unit and safely enter and exit, I find that the Tenants are entitled to a 2.5% abatement of rent for the issues regarding the front steps for one year and the back steps for 18 months, for a total amount of \$787.50.

Windows

46. The Tenants testified that windows were in poor repair and/or not operational and they advised the Landlord when they moved into the rental unit. They testified that the Landlord replaced the windows as follows:
 - Living room window replaced March 2019;
 - Primary bedroom window replaced March 2019; and
 - Basement window (which was stuck in the open position and boarded up) was replaced September 2018.
47. The Landlord testified that work was done on the windows and replaced by Mobile Windows including:
 - Mobile Glass and Framing installed 5 screens and one window and as invoiced for the work completed on November 14, 2018. (Exhibit 11)
48. On the basis of the evidence before the Board, I find that the windows were not in a state of good repair until March of 2019, with 2 having been replace in the fall of 2018.
49. Based on the nature of the problem, the continuation of the windows and the impact on the Tenants, I find that the Tenants are entitled to total abatement of 750.00.

Rats

50. The Tenants testified that there were rats on the property and that a rat came into the house on September 3, 2018 and they advised the Landlord that day. (Exhibit 3 – Tenants' emails and photos) They testified that the Landlord sent pest control services 3 weeks later to address the problem. They testified that there were no other occurrences of rats in the house.
51. The Landlord testified that he was advised on September 3, 2018 that a rat had entered the house and he retained a pest control company who attended at the rental unit on September 14, 2018 to perform pest control. He testified that he had a monthly pest

control program that he had contracted with the company to address the issue. (Exhibit 12 – Northern Pest Solutions Invoice)

52. In the case *Onyskiw v. CJM Property Management*, 2016 ONCA 477 (Onyskiw) (CanLII), the Court of Appeal for Ontario 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. Therefore, simply because there was a pest issue in the rental unit, does not automatically amount to a breach of subsection 20(1) of the Act by the Landlord. *Onyskiw* states that a breach may not be found if the Landlord's response was reasonable in the circumstances
53. It was uncontested that the Landlord responded to the rat issue resolved the problem and another rat did not enter the rental unit; the problem did not occur again.
54. On the evidence before me, I find that the Landlord's responses and actions to engage pest control services to attend the unit by September 14, 2018 were reasonable.
55. Consequently, in accordance with *Onyskiw*, I am not satisfied that the Landlord breached subsection 20(1) of the Act by failing to maintain the rental unit with respect to rats. This claim is denied.

Holes in the backyard

56. The Tenants testified that there were one foot wide and one foot deep holes in the backyard when they took possession of the rental unit and as a result the backyard was unusable. They testified that they advised the Landlord of the issue when they moved in and as he took no action to repair the lawn, they testified that they repaired the lawn themselves in July 2018.
57. The Landlord testified that he received an email from the Property Manager on June 19, 2018 advising him that the backyard supplies of dirt, grass seed and patio stones were purchased by the Landlord and were delivered to the rental unit. He testified that he was billed for and paid for the delivery of the items and labour to install the items. The Landlord testified that there were no further concerns raised by the Tenants regarding the backyard after the work was completed.
58. Having considered the evidence before the Board, I find that the Landlord purchased soil, grass seeds and other supplies that were delivered to the property and that emails substantiate that the work was performed. It was unclear from the evidence whether the Landlord and the Tenant were speaking about the same issues or whether the Tenants had another issue with the yard that was not completed or addressed by the Landlord's work.
59. On an application to the Board, the person who alleges a particular event occurred has the burden of proof to establish that it is more likely than not that their version of events is true. In this application, the burden falls on the Tenants to establish that the Landlord failed to maintain the back yard. I find that there was insufficient evidence before the

Board to conclude that the backyard repairs were not completed by the Landlord. This claim will be denied.

Dog feces in back yard

60. The Tenants testified that there were piles of dog feces all around the backyard and they advised the Landlord of this in June 2018. They testified that the Landlord took no action to clean the backyard and remove the feces, and they cleaned the backyard themselves in June 2018.
61. The Landlord testified that he received an email from the Tenants on June 19, 2018 advising him that the backyard was fine, there were no concerns regarding the backyard.
62. On the evidence before the Board, I find that it is more likely than not that the lawn had dog feces and that the Tenants removed the feces in June of 2018.
63. I find that the issue was resolved at the very start of the tenancy and the Tenants were not significantly impacted by the issue as it was resolved. I am not satisfied that the Landlord breached subsection 20(1) of the Act by failing to maintain the backyard in relation to this issue. This claim will be denied.

Heating Costs

64. The Tenants testified that due to the gaps around the exterior doors the monthly heating bills were in excess of \$360.00. The Tenants claimed an abatement of rent in the amount of \$2,800.00 for heating costs for 8 months.
65. On the basis of the exterior doors not being fully replaced to address their ill fit, I find on a balance of probabilities, that the Tenants were impacted by cold air until the doors were fully replace in June of 2019 and that this would impact their heating costs.
66. The Tenants had no heating bills or evidence of payment of the heating costs comparisons to demonstrate by what amount the bills would exceed the same size home with properly sealed and insulated doors.
67. Based on the nature of the problem, the duration and the impact on the Tenants having gaps in the exterior doors, I find that the Tenants are entitled to a 10% abatement of rent for 8 months, for a total amount of \$840.00.
68. For the all of the reasons outlined above, I am satisfied on the balance of probabilities that the Landlord failed to meet the Landlord's obligations under subsection 20(1) of the *Residential Tenancies Act, 2006*, S.O. 2006, c.17 ('Act') to repair or maintain the rental unit.
69. I find that the Tenants are entitled to an abatement of rent for the issues above, in the total amount of \$5,111.06.
70. The Tenant paid a \$50.00 filing fee and is entitled to reimbursement of those fees.

Set-Off

71. The Divisional Court in *Marineland of Canada Inc. v. Olsen*, 2011 ONSC 6522, has indicated that when the Board is aware of situations such as this, where there are two application involving the same parties, it should be made clear to the parties that any amount owed to one party under a Board order is to be set off against monies awarded to the opposing party. As a result, as the Tenants in their applications were awarded monies with respect to Board file NOT-37851-19, that amount shall be set off against the arrears of rent the Tenants owe the Landlord under Board file NOL-38299-19.

It is ordered that:

L1 Application:

1. The Tenants shall pay to the Landlord \$2,957.50, which represents the amount of rent owing, less the last month rent deposit and interest owing on the deposit, and the cost of filing the application.

T6 Application:

2. The Landlord shall pay to the Tenants \$5,161.06. This amount represents the abatement of rent for the Landlord's failure to maintain the rental unit and the cost of filing the application.
3. The amount of \$5,161.06 payable by the Landlord to the Tenants pursuant to paragraph 2 of this order may be set off against this amount the Tenants owe to the Landlord pursuant to paragraph 1 of this order, leaving a net balance payable by the Landlord to the Tenants in the amount of \$2,203.56.
4. The Landlord shall pay the Tenants the full amount owing by May 31, 2021.
5. If the Landlord does not pay the Tenants the full amount owing by May 31, 2021 the Landlord will owe interest. This will be simple interest calculated from June 1, 2021 at 2.00% annually on the outstanding balance.



Nicola Mulima
Member, Landlord and Tenant Board

May 20, 2021
Date Issued

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

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