



Order under Section 31
Residential Tenancies Act, 2006

File Number: TET-12079-20

In the matter of: 19 MAYFLOWER AVENUE
SCARBOROUGH ON M1R4W9

Between: Megha Sood
Vaibhav Chopra Tenants

and

Nabil Khilla
Hanan Atala Landlords

Megha Sood and Vaibhav Chopra (the 'Tenants') applied for an order determining that Nabil Khilla and Hanan Atala (the 'Landlords') or the Landlords' superintendent or the Landlords' agent harassed, obstructed, coerced, threatened or interfered with them and substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household.

This application was heard by teleconference on December 10, 2021.

The Tenants and the Landlords attended the hearing.

Amendments:

1. The application is amended on consent as follows:
 - a) to add Hanan Atala as a Landlord;
 - b) to change the rent abatement claimed from \$500.00 in total to \$500.00 per month for the period during which the problems allegedly occurred;
 - c) to add an issue regarding air conditioning.
2. The Tenants filed other proposed amendments prior to the hearing. They proposed to add issues about a non-functioning range hood and lawn maintenance. These issues are framed as maintenance issues: the Tenants' complaints are that the range hood is not working, the equipment to maintain the lawn is not working, and the Landlords have not maintained the lawn. The Tenants do not allege substantial interference or harassment for these issues (the latter would be a difficult argument in any event) and so I denied the

Tenants' request to amend their T2 application to add these issues, which should have been raised in a T6 application.

Determinations:

3. The rental unit is the upper part of a house. The Tenants moved into the rental unit on September 28, 2019. The Tenants moved out in November 2020.

Garbage

4. The tenancy agreement provides that the Tenants have use of the backyard and driveway.
5. In their application the Tenants allege that the Landlords substantially interfered with their reasonable enjoyment of the premises by leaving garbage in the backyard. The Tenants testified that when they viewed the property before entering into the lease agreement, they noticed garbage in the backyard and the Landlords promised to remove it. The Tenants testified that the Landlords did nothing about the garbage until July 2020.
6. The Tenants filed photographs, taken on various dates in the spring and summer of 2020, showing the following:
 - a basketball hoop and bicycle against the side wall of the house on the edge of the driveway (there are pizza boxes under the bicycle),
 - a white board laying on the ground just behind the house,
 - a bright blue plastic bin containing garbage (styrofoam and plastic wrap) behind the shed in the backyard, and
 - a grey plastic storage bin filled with dirty water behind the shed.
7. The Tenants testified that they had use of a shed in the backyard, but it was not useable. The Tenants filed a photograph showing the inside of the shed. It is dirty, disorganized, and contains a lot of discarded items and refuse. The Tenants testified that the only thing they could keep in there was the box for a barbeque that they bought in July 2020.
8. The Tenants also filed a photograph of an old ragged sofa just behind the house. They testified that they took this photograph in March 2020. The photograph of the white board behind the house, taken in the summer of 2020 does not show this sofa. The Tenants did not testify as to how long the sofa was at the property but they did testify that it was removed in May 2020.
9. The Tenants also filed a photograph of garbage bins containing garbage, yard waste, paper and dirty water, located against the fence on the side of the driveway opposite of the house. The Tenants testified that they took this photograph on July 14, 2020. The Tenants did not testify as to how long this garbage was there.
10. The Tenants also filed a photograph of some garbage bags at the curb in front of the house that were there for a week. This evidence is irrelevant to the application, which complains about garbage in the backyard and the shed.

11. The Tenants testified that because of the garbage in the backyard they could not use the backyard. They testified that in May 2020 they cleaned up the garbage, except inside the shed, and that in July 2020 the Landlords cleaned up the shed. The Tenants testified that it took an hour to clean up the garbage.
12. The Tenants testified that they complained about the garbage to the Landlords multiple times. The Tenants filed copies of text messages to the Landlords showing that they complained in March and May of 2020. There are other text messages that refer to the garbage but they are not dated.
13. The Landlords testified that they cleaned up all of the garbage in November 2019 but the garbage kept coming back.
14. It is uncontested that the backyard area had garbage in it. The parties disagree as to when it was cleaned and by whom. There are several text messages from the Tenants complaining about the garbage situation in March and May 2020. These texts refer to a problem that has existed since the beginning of the tenancy. The Landlords filed no evidence that they responded to these texts asking what the Tenants are talking about, referring to the cleaning that they did in November 2019, or asking how garbage could have accumulated after then. For these reasons, I prefer the Tenants' evidence to the Landlords' evidence as to when the garbage was cleaned up and by whom.
15. Based on the above I find, on a balance of probabilities, that there was garbage of various kinds in the backyard from September 28, 2019 to May 16, 2020 and that the shed was dirty and full of garbage from September 28, 2019 to July 1, 2020. I find that this substantially interfered with the Tenants' reasonable enjoyment of the premises.
16. The Tenants testified that they have a dog and that because of the condition of the backyard they could not let their dog out there. The Tenants adopted their dog in September 2020. I therefore cannot consider this as an impact on the Tenants by the garbage in the backyard before July 2020. The application states that the garbage was a problem from September 2019 to July 2020 when it was cleaned up. The Tenants have filed proposed amendments to their application but did not propose to amend it to include a further allegation that there was new garbage in the backyard after July 2020. I therefore cannot consider any evidence of garbage after July 2020 as the Landlords were not put on notice that this would be an issue at the hearing.
17. The Tenants took one hour to clean up the garbage in the yard in May 2020. They could have done this earlier but decided not to do so because this as the Landlord's responsibility. Section 16 of the *Residential Tenancies Act, 2006* (the 'Act') provides as follows: "When a landlord or a tenant becomes liable to pay any amount as a result of a breach of a tenancy agreement, the person entitled to claim the amount has a duty to take reasonable steps to minimize the person's losses." This section codifies the common law principle of the duty to mitigate. The Tenants had an obligation to take reasonable steps to rectify the backyard situation so that they could enjoy the backyard. One hour of work rectified the situation; they could have done this in November of 2019 but decided to refrain from using the backyard instead.

18. The garbage of which the Tenants complain appears annoying but is only at the perimeters of the property and inside the shed.
19. After considering the nature of the problem, the impact on the Tenants, the duration of the problem and the Tenants' failure to mitigate their losses, I find that the Tenants are entitled to a lump sum rent abatement of \$200.00.

Car in driveway

20. In the application the Tenants allege that when they moved in a car was permanently parked in the back part of the driveway, blocking the Tenants from keeping their waste bins at the back and as a result the bins would crash against the Tenants' car and raccoons would run on the Tenants' car (which was parked in the front of the driveway).
21. The other car belonged to the tenants downstairs. The other car was removed in July 2020.
22. The Tenants gave no evidence that the garbage bins or raccoons caused damage to their car.
23. Because the Tenants gave no evidence of any negative impact that this issue had on them (other than that it was annoying to keep the waste bins at the front) I cannot find that this issue constitutes substantial interference with their reasonable enjoyment of the premises. The car may have somewhat interfered with their reasonable enjoyment but not substantially.

Utility bills

24. The tenancy agreement provides that during the tenancy the Tenants would pay for 60% of the utilities costs and the basement tenants would pay for 40% of the utilities costs.
25. It is uncontested that the basement tenants stopped paying their share of the utilities costs about 6 weeks after the Tenants moved in. The Tenants then paid 100% of the utilities costs and complained to the Landlords.
26. The Tenants took the position that their added costs were \$1,381.00 and they deducted this amount from their rent to the Landlords. The Landlords did not agree that the Tenants had incurred this amount of additional utilities costs. The Tenants did not file any of the utilities bills showing how much was charged utilities during the material time and so there is no way to calculate, based on objective evidence, the costs incurred by the Tenants. The utilities were in the Tenants' names and so this evidence was easily obtainable.
27. The Landlords testified that when the Tenants complained about this issue, they served an N5 notice of termination on the basement tenants, who then told the Landlords that they had paid for a lot of the outstanding balance.
28. Based on the Tenants' lack of evidence, I cannot find, on a balance of probabilities, that the Tenants paid \$1,381.00 in utilities cost shortfalls created by the downstairs tenants' failure to pay their portion of the utilities costs.

Air conditioning

29. The Tenants testified that one day in June 2020 the Tenants noticed it was uncomfortably hot in the unit and that the air conditioning appeared to not be working. They spoke to the downstairs tenants about it and they said the air conditioning was making them cold so they flipped the breaker, cutting electricity to the air conditioner. The Tenants reported this issue to the Landlords the same day. The Tenants testified that the Landlords told them they would speak to the basement tenants about it. The Tenants testified that the issue continued throughout July and August 2020.
30. In cross examination the Tenants testified that they reported a problem with the air conditioning to the Landlords on May 27, 2020 and that the Landlords had a technician inspect the air conditioning unit on June 1, 2020.
31. The Landlords testified that the moment they learned that the basement tenants were flipping the breakers to interfering with the air conditioning they served the basement tenants with an N5 notice of termination. The Landlords testified that they also contacted the fire department and asked if it would be permitted to build a box around the electrical panel to prevent the basement tenants from accessing it. The Landlords testified that they were told this is not permitted.
32. The Board's records show that the Landlords served the basement tenants with an N5 notice of termination on June 24, 2020 and that this notice alleges that the basement tenants are interfering with the air conditioning. The Landlords also filed an L2 application seeking eviction. By the time the hearing was held for this application, the basement tenants had moved out.
33. For an allegation such as this one, where the problem is caused by another tenant and not by the Landlords, the Tenants must establish that the Landlords failed to address the issue in a reasonable manner. In this case the Landlords threatened the basement tenants with eviction and followed through with their threat by commencing eviction proceedings. This is the most reasonable way to address the issue.
34. Further, the parties agree that the Landlords offered the Tenants a \$100.00 rent abatement (to be applied toward arrears) for the cost of fans or other equipment they could use for cooling. The Tenants had asked the Landlords to pay the cost of a portable air conditioner. The Tenants testified that the cost would be \$600.00 or \$700.00 for a portable unit and that they could not afford it. The Tenants gave no evidence that they considered or researched any less expensive alternative, like a window air conditioner.
35. In these circumstances it would not be fair to expect the Landlords to spend \$600.00 or \$700.00 on a second air conditioner for a residential complex that already has a working air conditioner. I find that the Landlord's response to this issue was reasonable and, further, that the Tenants failed to mitigate the harm to themselves; they did not look into a less expensive option such as a window air conditioner, the cost of which would have been subsidized by \$100.00 by the Landlords.

36. For the reasons above, I cannot find that the Landlords substantially interfered with the Tenants' reasonable enjoyment of the rental unit by failing to address the air conditioning issue.

It is ordered that:

1. The Landlords shall pay to the Tenants \$200.00 as a lump sum rent abatement for substantially interfering with their reasonable enjoyment of the premises with respect to the garbage issue.
2. The Landlords shall also pay to the Tenants \$48.00 for the cost of filing the application.
3. The total amount the Landlords owe is \$248.00.
4. The Landlords shall pay the Tenants the full amount owing by January 23, 2022.
5. If the Landlords do not pay the Tenants the full amount owing by January 23, 2022, the Landlords will owe interest. This will be simple interest calculated from January 24, 2022 at 2.00% annually on the balance outstanding.
6. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.



January 12, 2022

Date Issued

Renée Lang

Member, Landlord and Tenant Board

Toronto East-RO
2275 Midland Avenue, Unit 2
Toronto ON M1P3E7

This order contains all reasons for the determinations and order made. No further reasons will be issued.

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