



Order under the Residential Tenancies Act, 2006

Citation: BARNETT v TASELOS, 2023 ONLTB
81414 **Date:** 2024-01-16

File Number: LTB-T-074184-22

In the matter of: BSMT, 468 ONTARIO ST
TORONTO ON M5A2W1

Tenant

Between: ELIJAH BARNETT
JOHN DEMUYNCK

And

Landlord

PHOTINI TASELOS
MARY-LOUISE TASELOS

ELIJAH BARNETT and JOHN DEMUYNCK (the 'Tenant') applied for an order determining that PHOTINI TASELOS and MARY-LOUISE TASELOS (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.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.
- withheld vital services

ELIJAH BARNETT and JOHN DEMUYNCK (the 'Tenant') also applied for an order determining that PHOTINI TASELOS and MARY-LOUISE TASELOS (the 'Landlord') failed to meet the Landlord 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 November 19, 2021, and October 31, 2022.

The parties were also permitted post-hearing submissions with a final deadline of January 13, 2023.

The Landlord's Legal Representative David Ciobotaru, the Landlords and the Tenants attended the hearings.

These applications have been migrated from the previous case management system with former file number TST-20565-21.

Determinations:

2024 CanLII 17598 (ON LTB)

1. As explained below, the Tenant proved the allegations contained in the applications on a balance of probabilities. Therefore, the Landlord must pay the Tenants reasonable out-of-pocket expenses and a rent rebate.

T6 Application

2. The Tenant John Demuynck testified regarding the maintenance issues:
 - a. A smoke alarm in the rental unit was defective, had been reported to the Landlord on June 28, 2020, and was finally repaired on September 15, 2020. The Tenant stated that it was only resolved once the fire department was called to inspect.
 - b. There is a lack of insulation in floor joists and sound proofing between this unit and the upper unit, that caused excessive heat loss and noise. This was reported on August 28, 2020 and not resolved before the Tenants vacated.
 - c. Some appliances, stove and dryer, and the air conditioning unit did not work. The air conditioning was reported October 5, 2020 and not resolved before Tenants vacated. The dryer was reported on October 5, 2020 and resolved on October 29, 2020. The stove was reported on October 15, 2020 and resolved on October 29, 2020.
 - d. The windows were defective. The window crank did not work and there were gaps between the screen and the window. This was reported on July 14, 2020 and not resolved before Tenants vacated. The Tenants stated that they could only open the window by using wrench.
3. The Tenants stated that they believed that the Landlord's air conditioner technician had come in to inspect the air conditioning unit and had turned off the breakers which affected the other appliances. They stated that an electrician had come in on October 29, 2020 and indicated that the breakers were faulty.
4. The Landlord Mary-Louis Taselos testified regarding the maintenance issues.
 - a. That an electrician had been called to repair the smoke detector and after some delays because the Tenants were not home, repaired the smoke detector.
 - b. The air conditioning unit had been added after the Tenants moved in and was not included in the tenancy agreement. The repairman indicated that a part was required and that due to COVID there may be a delay in obtaining the part. This was in September 2020, and since was not during the hot summer months, was not a priority to repair.
 - c. Regarding the appliances, they contracted an electrician who was able to attend within a couple of weeks to repair the problem. They stated that 3 breakers had to be replaced.
 - d. They had contacted the window company to inspect and repair the windows. The windows were repaired on November 11, 2020.
5. The Landlord testified that they did their best to have repairs done during COVID.

6. I am not satisfied that the lack of insulation or soundproofing is indicative of any maintenance defects. The Tenants were unable to refer to any order from the City or the Building Code to show that there was a requirement for these things.
7. The air conditioning unit, once installed, became an integral part of the tenancy, even if it was not included or contemplated at the time the tenancy was formed. Although, it broke down in September 2020 and was not repaired until after the Tenants vacated, I am not satisfied that this was unreasonable in all of the circumstances, noting COVID, and the delays in obtaining parts. Given that the summer peak hot period had passed, I am not satisfied that this warrants compensation.
8. It was uncontested that one of the smoke detectors did not work and that it was finally repaired after some 10 weeks. It is likely that since the Fire Department had inspected and directed the repairs that it only become a priority for the Landlord at that time. The lack of functioning smoke detection equipment, particularly in a multi-residential complex is a serious maintenance issue.
9. It was uncontested that the breakers were the cause of the appliance malfunctions. It is unclear if this was deliberate or just a reflection of an older building needing regular maintenance. The lack of a stove over a two-week period is significant. There was no reasonable explanation for why it took two weeks for an electrician to arrive and effect repairs. These issues, if the electrical breakers were the cause, suggest that there ought to have been a greater sense of urgency by the Landlord to at least have it inspected quickly given that electrical issues could have serious consequences if not properly resolved in a timely manner.
10. The window cranks were repaired, however the gaps in the screen was bothersome for the Tenants because it meant that when the windows were open that bugs and insects could enter into their unit.
11. I am satisfied that the Landlord has breached section o 20 of the Act which states:

20 (1) 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.

(2) Subsection (1) applies even if the tenant was aware of a state of non-repair or a contravention of a standard before entering into the tenancy agreement.

12. The Tenants were seeking a rent abatement of 25% for the duration of their tenancy in relation to the maintenance issues. They also claimed \$694.54 for the cost of take-out meals purchased while the stove did not work.

13. I have considered all of the circumstances, and the duration of the issues, noting that the non-functioning smoke detector was the most serious and lengthy issue and that it was likely not repaired until after the fire department inspection that an abatement of 10% for 3 months in total is appropriate. The Landlord shall be ordered to pay \$570.00 rent abatement. ($\$1,900 \times 10\% \times 3$).
14. I am also satisfied that the Tenants are entitled to reimbursement for out-of-pocket expenses for meals. The Tenants provided receipts for the amount of \$694.54. Some reasonable delays are to be expected with any appliance repair, however in this instance 2 weeks appeared too long before the electrician arrived. Therefore, I am satisfied that the Tenants are entitled to a 75% reimbursement for out of pocket expenses for a total of \$520.91.

T2 Application

15. The Tenant's witness Kevin Sullivan, a former tenant testified of their experiences with the Landlord. The issues raised by this witness are not related to the merits of the Tenant's applications, and therefore I have not given this testimony any weight or consideration in my deliberations.
16. The Tenant Elijah Barnett testified about the allegations in the T2 application:
 - a. That the Landlord had attempted to overcharge them for hydro and failed to provide any reasonable explanation for the charges.
 - b. The Landlord and Tenants would get into arguments at inappropriate times (during medical appointments) over the unpaid hydro bills.
 - c. The Tenants believe that the Landlord served N5 notices of termination in bad faith.
 - d. The Tenants had complained about another Tenant's dog barking and that the Landlord did nothing about it.
 - e. That the Landlord screamed profanities at them and threatened to call police on them. That on October 3, 2020 that the Tenant Elihah Barnett was arrested and charged. That the Landlord would show up at the residential complex to harass and "bait" the Tenants into reacting to it.
 - f. That the Landlord had used a leaf blower to blow debris into he Tenant's unit, resulting in the Landlord being charged with mischief.
 - g. That the Landlord had illegally caused the Tenant's vehicle to be towed.
17. The Tenants confirmed that the charges had been withdrawn on October 21, 2021.
18. The Tenant's witness Regan Irvine testified. Mr Irvine is a former commercial and residential tenant in the buildings. He had been a commercial tenant for 8-9 years and a residential tenant just over 2 years.
 - a. He stated that the Landlord had instructed him to turn off the electrical breakers.

- b. He stated that the Landlord had asked him to arrange for the Tenants to move their vehicle so it could be towed. He confirmed that this was a set-up by the Landlord.
 - c. On cross-examination he stated that he would turn off the breakers in order to turn off the Tenant's music because it was too loud.
19. The Landlord's witness Caitlin Fisher testified. The witness had been a tenant in unit 2 on the second floor.
 - a. They testified that they vacated in October 2020, the rental unit because of problems with the Tenants.
 - b. They testified that they had called the police regarding the Tenants because they were aggressive towards them and would not maintain proper social distancing.
 - c. They testified that they vacated due to daily drug use on the property and the smoking of marijuana in the building, although it was supposed to be a non-smoking building.
 - d. On cross-examination they testified that they had 2 dogs in their rental unit and that they did bark a lot. They thought it was because the dogs were being heckled, making them upset.
20. The Landlord's witness Susan Malicki testified. They are also a tenant in the residential complex.
 - a. They witnessed what appeared to be restaurant patrons smoking just outside the restaurant and entrances.
 - b. They confirmed that they consume marijuana in their apartment.
21. The Landlord Mary-Louis Taselose testified regarding the allegations in the T2 application.
 - a. They stated that the relationship with the Tenant's quickly spiralled out of control, it became combative.
 - b. They received calls from fire inspector, building inspector, and others; all came in to inspect arising from complaints the Tenants filed against them.
 - c. At one point mother felt threatened by the Tenants and had called police about it.
 - d. They witnessed the Tenants smoking in common areas, and outside of buildings.
 - e. The lease agreement is silent on smoking but that it had been discussed with the Tenants.
22. The Tenants provided post-hearing submissions which have been reviewed.
23. Based on the uncontested evidence that the Landlord directly or through others did intentionally harass the tenants by interfering with hydro and delaying repairs, by having the Tenant's vehicles towed. This evidence was not challenged by the Landlord.
24. The Landlord testified about smoking in the building, and yet their own witness testified to smoking in the building and that the restaurant patrons also smoke around the building.

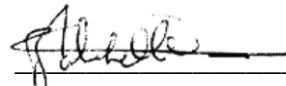
25. I am satisfied on a balance of probabilities that the Landlord has significantly interfered with the reasonable enjoyment of the Tenants. I am satisfied that they did so when the Tenants began to enforce their rights by calling inspectors about fire safety and maintenance issues. This was a deliberate campaign of harassment to force the Tenant's to vacate the rental unit.
26. The Tenant's testified regarding the significant impacts this has had on them, as individuals and as a couple, having to address all of the legal issues, and their own medical and mental health impacts.
27. I am satisfied that the Landlord has breached section 23 of the Act which states:
 23. A Landlord shall not harass, obstruct, coerce, threaten, or interfere with a tenant.
28. The terms used in section 23 of the Act are not defined in the Act, however they are discussed in Board Interpretation Guideline 6, *Tenant Rights*. As noted therein, the Board often relies on the following definition of harassment: engaging in a course of vexatious comment or conduct that is known or ought reasonably be known to be unwelcome.
29. The Tenants requested a rent abatement equal to 100% for the term of their tenancy. I am satisfied that in all the circumstances that an abatement of rent of 25% for 4 months appropriate in all the circumstances as a result of the harassment of the Landlord and the interference with reasonable enjoyment of the Tenants. An amount of \$1,900.00 shall be ordered.
30. The Tenant also requested general damages in their closing submissions. However, these were not included in the applications and were not raised at the hearing where the Landlord would have been afforded the opportunity to cross-examine the tenants on them. Therefore, no order for general damages shall be issued.
31. The Tenants requested that the Board issue a fine to the Landlord. Board Interpretation Guideline 16, *Administrative Fines*, suggests that the purpose of a fine is to encourage compliance with the Act and to deter landlords from engaging in similar activities in the future. It goes on to say that the remedy of an administrative fine is not normally imposed unless a landlord has shown a blatant disregard for the Act and other remedies will not provide adequate deterrence and compliance.
32. I am satisfied that the blatant actions of the Landlord to harass the Tenant's warrant a fine to ensure this conduct does not repeat itself. I say this having also considered the nature of the tenancy relationship with other the other tenants and former tenants that had testified where whenever complaints were brought forward those relations with the Landlord's quickly soured. In consideration of all of the circumstances, I am satisfied that a fine in the amount of \$5,700.00 is appropriate. This is equivalent to 3 months rent for the Tenants.
33. Any amount owed by the Landlord to the Tenants shall be offset by any arrears of rent the Tenant's owe the Landlord in application LTB-L-075870-22.

It is ordered that:

1. The total amount the Landlord's shall pay the Tenant is \$3,043.91. This amount represents:
 - \$2,470.00 for a rent abatement
 - \$520.91 for the reasonable out-of-pocket expenses the Tenant have incurred.
 - \$53.00 for the cost of filing the application.
2. The Tenants owe the Landlord \$1,497.87 for arrears of rent in application LTB-L-075870-22.
3. The Total amount that the Landlord owes the Tenant after offsetting arrears of rent is: \$1,546.04.
4. The Landlord shall pay the Tenant the full amount owing by January 27, 2024.
5. If the Landlord does not pay the Tenant the full amount owing by January 27, 2024, the Landlord will owe interest. This will be simple interest calculated from January 28, 2024, at 7.00% annually on the balance outstanding.
6. The Landlord shall pay to the Landlord and Tenant Board an administrative fine in the amount of \$5,700.00 by January 27, 2024.

January 16, 2024

Date Issued



Robert Patchett

Vice Chair, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

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

Payment of the fine must be made to the LTB by the deadline set out above. The fine can be paid by certified cheque, bank draft or money order made payable to the Minister of Finance. If paying in person, the debt can also be paid by cash, credit card or debit card.