



Order under Section 30
Residential Tenancies Act, 2006

File Number: TNT-31486-21

In the matter of: 40 RESOLUTION CRESCENT
NORTH YORK ON M2H1N4

Between: David Singer Tenants
Lillian Singer

and

Clifford Singer Landlord

David Singer and Lillian Singer (the 'Tenants') applied for an order determining that Clifford Singer (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 December 9, 2021. The Tenants and the Tenants' representative, Darcy McIntosh, were present at the hearing. The Landlord was also present at the hearing.

Determinations:

1. On March 23, 2021 the Tenants filed a T6 application (T6) seeking a rent abatement and compensation for legal costs as a result of the Landlord failing to meet maintenance obligations under 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 Tenants moved into the rental unit, a single detached home, on May 19, 2019 and vacated the rental unit on November 18, 2020. Although the Tenants and the Landlord have the same surname, they are not family members.
6. The monthly rent for the unit was \$2700.00. On February 8, 2021 in TNL-27093-20 the Board ordered the Tenants to pay to the Landlord \$4164.83 for rent arrears and filing fees. The Landlord testified that he has not received any payment from the Tenants for this amount. The Tenants testified that they did not make any payments to the Landlord for the rent arrears and filing fee.
7. The Tenants allege that the Landlord failed to maintain the unit in a good state of repair, specifically regarding the following:
 - a) Dirty Furnace Filter;
 - b) Inoperative Dishwasher;
 - c) Inoperative Washing Machine;
 - d) Inoperative Air Conditioner;
 - e) Faulty Screen Door;
 - f) Back Deck Disrepair;
 - g) Patio Door Screen Missing;
 - h) Bedroom Window Malfunction and Screen Missing;
 - i) Broken Fridge Drawer;
 - j) Hardwood Floors Scratched and Chipped;
 - k) Kitchen Floor Lifting Tiles; and
 - l) Cracked Bathroom Floor.
8. The alleged four maintenance issues in paragraph 7a, b, c and d occurred more than one year before March 23, 2021, the date the Tenants filed this application. While all limitation periods were suspended in Ontario during the period March 16, 2020 to September 14, 2020 pursuant to an order under the Emergency Order Management and Civil Protection Act, this application was still filed more than 1 year after the detection and resolution of these four maintenance issues - even after the period of suspension is accounted for. These maintenance issues were not on-going issues that continued into the suspension adjusted limitation period that started on September 29, 2019. Therefore, given the one-year limitation period contained in s. 29(2) of the Act, the allegations in paragraph 7a, b, c and d cannot be considered.
9. The alleged eight maintenance issues in paragraph 7e through 7l, also occurred more than one year before March 23, 2021, the date the Tenants filed this application; however, the Tenants allege that these items were on-going maintenance issues that still had not been resolved on November 18, 2020 - the date that they vacated the rental unit. The date of November 18, 2020 falls within the one-year limitation period before the Tenants filed their application on March 23, 2021. Therefore, I am satisfied that these eight allegations can be considered pursuant to s. 29(2) of the Act.

Faulty Screen Door

10. The Tenants testified that at the end of May 2019, upon moving into the rental unit, they noticed that the bottom of the front screen door scraped on the concrete threshold, and as a result of the scraping, the glass in the screen door eventually broke on June 2, 2020. The Tenants submitted photos of the broken glass. The Tenants stated that the Landlord would have been aware of this issue during their meeting with him at the rental unit a few weeks before taking possession of the property. The Tenants also noted that the Landlord advised them during that meeting that all items in the rental unit were functional. The Tenants did not specifically advise the Landlord during the tenancy about the issue with the front screen door, or the fact that the glass in the screen door broke on June 2, 2020.
11. The Landlord testified that the Tenants never advised him of their concerns about the front screen door, or that the glass in the screen door broke on June 2, 2020. Nor was he aware of any maintenance issues regarding the screen door. The Landlord stated that the Tenants inspected the rental property twice at the end of April 2019, the first time with their real estate agent, and the second time with him and their real estate agent. The Landlord testified further that the Tenants did not advise him about any maintenance concerns in the rental unit as a result of these inspections.
12. On the basis of the evidence provided, I am satisfied that the front screen door did not function as desired by the Tenants; however, the door did close and was functional – until the glass of the front screen door broke on June 2, 2020. I accept that the Tenants never informed the Landlord of their concern about the front screen door, or the breakage of the front screen door glass on June 2, 2020. I am satisfied that the Landlord was not aware of the broken glass in the front screen door, and therefore could not reasonably be expected to repair it. I therefore find that the Tenants have not established that the Landlord breached his obligation under s. 20(1) of the Act to maintain the front screen door in a good state of repair, and to comply with health, safety, housing and maintenance standards.

Back Deck Disrepair

13. The Tenants testified that the wooden back deck was in poor shape with pieces of wood falling off. The Tenants stated that the deck could be used, but with care, because the railing on the deck was loose. The Tenants submitted several photos of the back deck. The Tenants testified further that they did not advise the Landlord during the tenancy about their concerns regarding the back deck or submit any request to the Landlord to repair the back deck.
14. The Landlord acknowledged that the deck was old; however, he noted that it was functional. The Landlord testified that the Tenants never advised him that they had any concerns about the back deck, nor did they submit to him any requests to repair the deck.
15. On the basis of the evidence provided, I am satisfied that the back deck was weathered, and not in pristine condition; however, it was fit for use. No evidence was provided that the deck did not adhere to municipal building codes. I accept that the Tenants never advised the Landlord about their concerns regarding the back deck, and as such, the

Landlord could not reasonably be expected to address the Tenants' deck maintenance concerns. I therefore find that the Tenants have not established that the Landlord breached his obligation under s. 20(1) of the Act to maintain the wooden back deck in a good state of repair, and to comply with health, safety, housing and maintenance standards.

Patio Door Screen Missing

16. The Tenants testified that there was no screen on the patio door when they assumed possession of the rental unit. The Tenants noted that the screen for the patio door was in the garage of the rental unit. The Tenants testified further that they did not advise the Landlord about the missing screen during the period of their tenancy.
17. The Landlord testified that the Tenants never advised him about their issue regarding the patio door screen, or that it needed to be installed. He added that the screen was in the garage of the rental unit, and that many tenants prefer to remove the screens in the fall and to re-install them in the spring, themselves, according to their preferences.
18. On the basis of the evidence provided, I am satisfied that the screen for the patio door was not installed in the patio door; however, the missing screen did not hinder the basic operation of the patio door. I accept that without the screen, leaving the patio door open would have been restricted to months without exterior pests; however, the Tenants were aware of the screen location in the garage, and never installed it themselves, or advised the Landlord to install it. Without the Tenants advising the Landlord about the screen, the Landlord could not reasonably be expected to address the Tenants' concerns. I therefore find that the Tenants have not established that the Landlord breached his obligation under s. 20(1) of the Act to maintain the screen door in a good state of repair, and to comply with health, safety, housing and maintenance standards.

Bedroom Window Malfunction and Screen Missing

19. The Tenants testified that in June 2019 they noticed that the Master Bedroom window was difficult to open and that it did not have a screen. The Tenants stated that they never advised the Landlord about these issues during the course of their tenancy.
20. The Landlord testified that he was not aware of this maintenance issue, and that the Tenants never advised him that the window was difficult to close or that the screen was missing.
21. On the basis of the evidence provided, I am satisfied that the Master Bedroom window was difficult to open; however, the window was fit for use and operational. I accept that without the screen, leaving the window open would have been restricted to months without exterior pests; however, the Tenants never advised the Landlord of these window issues, and thus the Landlord could not reasonably be expected to remedy the difficult opening of the window or to install its screen. I therefore find that the Tenants have not established that the Landlord breached his obligation under s. 20(1) of the Act to maintain the Master Bedroom window in a good state of repair, and to comply with health, safety, housing and maintenance standards.

Broken Fridge Drawer

22. The Tenants testified that at the end of May 2019 they noticed that one of the drawers in the fridge was broken. The Tenants submitted several photos of the drawer. The Tenants stated that they never advised the Landlord about the broken fridge drawer during the course of their tenancy.
23. The Landlord testified that the fridge was in good condition at the start of the tenancy in May 2019. He noted that he had maintenance personnel complete an inspection of the rental property in March 2019 to ensure that all items were in good working order for the tenancy. The Landlord testified further that he was not aware of the broken fridge drawer, and that the Tenants never advised him that there was a maintenance problem with the fridge drawer.
24. On the basis of the evidence provided, I am satisfied that one fridge drawer was broken; however, this fault did not appreciably restrict the Tenants' use of the fridge or hinder the operation of the fridge. I accept that the Landlord was not advised by the Tenants of the fault, nor did the Tenants ask the Landlord to repair the drawer. As such, the Landlord could not reasonably be expected to fix the broken fridge drawer. I therefore find that the Tenants have not established that the Landlord breached his obligation under s. 20(1) of the Act to maintain the fridge drawer in a good state of repair, and to comply with health, safety, housing and maintenance standards.

Hardwood Floors Scratched and Chipped

25. The Tenants testified that on their second visit to the rental unit at the end of April 2019, they noticed that there were scratches on the hardwood floor and some pieces of the hardwood floor were "gouged out". The Tenants stated that they did not expect the Landlord at that time to complete repairs to the floor, they just wanted to advise the Landlord of the condition of the floor. The Tenants testified further that they accepted the floor in its current state, "as is" for their tenancy, and that they never advised the Landlord of any maintenance issues regarding the floor during their tenancy. The Tenants submitted several black and white photos of the hardwood floor with scratches.
26. The Landlord submitted two sets of coloured photos of the hardwood floor of the rental unit. The first set of photos were taken by the Landlord on March 11, 2019 before the tenancy and show a floor in relatively good condition. The second set of coloured photos taken by the Landlord on November 17, 2020, at the end of the tenancy, illustrate hardwood flooring with, in some areas, significant "wear and tear". The Landlord testified that the hardwood floor was in good condition at the start of the tenancy and it was not in good condition at the end of the tenancy. The Landlord stated that at no time during the tenancy did the Tenants advise him of any repair issues concerning the hardwood flooring.
27. On the basis of the evidence presented, I am satisfied that the hardwood flooring in the rental unit was in a good state of repair at the start of the tenancy and remained in a reasonable condition for the duration of the tenancy. Any deterioration in the condition of the flooring during the tenancy was the result of wear and tear caused by the Tenants. I accept that the Tenants did not request the Landlord to refurbish or repair the hardwood

flooring during the course of their tenancy. I therefore find that the Tenants have not established that the Landlord breached his obligation under s. 20(1) of the Act to maintain the hardwood flooring in a good state of repair, and to comply with health, safety, housing and maintenance standards.

Kitchen Floor Lifting Tiles

28. The Tenants testified that a couple months after moving into the rental unit they noticed that the tiles on the kitchen floor were beginning to lift and come loose from the sub-floor. The Tenants submitted several photos of lifting tiles. The Tenants testified further that they never mentioned the issue of the lifting tiles to the Landlord.
29. The Landlord submitted two sets of coloured photos of the tiled kitchen floor. The first set of photos were taken by the Landlord on March 11, 2019 before the tenancy and show a floor in relatively good condition. The second set of coloured photos taken by the Landlord on November 17, 2020, at the end of the tenancy, illustrate numerous tiles on the kitchen floor that are lifting from the sub-floor. The Landlord testified that the kitchen tile flooring was in good condition at the start of the tenancy, but by the end of the tenancy several tiles had lifted. The Landlord stated that at no time during the tenancy did the Tenants advise him of any repair issues concerning the kitchen floor.
30. On the basis of the evidence presented, I am satisfied that during the course of the tenancy several tiles on the kitchen floor had lifted; however, the floor did not degrade the Tenants' use of the kitchen and the kitchen remained fit for habitation. No evidence was provided that the lifting tiles were a tripping hazard or a safety concern for the Tenants. I am also satisfied that the Tenants did not ask the Landlord to repair the floor during their tenancy, and thus deemed the floor to be acceptable for their use. I therefore find that the Tenants have not established that the Landlord breached his obligation under s. 20(1) of the Act to maintain the kitchen flooring in a good state of repair, and to comply with health, safety, housing and maintenance standards.

Cracked Bathroom Floor

31. The Tenants testified that in September or October 2020 they noticed a floor tile in the bathroom that was cracked. The Tenants submitted a photo of the cracked tile. They noted that this crack was cosmetic in nature, and it did not impair their use of the bathroom. The Tenants testified further that they never advised the Landlord of this crack or asked the Landlord to repair the crack.
32. The Landlord testified that the bathroom tiles were replaced in March 2019 before the start of the tenancy. The Landlord stated that the Tenants never advised him about the cracked bathroom floor tile or asked him to repair it.
33. On the basis of the evidence presented, I am satisfied that one floor tile in the bathroom was cracked; however, the cracked tile did not degrade the Tenants' use of the bathroom and the bathroom remained fit for habitation. No evidence was provided that the cracked tile was a tripping hazard or a safety concern for the Tenants. I am also satisfied that the Tenants did not ask the Landlord to repair or replace the tile during their tenancy and considered the cracked tile to be a cosmetic issue. I therefore find that the Tenants have

not established that the Landlord breached his obligation under s. 20(1) of the Act to maintain the bathroom flooring in a good state of repair, and to comply with health, safety, housing and maintenance standards.

Conclusion

34. As noted in the preceding paragraphs, I find that the Tenants have not established on the balance of probabilities that the Landlord breached his obligations under s. 20(1) of the Act with respect to any of the eight maintenance issues listed in paragraph 7e through 7l. Accordingly, the Tenants' application must be dismissed.

It is ordered that:

1. The Tenants' application is dismissed.

December 29, 2021

Date Issued



Frank Ebner

Member, Landlord and Tenant Board

Toronto North-RO
47 Sheppard Avenue East, Suite 700, 7th Floor
Toronto ON M2N5X5

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