



Order under Section 30
Residential Tenancies Act, 2006

File Number: EAT-90643-20

In the matter of: 203C, 316 RIDEAU STREET
OTTAWA ON K1N5Y5

Between: Jack Glick Tenant

and

Go North Capital Landlord

Jack Glick (the 'Tenant') applied for an order determining that Go North Capital (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 August 26, 2021. The Tenant and the Landlord's Agents, Steve Pocrnick and Adam Law, attended the hearing.

Determinations:

1. Subsection 20(1) of the Act provides that a landlord is responsible for providing and maintaining a residential complex, and 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. The Tenant raised the following maintenance issues: leaky bathroom fan, leaky vent in bathroom, moist and moldy laminate floorboards, unexplained furnace cost, and dirty windows.
3. For the reasons below, I am satisfied that the Landlord is in breach of its maintenance obligations under subsection 20(1) of the Act as it relates to the leaky bathroom fan, leaky vent in the bedroom closet, and the laminate floorboards. However, I am not satisfied that the Landlord is in breach as it relates to the furnace and windows.

Bathroom fan, bedroom closet vent and laminate floorboards

4. The Tenant testified that he lives on the second level above a commercial unit. Beginning in the Fall of 2017, the Tenant began noticing drops of water leaking into the rental unit through the bathroom fan. The Tenant informed the Landlord in January of 2018. However, the issue was never resolved by the Landlord throughout the tenancy.

5. The Tenant submitted pictures of the bedroom closet vent and laminate floorboards. According to the pictures, moisture is accumulating in the surrounding drywall of the bedroom vent. The laminate floorboards in the rental unit are bubbling and lifting up consistent with moisture accumulation. The Tenant testified that during rainy days the leaks would be worse to a point where he would need to collect the water leaking through the vent with a bucket.
6. The Landlord acknowledges that there were issues with water and moisture dripping from the bathroom fan and bedroom closet vent. The Landlord also acknowledges that the water may have made its way to the floorboards. Given the evidence, I am satisfied that the accumulation of moisture in the rental unit are the likely cause of the damage to the floorboards.
7. The Landlord tried to address the moisture in the unit by providing the Tenant with a de-humidifier, but the Tenant refused. The Tenant explained that using the de-humidifier would exacerbate his partner's breathing issues. However, I find this explanation to be speculation and conjecture. No medical evidence was tendered to support the Tenant's position.
8. The Landlord failed to provide sufficient evidence at the hearing to satisfy me that it made reasonable efforts to address the cause of the leaking and moisture in the rental unit or replace the damaged floorboards. Therefore, I find that the Landlord failed to meet the Landlord's obligations under subsection 20(1) of the Act to repair or maintain the rental unit with regards to the leaks in the bathroom fan, the vent in the bedroom closet and the resulting damage to the floorboards.

Furnace costs and windows

9. Based on all the evidence presented at the hearing, I am not satisfied on a balance of probabilities that Landlord breached its maintenance obligations under the Act relating to the furnace and windows. The Tenant did not provide sufficient evidence to prove there was anything wrong with the furnace, other than his belief that it was operating inefficiently leading to higher than normal costs. In support of this, the Tenant submitted a spreadsheet he created calculating the additional costs on his utility bill. This evidence was confusing, arbitrary, and speculative.
10. With regards to the allegations of dirty windows, the pictures submitted by the Tenant did not satisfy me that the windows were dirty.
11. Therefore, no remedies are awarded for these items.

Abatement of rent:

12. The Tenant requested that any abatement awarded apply to 24-month duration for which the maintenance issues persisted. However, the amount that the Board may order is limited by the timing of the Tenant's application. Subsection 29(2) of the Act limits the time for Tenants to apply to the Board with respect to issues raised under subsection 29(1) of the Act:

29. (2) No application may be made under subsection (1) more than one year after the day the alleged conduct giving rise to the application occurred.

13. In *Toronto Community Housing Corp. v. Vlahovich* [2010] O.J. no. 1463 at para. 9 (Ont. Div. Ct.), the Ontario Divisional Court clarified the effect of subsection 29(2) on the extent of remedies that the Board may order:

It is plain from the language of s. 30(1) that the Board can only order a remedy under that provision in relation to a determination in an application under paragraph 1 of subsection 29(1) that a landlord has breached an obligation under subsection 20(1). In light of the one year limitation period in s. 29(2), the Board can only make a determination that a landlord has breached an obligation under s. 20(1) during the one year period before the making of the application. Accordingly, the remedy that may be granted may only be granted in relation to breaches during that one year period. While evidence of events prior to the commencement of the one year period may be admissible at a hearing before the Board, for example, to enable the Board to understand the cause of the disrepair, this does not permit the Board to extend the remedy back to a time prior to the commencement of the statutory limitation period.

14. The Court's decision is compatible with its earlier decision in *Goodman v. Menyhart* [2009] O.J. No. 1602 (Ont. Div. Ct.). In that case, the Court held that an abatement may extend back one year before the application had been made and no further.
15. Since the Tenant filed his application on June 15, 2020, I may only award a remedy from June 15, 2019 forward. The evidence before me establishes that the Landlord did not remedy the maintenance issues until after the Tenant vacated the rental unit on October 7, 2020. Accordingly, any abatement ordered is necessarily limited to the period from June 15, 2019 to October 7, 2020.
16. However, the Tenant previously filed a T2 and T6 application with the Board with regards to the some of the same issues raised in this application (Board's file EAT-84406-19 and EAT-84459-19). These applications were resolved by a consent order in which the Tenant received 1.5 months of rental abatement, to be applied to the months of October and November 2019. Therefore, the abatement award in this order is limited to the time period from December 1, 2019 to October 7, 2020.
17. Based on my experience and similar cases decided by the Board, I find that 10 percent rent abatement from December 1, 2019 to October 7, 2020 is an appropriate remedy flowing from the Landlord's failure to remedy the leaks in the bathroom fan, bedroom vent closet and repair the laminate floorboards. This amounts to \$1,974.37. In deciding this amount, I have also considered the Tenant's failure to accept the de-humidifier as a breach of his obligation to mitigate pursuant to section 16 of the Act.
18. This order contains all of the reasons in this matter and no further reasons will issue.

It is ordered that:

1. The Landlord shall pay to the Tenant a rent abatement of \$1,974.37.

2. The Landlord shall also pay the Tenant \$45.00 for the cost of filing the application.
3. The total amount the Landlord owes the Tenant is \$2,019.37.
4. The Landlord shall pay the Tenant the full amount owing by November 6, 2021.
5. If the Landlord does not pay the Tenant the full amount owing by November 6, 2021 the Landlord will owe interest. This will be simple interest calculated from November 7, 2021 at 2.00% annually on the outstanding balance.

October 26, 2021
Date Issued



Khalid Akram
Member, Landlord and Tenant Board

Eastern-RO
255 Albert Street, 4th Floor
Ottawa ON K1P6A9

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