



Order under Section 31
Residential Tenancies Act, 2006

File Number: EAT-90778-20

File Number: EAT-92183-20

In the matter of: 8, 480 COOPER STREET
OTTAWA ON K1R5H9

Between: Josee Couture Tenant

and

Mikhael Holdings Inc. Landlord

Josee Couture (the 'Tenant') applied for an order determining that Mikhael Holdings Inc. (the 'Landlord') or the Landlord's superintendent or the Landlord's agent substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household.

This application was heard by videoconference on October 13, 2021.

The Tenant and the Landlord attended the hearing.

Determinations:

1. The Tenant's application is a T2 Application, brought pursuant to s.29(1) [Residential Tenancies Act, 2006](#) (the 'Act'), which alleges that the Landlord, or the Landlord's superintendent / agent substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant.
2. The first T2 Application was filed on July 1, 2020 (File # EAT-90778-20). The Tenant filed a near identical T2 Application on October 17, 2020 (File # EAT-92183-20). Both matters were heard together.
3. The tenancy began in May 2020. The Tenant was unable to see the rental unit in person prior to agreeing to rent the rental unit due to the pandemic but did have the benefit of a "virtual" tour. The Tenant did see the rental unit in person on April 27, 2021, a few days prior to moving in.

4. The monthly rent was \$1,550.00. The Tenant moved out of the rental unit on December 31, 2020. Both T2 applications, file # EAT-90778-20 and file # EAT-92183-20, raised the following allegations:

- A the sound proofing of the apartment was inadequate;
- B portions of the apartment were not painted or poorly painted;
- C there was minimal security of the screen doors on the balcony;
- D the floors were not sanded/polished as represented prior to move in;
- E the apartment was filthy upon move-in;
- F the buzzer to the apartment was broken;

5. Application file # EAT-90778-20 raised the following additional allegations:

- G that the Tenant was restricted access to the storage unit
- H that the deck was very weathered/rundown

6. Application file # EAT-92183-20 raised the following additional allegations:

- I that the Tenant's concerns have largely been ignored & mocked
- J that the plumbing and electrical was not up to code

A Sound

7. The Tenant indicated she had trouble sleeping in the unit due to loud noise, for various reasons, including people running up and down the stairs in the common hallways outside her unit, the vibration/sounds emanating from the building AC/heating units, people walking around in adjoining units..etc. The Tenant testified the noise became a concern at the end of summer. The Tenant indicated that she works from home and that she required a quiet place to work and live and was reassured several times prior to move-in that the noise would not be an issue.
8. The Landlord testified that the building is older and is a wooden structure, and in any event, denies there was any "substantial" interference with respect to the noise issue.
9. I found the Tenant's evidence credible on this issue. The Tenant went to great lengths to document the noise levels and raise her concerns with the Landlord on a number of occasions prior to - and after - the tenancy began.
10. While the building itself is old and can be expected to have some noise, I find the Landlord could have taken some measures to help mitigate the noise issues experienced by the Tenant, especially since this issue was raised as an area of concern by the Tenant prior to her move in.

11. For this reason, I find on a balance of probabilities that the Landlord, or the Landlord's superintendent/agent substantially interfered with the reasonable enjoyment of the Tenant's rental unit as a result of its failure to address the noise concerns raised by the Tenant. I am awarding the Tenant a 10% abatement of rent for the months of October through to December, as a result of this issue, for a total abatement of \$465.00.

B Paint Job & renovations

12. The Tenant stated the paint job performed prior to her move-in was incomplete or poorly done and produced pictures in support of her allegation. The Tenant also alleged the bathroom was gutted at the time of her "virtual tour" but stated she was assured the bathroom would be renovated. The Tenant alleged that upon move-in, the paint job and bathroom was not as promised, stating there were chips, portions not painted, mirror was not properly cut, and overall poor workmanship.
13. While the Tenant was clearly not pleased with the renovations performed by the Landlord, based upon the photographic evidence presented, I do not find that the Landlord's paint job/bathroom renovations (or lack thereof) amount to substantial interference with the Tenant's reasonable enjoyment of the rental unit. Simply put, I do not find that the work performed resulted in any disruption to the Tenant's ability to normally reside in the rental unit. This portion of the Tenant's application is dismissed.

C Minimal Security

14. The Tenant alleged there was minimal security of the screen doors on the balcony and to the fire escape in her bedroom. While the Tenant would have preferred a more reliable security mechanism, very limited evidence was presented on this issue. I do not find that this allegation amounted to substantial interference with the Tenant's reasonable enjoyment of the rental unit, or that there was any disruption to the Tenant's ability to normally reside in the rental unit. This portion of the Tenant's application is dismissed.

D Floors

15. The Tenant alleged the floors were not polished or sanded prior to move in as she was assured and produced pictures in support of her allegation. The floors appear to fairly old with some roughness and a few minor stains where the floor meets the walls, but I find they would not impact the Tenant's ability to normally reside in the rental unit. I do not find that this allegation amounted to substantial interference with the Tenant's reasonable enjoyment of the rental unit. This portion of the Tenant's application is dismissed

E Condition of apartment upon move-in:

16. The Tenant submitted it took over 40 hours to clean the apartment upon move in. She stated the Landlord's failure to clean the unit prior to move in substantially interfered with her reasonable enjoyment of the rental unit. The Tenant produced photos in support of this allegation and text messages she sent the Landlord about this issue.
17. I find on a balance of probabilities that the Landlord, or the Landlord's superintendent/agent substantially interfered with the Tenant's reasonable enjoyment of the Tenant's rental unit as a result of the condition of the rental unit move in. It is certainly inconvenient for a Tenant to move into a rental unit that has not been cleaned. I find that the Tenant lost the use of the rental unit for one full day as a result of the cleaning that she had to undertake, for a total abatement of \$50.95.

F the Buzzer

18. The Tenant indicated the buzzer for her unit does not work. The Landlord testified that the buzzer for the entire building has not worked for a long time, and there was never any representation to the Tenant that it would be functional. The Landlord further stated the Tenant was still able to obtain her mail from her designated mailbox. The Tenant failed to show that her enjoyment of the rental unit was impacted as a result of the buzzer malfunction. I do not find on a balance of probabilities that the Landlord, or the Landlord's superintendent/agent substantially interfered with the reasonable enjoyment of the Tenant's rental unit as a result of this issue.

G The storage unit

19. The Tenant testified that the storage unit was not accessible upon move-in for a period of time but was unclear as to when it was restored. The Landlord stated that the basement storage was a "complementary service" and in any event, was only inaccessible for a short period of time while the Landlord was doing renovations in the basement. While the lack of storage may have been inconvenient for the Tenant, I do not find on a balance of probabilities that the Landlord, or the Landlord's superintendent/agent substantially

interfered with the Tenant's reasonable enjoyment of the Tenant's rental unit as a result of this issue.

H Deck was weathered/rundown

20. The Tenant indicated at the hearing that she was abandoning this allegation.

I/J Complaints ignored/mocked & Plumbing and electrical not up to code

21. Based upon the evidence presented, it appears the parties had different expectations at the time of entering into this tenancy and that this lack of common understanding, resulted in frustration on the part of both parties. The Tenant says she was mocked and ignored as a result of the issues raised, which allegation was denied by the Landlord. The Tenant's allegations were not supported by the written communications presented between the parties and, in this regard, I find the evidence of the Landlord to be more believable on this issue.

22. No evidence was presented regarding the plumbing/electrical allegation to support a finding that this allegation amounted to substantial interference with the Tenant's reasonable enjoyment of the rental unit. This portion of the Tenant's application is dismissed.

It is ordered that:

1. The Landlord shall pay the Tenant a rent abatement in the total amount of \$515.95, on or before January 31, 2022.
2. If the Landlord does not pay the Tenant the full amount owing by January 31, 2022 the Landlord will owe interest. This will be simple interest calculated from January 31, 2022 at 2.00% annually on the outstanding balance.
3. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.



January 11, 2022
Date Issued

Peter Nicholson
Member, Landlord and Tenant Board

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

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

2022 CanLII 55221 (ON LTB)