



Order under Section 30
Residential Tenancies Act, 2006

File Number: EAT-94453-21

In the matter of: 34, 653 ST LAURENT BOULEVARD SE
OTTAWA ON K1K3A6

Between: Alejandra Lema Tenants
Gerardo Arreola

and

JSS Riverdale Holdings Inc. Landlords

Alejandra Lema and Gerardo Arreola (the 'Tenants') applied for an order determining that JSS Riverdale Holdings Inc. (the 'Landlord') failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') and failed to comply with health, safety, housing or maintenance standards.

This application was heard by videoconference on October 20, 2021. The Tenants and the Landlord's agent, Victor Saikaley, were present at the hearing.

Determinations:

T6 Application

1. On March 1, 2021 the Tenants filed a T6 application (T6) alleging the Landlord is failing to meet maintenance and safety obligations under the Act because the unit has a bed bug and roach infestation that threatens the health and safety of the Tenants and their family. Although the alleged Landlord conduct giving rise to the Tenants' application commenced in October 2018, the issues remain ongoing as of the date of this hearing. I am therefore satisfied that the Tenants' T6 complies with the one-year limitation period contained in s.29(2) of 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.

Tenants' Evidence

4. The Tenants moved into the rental unit on May 4, 2018 and remain in the unit with a monthly rent of \$1560.00.
5. The Tenants testified that they first noticed a limited number of roaches in the unit at the end of May 2018, followed by some bedbugs in November and December of 2018. They stated that they advised the Landlord about the problem first in October 2018, and that the Landlord responded immediately with gel and spray treatments that initially remedied the problem. However, the bugs returned, and therefore they contacted the Landlord again on April 10, 2019. The Tenants stated further that for several weeks they purchased pest control products and applied them in the unit, but that it did not resolve the problem.
6. The Tenants provided 35 photos taken in their home of various bugs and what appeared to be bug bites on their two children. Of these photos, three are from the period of July to August 2019, 14 cover the period of July to December 2020, and the remaining 18 photos are from January to May 2021. The Tenants added that during one of the spray treatments the technician advised that it was spiders and not bed bugs that were in the unit. The Tenants stated that the Landlord did not consistently apply the spray treatment and that is the reason that the infestation persisted.
7. The Tenants testified further that as a result of the infestation, and their concern for their health and safety, in May 2020 they replaced all of the bedding and furniture in their bedroom and the children's bedroom with new bedding and furniture at a cost of \$4909.00. The Tenants provided an itemized receipt of these purchases and added that the furniture and bedding that had to be replaced was only two years old. They stated that they cancelled their contents insurance a year ago, and consequently, had no insurance to cover the cost of the bedroom furniture and bedding replacements. The Tenants also testified that as a result of the ongoing bug infestation, starting in August 2019, they did not fully pay their rent each month.

Landlord's Evidence

8. The Landlord's agent testified that the Tenants have a total of \$7079.00 in rent arrears over the period of August 1, 2019 to October 1, 2021. On the issue of contents insurance, the Tenants obtained contents and liability insurance from BrokerLink effective May 1, 2018, as stipulated in the tenancy agreement; however, the Tenants cancelled their insurance policy approximately one year ago contrary to tenancy requirements. The Landlord's agent provided the Board with the Tenants' lapsed insurance policy letter as evidence.
9. The Landlord's agent testified that the Tenants first advised him of an insect problem in the unit in October 2018, and that he responded in the following manner:
 - a) October 12, 2018 - Go Pro pest control conducted a gel treatment in the unit;
 - b) January 30, 2019 - Go Pro conducted a spray treatment in the unit;
 - c) November 19, 2019 - Orkin pest control conducted a treatment in the unit;

- d) November 9, 2020 - Orkin was denied access to the unit by the Tenants as a result of the Tenants leaving the unit to go to work;
- e) December 27, 2020 - Orkin conducted a treatment in the unit;
- f) April 19, 2021 - Orkin conducted a gel and spray treatment in the unit; and
- g) October 2021 - Orkin conducted a treatment in the unit.

10. The Landlord's agent submitted invoices for these pest control visits, and the Tenants agreed that these visits occurred. The Landlord's agent noted that some of the treatments used gel rather than spray because it is less toxic for children and pets, but when the gel at times proved to be ineffective, spray was then used.

Analysis

11. I am satisfied on the basis of the Tenants' evidence respecting the condition of the rental unit and the fact that the Landlord has had to continue to provide pest control treatments, that there is an ongoing pest infestation problem in the rental unit.
12. Although the Landlord responded promptly when advised of the pest control issue in October 2018, and six more times from January 2019 to October 2021, I find that the frequency of these applications was not sufficient to resolve the problem – the Tenants continued to have pests in their rental unit, and their children continued to sustain insect bites. I therefore find that the Landlord breached his obligation under s. 20(1) of the Act to ensure that the unit is in a good state of repair and fit for habitation.

Remedy

13. The Tenants are seeking the following remedies:
- a) a 5% rent abatement over the 15-month period of November 28, 2019 to February 28, 2021 for a total of \$1170.00;
 - b) compensation of \$4909.00 to replace damaged property as a result of the pest infestation;
 - c) to have the Landlord pay the costs for pest control applications ordered by the Tenants; and,
 - d) a Board order prohibiting the Landlord from increasing the rent until the pest infestation is resolved.
14. In determining the appropriate remedy I must apply subsection 30(2) of the Act and consider whether the Tenants advised the Landlord of the alleged breaches before applying to the Board, and the parties' duty to mitigate their losses found in section 16 of the Act.
15. In this case the Tenants advised the Landlord of the alleged breach in October 2018, and again on April 10, 2019, well before applying to the Board on March 1, 2021. I therefore find that the Tenants complied with s. 30(2) of the Act.


16. The Tenants are seeking a 5% rent abatement over the 15-month period of November 28, 2019 to February 28, 2021 for a total of \$1170.00. I find that this abatement to compensate the Tenants' for their loss of use and enjoyment of the rental unit as a result of the Landlord's failure to control pests is reasonable. I therefore award the Tenants a rent abatement of \$1170.00 pursuant to s. 30(1)2 of the Act. This rent abatement however will be offset against the rent arrears of \$7079.00 that the Tenants owe the Landlord (see: *Marineland of Canada Inc. v. Olsen*, 2011 ONSC 6522) .
17. The Tenants are also seeking compensation of \$4909.00 for damaged property as a result of the insect infestation . The Landlord stated that the Tenants failed to mitigate this loss through maintaining current contents insurance as required by their tenancy agreement and requested by the Landlord. The Tenants' lack of insurance does not absolve the Landlord from liability and responsibility for damages caused by a breach of his obligations. However, on the basis of the evidence provided by the Tenants, I am not satisfied that the pest control issue required the replacement of the bedroom furniture and the living room sofa and loveseat set. I do accept that the replacement of the mattresses and bed linens was reasonable under the circumstances of the infestation. I therefore award the Tenants compensation at a rate of 25% of their costs for replacing their mattresses and bed linens. This rate is based on the value of the two-year old items that required replacement. The Tenants' costs included: a queen coil set for \$698.99; a twin storage bed for \$248.00; and, bedding for \$107.00 - for a total including tax of \$1191.00. Thus, at a depreciated property value of 25%, and pursuant to s. 30(1)5i of the Act, I award the Tenants compensation for damages in the amount of \$297.75. This award will be offset against the rent arrears of \$7079.00 that the Tenants owe the Landlord.
18. The Tenants also requested a Board order to have the Landlord pay the costs for pest control applications ordered by the Tenants. I am satisfied that the Landlord, through an increased frequency of pest control applications, will be able to fulfill his obligations under s. 20(1) of the Act. The Landlord will therefore retain his responsibility for pest control, and the Tenants' request pursuant to s. 30(1)3 of the Act is denied.
19. The Tenants also requested a Board order prohibiting the Landlord from increasing the rent until the pest infestation is resolved. Pursuant to s. 30(1)7 of the Act, the Board may:
7. Prohibit the landlord from giving a notice of a rent increase for the rental unit until the landlord has,
 - i. completed the items in work orders for which the compliance period has expired and which were found by the Board to be related to a serious breach of a health, safety, housing or maintenance standard, and
 - ii. completed the specified repairs or replacements or other work ordered under paragraph 4 found by the Board to be related to a serious breach of the landlord's obligations under subsection 20 (1) or section 161.
20. Although the Landlord breached its obligation under s. 20(1) of the Act resulting in a degradation of the Tenants' use the rental unit, the breach did not prevent the Tenants

from living in the unit, and therefore, I find that the Landlord's breach was not a serious breach. The Tenants' request for a Board order prohibiting the Landlord from increasing the rent is denied.

It is ordered that:

1. The Landlord shall arrange to have a licensed pest control technician of their choosing treat the rental unit at a frequency of once every two months, over the period of December 1, 2021 to December 1, 2022, or until the unit is free of all pests, which ever comes first.
2. The Landlord owes the Tenants a total of \$1512.75 in respect of a rent abatement, compensation for damage to the Tenants' property, and the Tenants' \$45.00 application fee. This amount shall be applied to the arrears of rent the Tenants owe the Landlord.

November 9, 2021
Date Issued



Frank Ebner
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.