

Order under Section 30
Residential Tenancies Act, 2006

File Number: NOT-37529-19

In the matter of: 6, 525 FORD STREET NORTH
THUNDER BAY ON P7C4Z1

Between: Daniel Putman Tenant

and

PSD Properties Landlords
Sam Pasqualino

Daniel Putman (the 'Tenant') applied for an order determining that Sam Pasqualino ('SP') and PSD Properties (the 'Landlords') failed to meet the Landlords' 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 on February 1, 2021 and in Passcode 980 010 663# on May 14, 2021.

SP, who is principal of the Landlord PSD Properties, and the Tenant attended the hearing on both days. R. Donaldson ('RD'), who occupies the unit with the Tenant, appeared as a witness for the Tenant. J. Tomck, the Landlord's accountant, attended to assist the Landlord SP.

At the outset of the hearing on February 1, 2021 the Landlord SP requested an adjournment to allow him time to submit additional materials. I noted that an Interim Order issued for this matter in October 2019 mandated that the parties submit any additional materials on which they planned to rely by a specified deadline, which had long since passed. I denied the adjournment request.

The hearing of this matter, commenced on February 1, 2021, continued on May 14 2021. Interim Order NOT-37529-19, issued February 11, 2021, repeated the oral instructions to the parties given during the February 1, 2021 hearing with respect to timing for any additional documentary disclosure. The Landlord provided no additional materials to the Board subsequent to the February 1, 2021 hearing.

Determinations:

1. The parties indicated at the outset of the hearing that the residential complex in which the unit is located was sold as of September 30, 2019. The Tenant confirmed that, with the change in ownership and with the repair work subsequently effected by the new landlord, the Tenant now sought only a rental rebate.

2. The Tenant acknowledged that the key issue in dispute and for which the Tenant claimed rental rebate was the Landlords' alleged failure to properly deal with the Tenant's complaints of mold originating in the bathroom. The Tenant alleged that the Landlords delayed in responding to the Tenant's complaints and/or failed to properly effect the necessary repairs to address the problem.
3. The Tenant and RD, who lives with the Tenant in the unit, testified that they began having problems with mold and humidity in the bathroom in the fall of 2018. They contacted an organization called Green Saver in November 2018 (Refer emails at Exhibit 1 – Tenant Submissions 'Dehumidifier Use') and were supplied with a new dehumidifier in March 2019.
4. The Landlords had already supplied a dehumidifier, which the Tenant testified he ran continually, but it proved to be ineffective in controlling the humidity. The Landlord SP testified that the Tenant did not in fact run the dehumidifier and the Tenant's failure to do so caused the humidity and mold. The Landlord SP acknowledged that he came to this conclusion based on photos taken during an inspection of the unit, which showed the dehumidifier unplugged, and on the fact that the dehumidifier was not in use when he attended at the unit to effect various repairs. The Tenant testified that the unit was unplugged during SP's visits and during the inspection because it was normally located in the hallway and he had moved it when the inspectors and Landlord SP came to get it out of the way.
5. I note that the Tenant and RD proactively sought help from Green Saver with respect to a dehumidifier and find that it is more likely that not that they used the Landlord's equipment as the Tenant testified they did.
6. The Tenant did not report the mold/humidity issue to the Landlords until January 25, 2019. (Refer Exhibit 1, being the email from the Tenant to the Landlords – part of the folder entitled Tenant Submissions 'Dehumidifier Use'). The Landlords did not respond to that email.
7. In that the Landlords failed to respond to the mold complaint, the Tenant contacted the Thunder Bay District Health Unit (Refer Exhibit 6 – Tenant Submissions 'Health Unit Report') in early April 2019. The notes taken by Health Unit inspector A. Mackie ('AM') are set out in the Health Unit report and cover the period April 3, 2019 to September 10, 2019, when the Health Unit file was closed.
8. AM contacted the Landlord SP in early April 2019 and the Landlords responded promptly to the Health Unit's request to address the mold. The Landlords arranged to treat, prime and paint the affect areas (Refer Exhibit 6).
9. AM followed up with the Tenant in May 2019. The Tenant noted that the work had been done but that the mold had returned. The Tenant did not contact the Landlords with this further complaint and did not initiate any report to AM.

10. The Landlord SP testified that all notices for required work came only from the Health Unit and never from the Tenant. The Landlord SP denied receiving any notice prior to the contact in April 2019 from the Health Unit. The Landlord SP pointed to AM's notes in the Health Unit report (Exhibit 6) as evidence that the Landlords always responded fully and promptly to all requests for work. The Tenant testified that he communicated with the Health Unit because he could not reach the Landlords when he attempted to call.
11. I find, on the basis of the January 25 2019 email, that it is more likely than not that the Tenant gave the Landlords notice of the mold issue on that date.
12. AM completed another inspection of the unit on May 23, 2019 and again contacted the Landlord SP "to remove the ceiling" (Refer Exhibit 6).
13. Additional work was arranged by the Landlords and the Landlords' maintenance person removed a portion of the bathroom ceiling in or about June 24, 2019.
14. The Tenant responded to AM's follow up in May 2019 and complained that more work needed to be done. AM and the Landlords' maintenance person met on July 11, 2019. AM specifically identified the additional work which was required.
15. As of July 30, 2019 no additional work had been done. The Landlord SP confirmed to AM at that point that he would serve the requisite notices and get the work done.
16. The Landlords served notices of entry on August 1st, 12th, 13th and 14th 2019. The Tenant acknowledged to AM in early September 2019 that he and RD had been away from the unit for the month of August.
17. The Landlord SP initially testified that his repair people were unable to enter the unit as the Landlords had received no response from the Tenant to the notices of entry and the Tenant was not available to give entry to the unit. The Landlord SP later testified that work had in fact been done on the dates for which notice of entry had been given.
18. The Landlord SP testified that the hole in the ceiling, which had been covered in plastic and which showed in a photo from an inspection done August 2, 2019 (Exhibit 7), had been drywalled and taped in August. The only work required at that point was to complete the painting.
19. The Tenant testified that it was clear, on his return to the unit in early September, that no work had been done. The bathroom ceiling appeared, in early September, exactly as it appeared in the August 2, 2109 inspection photo
20. AM noted, in the Health Unit report, that on September 10, 2019 he contacted the Tenant again by way of follow up. The Tenant had not provided AM with any update, as he had undertaken to do. AM noted that many calls had been made to the Tenant (the notes do not say by whom) requesting the work to be done as the Landlord was willing to do the work. The Tenant denied receiving any such calls in early September and referred to a telephone log which he testified supported his claim in that regard.

21. Additional work was completed by the Landlords further to a notice of entry dated September 20, 2019.
22. The property was sold to a new owner on September 30, 2019.
23. The Tenant testified that the new owner did the necessary repairs shortly after taking ownership. The new owner completely removed the bathroom ceiling, treated the boards above the ceiling, installed a new fan, replaced the ceiling and repaired the bathroom window so that it could properly be opened and closed.
24. There have been no mold or humidity problems since.
25. I find that it is more likely than not that the Landlord SP did not complete any work between June 24, 2019 and September 20, 2019, despite the involvement of the Health Unit. While it appears that the Tenant allowed some lapses in communication, both with AM and the Landlords, the Landlord SP could have and should have ensured the work was done in the unit in August. He failed to do so.
26. I find that the Landlord SP did make some efforts to effect some and find that the Tenant contributed to delay in repairs by not providing AM with updates and by not advising either the Landlord or AM of his plans to be away for the month of August.
27. Nonetheless, the Landlord SP failed to act promptly to do all the work required to complete the repairs. I find, in all the circumstances, that portions of his delay were unreasonable.
28. I find the following with respect to the various periods in issue:
 - a) The Landlord SP was unaware of an issue with respect to the mold prior to the January 25, 2019 email from the Tenant;
 - b) The Landlord SP failed to respond to the January 25, 2019 complaint until he was contacted by the Health Unit on April 8, 2019;
 - c) The Landlord SP acted promptly to address the issue during the period April 8, 2019 through July 11, 2019, when AM met with the Landlord's maintenance person to detail the required work;
 - d) The Landlord SP failed to act promptly to effect this work during the period July 11, 2019 through to the sale of the unit at the end of September 2019. The work completed by the Landlord late in September failed to rectify the problem; and
 - e) The work done by the new landlord, subsequent to September 2019, finally solved the problem.

29. I find that the Tenant is entitled to a rebate in rent for the months of February and March 2019 and for the months of August, September and half of July 2019.
30. The Tenant had the use of the bathroom during this period but testified that he has suffered health issues from the mold. I find, in all the circumstances, that a rental rebate of 15% of the rent for 4 ½ months is warranted.
31. Rent was \$725.00 per month for the relevant period, so the Tenant is entitled to a rental rebate in the amount of \$489.38.

It is ordered that:

1. The Landlords shall pay to the Tenant a rent abatement of \$489.38.
2. The Landlords shall also pay the Tenant \$50.00 for the cost of filing the application.
3. The total amount the Landlords owe the Tenant is \$539.38.
4. The Landlords shall pay the Tenant the full amount owing by August 16, 2021.
5. If the Landlords do not pay the Tenant the full amount owing by August 16, 2021 the Landlords will owe interest. This will be simple interest calculated from August 17, 2021 at 2.00% annually on the outstanding balance.



August 5, 2021

Date Issued

Lynn Mitchell

Member, Landlord and Tenant Board

Northern-RO
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Sudbury ON P3E5P9

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