

Order under Section 30
Residential Tenancies Act, 2006

File Number: SOT-14315-20

In the matter of: 204, 50 WHITLAW WAY
PARIS ON N3L4C3

Between: Brian Clydesdale Tenant

and

Randy Rego Landlord

Brian Clydesdale (the 'Tenant') applied for an order determining that Randy Rego (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 via videoconference on March 03, 2021 and to conclusion on May 06, 2021.

The Tenant, the Tenant's representative, Theresa Martin, the Landlord and the Landlord's representative, Lisa Nadon attended the hearings.

On May 06, 2021 Pamela Clydesdale attended as a witness for the Tenant and Art Stieler attended as witnesses for the Landlord.

Determinations:

1. At the outset of the hearing on March 03, 2021 the parties agreed the following:
 - The washer and dryer have been repaired.
 - The water heater has been repaired.
 - The tenancy commenced on August 09, 2019.
 - The rental unit is a condo in a building containing 21 units.
 - The Tenant resides alone.
 - The monthly rent is \$1285.00.

Flooring

2. There was no dispute between the parties somewhere between August and September 2019, the Tenant requested the Landlord take action to repair a floorboard in the hallway.

3. The Tenant stated the floorboard is located in a high traffic area (hallway), made of wood, there is a crack down the middle and as the sides of the board are slightly raised it poses a potential tripping hazard. The Tenant provided no evidence to indicate the board has caused any accidents but stated that it was always necessary to be careful to ensure one doesn't stub their foot.
4. The Landlord agreed action should have been taken earlier to repair the flooring however due to delays caused with Covid-19, and a contractor who agreed to do the work, lost a sample and later declined to proceed with the job he has not been able to get the work done. He also claimed the Tenant has refused entry however acknowledge the Tenant had not always been given proper notice. The Landlord recently retained a contractor who has viewed pictures of the flooring and believes he can make the necessary repair. He will require access to properly assess what is required and 1-2 days to complete the work. The Landlord hopes it can be done shortly after the current Covid-19 related regulations are lifted.
5. I find the Landlord has failed to meet his maintenance obligations by failing to repair the portion of damaged wooden flooring.

Front Door

6. The Tenant stated he noticed a draft through the front door in November 2019 when the weather started turning colder. At that time, he informed the Landlord who inspected but did not see an issue. The Landlord advised the condo board as the door is their responsibility. They told him they were not going to do take any action.
7. On November 23, 2020 the Tenant again brought the issue to the Landlord after the Tenant observed work was being done to a neighbour's door. Within a few days, the Landlord hired Art Steiler (AS), who recommended attaching weather stripping to the door. As the Tenant felt there was still a draft entering, AS returned and added caulking. The Tenant said on December 14, 2020 and December 29, 2020 he informed the Landlord he did not feel the issue was resolved. The Tenant also claimed since the weather stripping was replaced the door will not stay closed unless it is locked.
8. The Tenant did not provide any evidence from a qualified person to support his claim there is a defect in the door or that it is not properly installed. He simply stated there is a draft from the door during winter months and suggest that his monthly heating bills are approximately \$5.00-\$10.00 more than other neighbours as a result. He provided no evidence to support his claim of the difference in heating costs is directly related to the door but said even after the weather stripping was added he did not notice a difference in his heating bills.
9. The Landlord testified the front door to the rental unit is a common element of the condominium and therefore maintenance is the condo board's responsibility. In November 2019 he did inform that board of the Tenant's complaint however they said the issues were weather related and they would not make a repair. In the summer of 2020, an HVAC/plumbing technician was at the unit and the Landlord inquired with him about

the door; he was told there was nothing wrong with the weather stripping. After another complaint from the Tenant, in November 2020, the Landlord hired AS to take a look at the door. The Landlord said he had not been informed until the hearing on May 06, 2021 the door does not stay closed unless locked.

10. AS testified since he retired as a manufacturing engineer manager, he has been operating a business known as 'Arts List' (8 years) and he is currently responsible for maintenance for 48 condos. In November 2020 he inspected the exterior door of the rental unit and noticed the weather stripping had shrunk and therefore recommended replacement. The Landlord authorized him to purchase and install high quality weather stripping. While he has installed lots of weather stripping and felt the problem was resolved, he returned to add caulking upon hearing the Tenant was still complaining. He has never added caulking to any door in the past but said the Tenant was fussier than most, so he went above and beyond. He viewed the door now as 99% perfect.
11. While the Landlord stated the front door was the responsibility of the condo board, I find the Landlord did have a responsibility to ensure repairs, if required were completed. While he brought the concern to the attention of the condo board in November 2019 simply telling the Tenant they were not going to do anything about it and taking no further action until November 2020 is unacceptable. When the Landlord did hire AS to look at the door, a rather simple and inexpensive fix was found. This could have been done a year earlier. Based on the evidence before me and on a balance of probabilities, I find the Landlord failed to meet his maintenance responsibilities by not taking immediate action to resolve the draft coming from the front door. However, I also find, the Landlord, in November 2020 has taken appropriate action to resolve the defect.

Thermostat

12. The Tenant testified in September 2019 he informed the Landlord the thermostat/furnace was not working properly; not enough airflow in some rooms, too much in others. In response, the Landlord had a repairman attend but no repairs were made. The Tenant did not offer any evidence to support his claim (independent inspection reports, etc.).
13. AS testified in December 2019 he inspected the thermostat and furnace. He utilized a digital laser and ultimately confirmed the furnace and thermostat were in proper working order. He gave the Tenant suggestions such as ensuring air intakes were not blocked as this would impact air flow. He did not bill the Landlord as he did not make any repairs.
14. While AS confirmed he is not certified in furnace repair, I am satisfied he is capable of determining if the furnace was functioning properly and the Tenant has provided no evidence other than his oral testimony to prove otherwise. I find the Tenant has not met his burden of proof and consequently do not find on a balance of probabilities the Landlord is in breach of maintenance obligations with respect to the thermostat/furnace.

Washer and Dryer

15. The Tenant testified in September 2019, he informed the Landlord the washer and dryer required repairs. While the washer was repaired, he said the thermostat in the dryer did not work properly.
16. The Landlord provided a letter dated May 17, 2020 from Dave VanGeutselaar, President and Service Technician for Tradeway Appliances which confirmed the Landlord contacted him on September 16, 2019 regarding the door seal in the washer and the heat level on the dryer. The seal was ordered and a used thermostat was to be installed in the dryer when both were available. He re-attended on October 9, 2019 and was refused entry by the Tenant; Tenant wanted a new dryer. Eventually he was able to make arrangements for installations of the washer seal and installation of a used thermostat in the dryer and later a new thermostat. He wrote in his letter, "Went back on November 16, 2019, checked temperatures and found out tenant is checking temperature in drum. Checking temperatures properly you check air temperature out the vent on the back, drum temperatures have not passed the thermostats. Thermostats are located in the blower housing.
17. I find based on the evidence before me, the Landlord acted quickly to have the Tenant's concerns regarding the washer and dryer resolved. While the washer did require repairs, based on the evidence before me, there is question as to whether or not the dryer required repairs in the first place. Regardless, I do not find the Landlord was in breach of his maintenance obligations. This portion of the Tenant's application is dismissed.

Water Heater

18. I have considered the evidence of the Tenant with respect to the leak in the hot water tank in September 2019, the fact that he had no hot water for approximately 1 week, and further complaints of lack of hot water in the bathroom however find based on the evidence before me that the Landlord is not in breach of his maintenance obligations. I find the Landlord, upon being notified of the water leak took immediate action to have the company who installed the water softener to re-attend the unit and inspect and when informed it was an issue with the hot water tank, the Landlord immediately contacted Reliance (the company he rents the tank from). Reliance attended the same day and advised the tank had to be replaced. Due to an issue with connections, it took a third party company approximately 1 week to complete the replacement of the hot water tank. I find the delay in repair was not as a result of inaction by the Landlord, but rather an issue with Reliance obtaining and installing the part.
19. The Landlord, upon receiving complaints from the Tenant regarding temperature issues also had Reliance attend on October 02, 2019, January 26, 2020 and April 11, 2020. He stated each time he was advised by the technician there is no defect and in particular after the inspection on April 11, 2020 received a call from Reliance asking why he continues to call when there is nothing wrong? The Tenant has not provided any evidence other than his oral testimony which would contradict the findings of the technicians with Reliance.

Cleanliness of the Unit and Painting

20. The Tenant asserted the overall condition of the unit was terrible and he submitted photos to support his allegations. The photos were close ups of particular areas of the unit; baseboards, windows, inside the oven, etc.
21. The Landlord argued he had cleaned the unit himself after his last Tenant left in June 2019 and it was in excellent condition. He submitted photos which showed the entire room but it was difficult to determine the overall cleanliness/condition of the paint based on the photos.
22. The Tenant's witness, Pamela Clydesdale (PC), who viewed the unit with her son at the open house, stated she took some of the photos which were entered into evidence and described the overall condition as "not show ready."
23. I have considered the testimony of all parties as well as photos submitted as evidence by the Landlord and Tenant. I agree with PC that when the Tenant took possession of the unit the unit may not have been "show ready" as some areas (baseboards, oven, windows, etc) could have been cleaned and the paint was not perfect (paint chips, etc). However, I do not find the condition constitutes a breach of the Landlord's maintenance obligations under section 20 of the Act. I find, on a balance of probabilities, despite the unit not being thoroughly cleaned, the rental unit was in a good state of repair and fit for habitation and complied with health, safety, housing and maintenance standards.
24. While the Tenant has requested the Board order the Landlord to reimburse him for costs he incurred to clean and paint the rental unit, as I do not find the Landlord was in breach, this portion of the Tenant's application is dismissed. A claim by the Tenant that the Landlord failed to pay the agreed costs would have to be part of a T2 application (substantial interference) in order to be considered.

Remedies

25. When assessing possible remedies, I have considered such factors as length of time the issues have gone unresolved as well as disruption caused to the Tenant's ability to normally reside in the rental unit.
26. I do not find either the issue with the front door or the flooring has played a significant role in the Tenant's ability to normally reside in the rental unit. The door took approximately 1 year to resolve and the flooring issue is ongoing (began Sept 2019). I have also considered circumstances which may have attributed to delays. Taking consideration of both issues, I find the Tenant should receive a rent abatement of \$750.00. The Landlord shall also take steps to ensure the front door to the rental unit closes properly (stays closed even if not locked).

It is ordered that:

1. The Landlord shall pay to the Tenant a rent abatement of \$750.00.

2. The Landlord shall repair or replace damaged flooring on or before August 01, 2021.
3. If the Landlord does not do the repair or replacement or work by August 01, 2021, the Tenant is authorized to arrange for the repair or replacement to be done and may recover the cost of the repair or replacement by deducting the amount from the rent paid in the month(s) after the repair or replacement or work is done until there is no longer any money owing.
4. The Landlord shall ensure the front door to the rental unit is in proper working condition, including closes and remains closed without the door being locked.
5. The Landlord shall also pay the Tenant \$45.00 for the cost of filing the application.
6. The total amount the Landlord owes the Tenant is \$795.00.
7. The Landlord shall pay the Tenant the full amount owing by May 29, 2021.
8. If the Landlord does not pay the Tenant the full amount owing by May 29, 2021 the Landlord will owe interest. This will be simple interest calculated from May 30, 2021 at 2.00% annually on the outstanding balance.
9. If the Landlord does not pay the Tenant the full amount owing by June 15, 2021, the Tenant may recover this amount by deducting \$795.00 from the rent for July 2021.
10. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.
11. Upon receiving proper Notice to Enter in accordance with the Act to address the flooring or door repairs, the Tenant shall not refuse the Landlord or any agent of the Landlord entry to the unit and further, shall not impede the repairs in any way.

May 18, 2021
Date Issued



Troy Rossignol
Member, Landlord and Tenant Board

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