



Order under Section 31
Residential Tenancies Act, 2006

File Number: TST-15341-20

In the matter of: 2812, 275 MAIN STREET
TORONTO ON M4C4X4

Between: Paul Wardle Tenant

and

Realstar Management Landlord

Paul Wardle (the 'Tenant') applied for an order determining that Realstar Management (the 'Landlord') 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 via video conference on October 19, 2021.

The Tenant, the Landlord's legal representative, Martin Zarnett, and the Landlord's witness, Leila Abdullahi, attended the hearing.

Determinations:

Preliminary Issue

1. At the outset of the hearing, the Landlord's legal representative sought clarification regarding the precise nature of the Tenant's application. Even though the Tenant's application concerns one issue of disrepair, the Tenant has chosen to bring an application pursuant to section 22 of the *Residential Tenancies Act, 2006* (the 'Act') (a 'T2 application') and not an application pursuant to section 20 of the Act (a 'T6 application').
2. At the hearing, I explained to the Tenant that the legal test and the relevant issues are slightly different on these applications such that, in order for the Board to find that the Landlord has breached their obligations under section 22 of the Act, I would need to be satisfied that the Landlord's behaviour substantially interfered with the Tenant's reasonable enjoyment of the rental unit. Although the disrepair issue is relevant with regards to the context of the matter, it is less relevant than the Landlord's behaviour in response to that disrepair issue.

3. After discussing the issue at length and explaining the differences to the Tenant, he assured me that he had sought legal advice prior to filing the application and he was content to proceed with the T2 even though it contains an issue of disrepair.

The Tenant's Application

a) The Facts

4. For the following reasons, I do not find that the Landlord's behaviour in response to the disrepair issue substantially interfered with the Tenant's reasonable enjoyment of the rental unit.
5. Many of the relevant facts are not in dispute. The Tenant lives in an apartment building and, on March 25, 2020, the resident in the unit above him flooded their bathroom which then caused a large leak in the Tenant's bathroom and resulted in a portion of the bathroom ceiling collapsing. This happened again on April 24, 2020.
6. In response to the leak and ceiling problem, the Landlord attended the rental unit both times and installed a temporary patch in the ceiling until a more permanent repair could be completed. The temporary patch was made of cardboard and tape.
7. There is no dispute that, just prior to the first flood, the Landlord's contractors contacted the Landlord in writing to explain that, due to the recent government pandemic-related instructions and for their own safety, they would not be entering occupied rental units to conduct any repairs or maintenance. The Landlord provided the Board with two letters from their contractors which outline their refusal to enter occupied rental units.

b) The Issues in Dispute

8. There are three issues in dispute. First, the Landlord says their property manager offered to replace the cardboard ceiling patch with a wooden patch while they awaited a more permanent repair; the Tenant says this offer was never made. Second, the Tenant says the Landlord failed to clean the bathroom properly when they installed the temporary ceiling patch. Finally, the Tenant says the Landlord should have contacted other contractors to attend the rental unit and permanently repair the Tenant's ceiling.
9. First, I find that the first issue is irrelevant to the substance of the Tenant's application. The Landlord says that the property manager offered to install pieces of wood to replace the cardboard while the Tenant waited for a permanent solution but the Tenant denies that the property manager made this offer. However, regardless of whether the Landlord offered to replace the cardboard patch with a wooden patch, the fact remains that this was still a temporary solution that would have resulted in merely a cosmetic change to the hole in the ceiling. I therefore find that this issue is irrelevant to the Tenant's application and I would also note that this is the reason I told the Landlord's legal representative that I did not need to hear from the property manager at the hearing.
10. Regarding the second issue, the Tenant says that the Landlord failed to clean the bathroom properly and he left debris littered throughout the room. However, the Tenant

failed to provide any documentary evidence to support his testimony. While the Tenant did provide several pictures of the state of the bathroom before the Landlord arrived, he failed to provide any pictures to confirm that the Landlord left debris littered throughout the bathroom after he installed the temporary ceiling patch. Based on the evidence before me, I am not satisfied that the Landlord failed to clean the bathroom properly after the flood when he installed the temporary patch. I would also note that, even if the Landlord did fail to clean the area, I would not find that this substantially interfered with the Tenant's reasonable enjoyment of the unit. Even if the Tenant simply had to sweep, tidy or wipe a cloth around the affected area, this would not rise to the level of "substantial interference" as contemplated by the Act.

11. Finally, the Tenant says that the Landlord substantially interfered with his reasonable enjoyment because they failed to contact additional contractors to investigate whether they would come to the rental unit to complete a permanent repair of his ceiling. For the following reasons, I do not agree with the Tenant's position. Both of the floods occurred during the very early stages of the pandemic and I take judicial notice of the fact that the government instituted sweeping regulations to encourage people to stay at home except for essential or emergency reasons. The fact that the Landlord's contractors informed them in writing that they would not be entering occupied units was to be expected during this time period. Also, I find it to be reasonable that the Landlord did not contact additional contractors in an attempt to find people who would hypothetically disobey government directives to attend the rental unit for a non-emergency and non-essential repair issue. Based on the evidence before me, I am satisfied that the Landlord's conduct was reasonable and it did not substantially interfere with the Tenant's reasonable enjoyment of the rental unit.

c) The Permanent Repair

12. There is no dispute that on May 21, 2020, the Landlord's contractor sent written confirmation that they were willing to begin entering occupied units to conduct repairs. There is also no dispute that the Landlord contacted the Tenant that same day to arrange a time for the repairs to be completed. The contractor entered the unit (with proper notice) and completed the permanent repair of the Tenant's bathroom on May 25, 2020. There is no dispute that the permanent repair job was complete and effective.
13. Based on the evidence before me, I am not satisfied that the Landlord's conduct during the course of this period of disrepair substantially interfered with the Tenant's reasonable enjoyment of the unit. The Landlord attended the unit immediately and installed a temporary patch to cover the ceiling hole. As soon as contractors were willing to attend the unit, the Landlord contacted the Tenant immediately to make these arrangements. When the contractors attended the unit, they conducted a complete repair of the situation that was both complete and effective. Based on the evidence before me, I find that the Landlord acted reasonably in all the circumstances and their conduct did not substantially interfere with the Tenant's reasonable enjoyment of the unit. For this reason, the Tenant's T2 application must be dismissed.

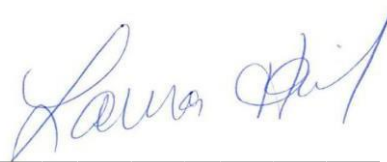
d) A Possible T6 Application

14. For the sake of completeness, I would also note that, even if the Tenant had decided to file a T6 application for disrepair and not this T2 application for substantial interference, I would still find that the Landlord had not breached their obligations under the Act.
15. I say this because the issue of disrepair is essentially a cosmetic one as the hole in the ceiling did not affect the plumbing or any other functional amenity in the rental unit. There is no dispute that the Tenant was able to use the bathroom during the weeks that he waited for more permanent repairs. In addition, while the intervening weeks may have felt inconvenient for the Tenant, the fact remains that the Landlord acted immediately to install a temporary repair and then, once their contractors were agreeable to enter the unit, they acted immediately to arrange a more permanent repair. Based on the evidence before me, I find that the Landlord acted in a timely and effective manner to address the disrepair issue and, for this reason, even if the Tenant filed a T6 application it would still be dismissed.
16. This order contains all the reasons within it and no further reasons will be issued.

It is ordered that:

1. The Tenant's application is dismissed.

October 27, 2021
Date Issued



Laura Hartslief
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.