



Order under Sections 31 and 130 Residential Tenancies Act, 2006

Citation: Makonnen v Katzman, 2024 ONLTB 24500

Date: 2024-04-25

File Number: LTB-T-055038-22

LTB-T-031826-22

In the matter of: 2908, 70 DISTILLERY LANE
TORONTO ON M5A0E3

Between: Tulu Makonnen Tenant

And

Marlene Katzman Landlord

Tulu Makonnen (the 'Tenant') applied for a reduction of the rent charged for the rental unit due to a reduction or discontinuance in services or facilities provided in respect of the rental unit or the residential complex. (T3 Application- LTB-T-055038-22)

The Tenant also applied for an order determining that the Landlord (Marlene Katzman) 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. (T6 Application LTB-T-031826-22)

This application was heard by videoconference on February 12, 2024.

The Tenant, the Landlord's Representative, Jessica Hewlett, and the Landlord attended the hearing.

Determinations:

Preliminary Issue- T3 Application

1. The Board brought forward a preliminary issue of its own, which was regarding the proper use of the T3 application. A T3 application is brought forward when a tenant is seeking to

have their rent adjusted for a loss of a service that was originally included in the lease agreement. Once this was explained to the Tenant, the Tenant stated that the issues were covered in their T6 application, and that the T3 may have been filed without fully comprehending the purpose of the T3 application.

2. The Tenant asked the consent of the Board to withdraw the T3 application. The request was granted at the hearing.
3. Therefore, LTB-T-055038-22 is dismissed as withdrawn.

T6 Evidence

4. The Tenant's T6 application alleges that the Landlord failed to maintain the rental unit in a timely manner and by doing so, breached their obligations pursuant to section 20(1) of the *Residential Tenancies Act*, 2006 (the 'Act').

Oven

5. The Tenant testified that in or around February 2022, the oven in the Tenant's range had stopped working. The stove burners still functioned but the oven portion would not turn on. The issue was reported to the Landlord on February 22, 2022.
6. A technician hired by the Landlord came to the rental unit on March 15, 2022. It had been assessed that the digital control panel to the oven was malfunctioning and that replacing the control panel would rectify the issue. This repair did not appear to work, and it was determined that the replacement control panel may have also been faulty.
7. On March 28, 2022, the technician returned to replace the control panel again, however that repair did not work either.
8. On April 4, 2022, the technician returned to reassess the issue and it was determined that the motherboard was not properly functioning, however one was not readily available and would have to be ordered.
9. No evidence was presented that put into question the qualifications or competency of the technician that attended the rental unit to make the repairs on all attempts.
10. The Landlord testified that on June 27, 2022, they purchased a new stove for the rental unit, and on July 4, 2022, the stove was replaced. The Tenant's evidence did align with the Landlord's however, the date the Tenant claims the replacement was delivered was July 6, 2022.

Faucet

11. The Tenant testified that a faucet in the bathroom was not functioning properly. The faucet fixture was a lever-type faucet.
12. On February 22, 2022, the Tenant reported to the Landlord that the faucet was not functioning. When the lever was lifted, water would not come out of the faucet. However, on cross-examination, the Landlord questioned the Tenant whether the faucet would not turn on or if it would not turn off. The Landlord presented the work invoice from the plumber showing that the assessment showed that the faucet would not turn off.
13. The Tenant testified that a plumber came out to the rental unit on March 1, 2022, to assess the faucet, however, the faucet was not replaced until April 23, 2022, when the plumber had to attend to the unit for a pipe burst in the kitchen.
14. The Landlord testified that a plumber had assessed the faucet as needing a new cartridge.
15. The Landlord testified that on March 17, 2022, the Tenant has stated that if the Landlord sent him the cartridge, he would install the cartridge himself. However, when the Tenant attempted to replace the cartridge, he found that he was unable to open the faucet to access the old cartridge.
16. The Landlord testified that the plumber attempted to change the cartridge on April 1, 2022, however it was discovered that the original builder had inexplicably glued the whole faucet together. This made it impossible to replace the cartridge and would require the whole faucet to be replaced. On April 11, 2022, a replacement faucet was ordered.
17. The Landlord provided an email communication with the plumber stating that the replacement faucet had arrived and that they would be able to install it shortly.
18. The Landlord testified that it was a coincidence that the kitchen water leak occurred around the same time as the arrival of the faucet.
19. Both parties agree that the faucet was replaced and fully functional as of April 23, 2022.

Toilet Seat

20. The Tenant testified that the toilet seat had been cracked since the beginning of the tenancy but was reported to the Landlord on February 22, 2022, when the toilet seat broke and became unusable. The Landlord did not contest this evidence and stated that they were aware of the crack in the toilet seat prior to when it was reported to the Landlord.
21. Both parties agree that the toilet required a unique toilet seat which was not readily available. The Tenant found a replacement toilet seat online. The Landlord e-transferred the Tenant money to fund the purchase of the toilet seat, but the e-transfer was reversed

when the seller told the Tenant that the seat was not be ready for shipping until July, or 3-4 months from the sale.

22. A suitable temporary toilet seat was installed on April 23, 2022. The Tenant testified that from February 22 to April 23, he did not have a toilet seat.

T6- Analysis

23. Section 20(1) of the Act states:

20 (1) A landlord is 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.

24. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, the Court of Appeal held that the LTB should take a contextual approach and consider the entirety of the factual situation in determining whether there was a breach of the landlord's maintenance obligations, including whether the landlord responded to the maintenance issue reasonably in the circumstances. The court rejected the submission that a landlord is automatically in breach of its maintenance obligation as soon as an interruption in service occurs. In this case, did the Landlord act reasonably when notified about the issues regarding the oven, the faucet and the toilet seat.

25. It is not contested that these issues were eventually addressed, however, as per *Onyskiw*, the question is whether the issues were responded to and fixed in a reasonable amount of time after they were reported.

26. It was not contested that all three issues followed the same timeline. All three issues were reported to the Landlord on February 22, 2022. The faucet and toilet seat issues were resolved April 23, 2022, but the oven issue was not resolved until early July 2022.

Analysis- Toilet Seat

27. The remedy for a broken toilet seat, even if only temporary, is a very minor issue to deal with when it comes to repair. However, I was not presented with any evidence as to why the Landlord did not purchase a temporary toilet seat when it was confirmed that the original toilet seat was no longer usable.

28. Based on the evidence before me, I am satisfied that the Landlord breached section 20(1) of the Act by failing to replace the toilet seat, even with a temporary one, in a reasonable amount of time.

Analysis- Oven

29. Regarding the oven, I am satisfied that the Landlord did their due diligence in hiring a professional third party to address the issues, and upon each attempted repair, had no reason to believe that the repair made by the technician would not be effective.
30. No evidence was presented that put into question the competency of the technician hired by the Landlord. Therefore, I have no reason to doubt the competency of the technician and must assume that they completed their job in as competent a manner as possible.
31. I find that the Landlord could not be reasonably be expected to know that each repair made by the technician would fail to repair the appliance, despite doing their due diligence in getting the appliance repaired by a licensed technician.
32. However, no evidence was presented to address the fact that after the oven was serviced a third time on April 4, 2022, it took until June 27, 2022, for the Landlord to purchase a replacement range. I find that to be an unreasonable amount of time, thus a breach of section 20(1) of the Act.

Analysis- Faucet

33. Based on the evidence before me, I am satisfied that the faucet was non-functional from February 22 until April 23, 2022.
34. No evidence was presented to me that would lead me to believe that the Tenant treated this as an urgent matter, but rather as an inconvenience that required use of the kitchen sink in lieu of a lack of a functioning tap in the bathroom.
35. However, I find that taking nearly two months to replace a bathroom faucet to be unreasonable. The Landlord did not provide any evidence that any effort was made to try to have the faucet fixed/replaced faster, such as presenting attempts to contact other plumbers when it became clear that it would longer than a day or two for a plumber to attend the unit. In this respect, the Landlord failed to act diligently, and therefore, breached section 20(1) of the Act.

T6 Remedies

36. The Tenant is asking for a rent abatement. A rent abatement is a contractual remedy, which is based on the idea that if you pay 100% of the rent you, should get 100% of the goods and services you are paying for, and if not then you should be granted an abatement which represents the difference between what you are receiving and what you are paying for.
37. The Tenant is claiming \$1,000.00 for a rent abatement, however based on the evidence before me, I am not satisfied that such an amount is warranted. Having said that, I am satisfied that the Landlord's breach of section 20(1) of the Act, and failing to address

issues in a timely manner, does warrant some rent abatement because the Tenant did not receive 100% of what he was paying for.

38. In consideration of the evidence before me, I find that a \$100.00 rent abatement is reasonable under the circumstances for the Landlord's failure to replace the toilet seat in a timely manner, \$150.00 for failing to repair or relace the oven in a timely manner, and \$200.00 for the Landlord's failure to replace the faucet in a timely manner.

39. Therefore, I find that the Landlord shall pay the Tenant a total rent abatement of \$450.00, plus the filing fee for this application.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$503.00. This amount represents the rent abatement for the faucet and toilet seat, and \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by May 15, 2024.
3. If the Landlord does not pay the Tenant the full amount owing by May 15, 2024, the Landlord will owe interest. This will be simple interest calculated from May 16, 2024, at 7.00% annually on the balance outstanding.
4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.
5. The Tenant's T3 application is dismissed.

April 25, 2024

Date Issued

Robert Brown

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor Toronto ON
M7A 2G6

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