Order under Sections 30 and 31
Residential Tenancies Act, 2006

Citation: Lahaye v 1455522 Ontario Limited, 2024 ONLTB 32171
Date: 2024-05-10
File Number: LTB-T-068179-22

In the matter of: 307, 39 Torrens Avenue
East York Ontario M4K2H9

Between: Fern Lahaye — Tenant

And

1455522 Ontario Limited — Landlord

Fern Lahaye (the 'Tenant') applied for an order determining that 1455522 Ontario Limited (the 'Landlord'):

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.

The Tenant also applied for an order determining that 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 by videoconference on April 25, 2024.

The Tenant, the Tenant's Legal Representative Jora Kuner, the Landlord's Agent Sandra Amodio and the Landlord's Legal Representative Christina Nastas attended the hearing.

Determinations:

T2 Application

1. The Tenant moved into the rental unit on July 1, 1996 and moved out of it on April 21, 2021. The rental unit is on the third floor of a three-storey building. The monthly rent the Tenant last paid to the Landlord was $816.61.

2. The Tenant's evidence was ongoing issues persisted with the various tenants that lived in the unit directly below her in unit 207. The issues began in 2017 and continued until she moved out of the rental unit on April 21, 2021.

3. It was not disputed the parties were before the Board in 2017 for a T2 application brought by the Tenant with respect to issues she was having with the tenant that lived in unit 207 at that time. This application was dismissed without prejudice as the Board found the remedies sought by the Tenant were not ones the Board could order.

Vibration and Noises from the Unit Below

4. The Tenant testified that in April of 2020, different tenants had moved into unit 207. The Tenant's evidence was an ongoing vibration from unit 207 affected her unit causing her to lose sleep. The Tenant described the issue as being caused by a vibrating machine. She suspected it was an evaporating air-cooling machine.

5. Her evidence was she was routinely woken up throughout the night. She could hear the tenants in unit 207 pouring water into what she believed was the machine causing the vibration.

6. The Tenant's evidence was she could not longer sleep in her bedroom due to the vibration coming from the unit below. She set up a travel bed to sleep in different parts of the unit, however she continued to experience the interference from the unit below her. She attempted to mitigate the problem by purchasing rubber mats for her floors however they did not eliminate the issue.

7. The Tenant testified the people in unit 207 below her moved out in August 2020. Her evidence was new tenants moved into unit 207 and the vibrational disruptions continued. The Tenant suspected the new tenants were using the same machine as the previous tenants since the circumstances did not change.

8. The Tenant testified that the vibration she felt while sleeping was approximately 7 out of 10 on a disruption scale with a 1 being compared to a cellphone vibrating in one's pocket and 10 being an earthquake.

9. The Tenant also testified that the tenants in unit 207 also stomped their feet on the hardwood flooring when she did her dishes in an attempt to harass her. Her evidence was they also used a sofa bed and upon getting up from it the support bar would hit the floor and she could hear this. The Tenant also testified that if the tenants below her were engaged in sexual activity on the sofa bed, the noise from the bed could also be heard in her unit.

10. The Tenant's evidence was she lived in the unit alone and kept a log of the dates and times she experienced interference from the vibrations and foot stomping coming from the unit below hers. The Tenant submitted into evidence numerous letters she wrote to the Landlord between April 9, 2020 and April 12, 2021.

11. In the letters, the Tenant advises the Landlord of the ongoing disruption coming from the unit below her. The letters state the Tenant believes the occupants in the unit below are using a vibrational machine and they include the dates and times the Tenant was affected by the vibrations and foot stomping.

12. The logs contained in the letters claim the vibration was being experienced several days per month and for several hours at a time. The letters read as an ongoing record of the problems in which the Tenant provides monthly or bimonthly updates to the Landlord. Each letter contains a request that the Landlord resolve the issue.

13. The Tenant testified she delivered each of the letters to the Superintendent by sliding them through the mail slot in the door. The Tenant's evidence was the Landlord never acknowledged or responded to any of these letters.

14. The Tenant acknowledged at the hearing that she has never been inside 207. She has never seen the machine causing the vibrations. She does not know the type of flooring that exists in unit 207.

15. The Landlord's Agent, Sandro Amodio testified that after the Tenant's T2 application was dismissed in 2017, he heard nothing more about noises or vibrations being experienced by the Tenant in her unit. He agreed the Superintendent's premises contains a mail slot in the door and that tenants not using email can use this slot to deliver notices of complaint.

16. Mr. Amodio stated the Superintendent never notified him that they were receiving regular complaints from the Tenant. His evidence was he only became aware of the letters when he reviewed the Tenant's evidence. He acknowledged it was possible the Superintendent did not tell him about the Tenant's letters however he testified the Superintendent would have told him given the volume of letters written by the Tenant.

17. Mr. Amodio testified the Landlord does not own any machines that produce vibrations. He testified when unit 207 was being renovated in 2019, he walked through the unit and it was empty. There was no machine inside it.

18. The Superintendent did not attend the hearing to testify.

19. Based on the evidence presented at the hearing, I am satisfied the Tenant has proven on a balance of probabilities she was experiencing an ongoing vibrational disturbance in her unit over the period from April 9, 2020 until she vacated on April 21, 2021. While she suspects the issue was caused by an air-cooling evaporator, I do not find the Tenant is required to conclusively prove the cause of the interference in order to succeed in this application.

20. The Tenant delivered numerous letters of complaint to the Superintendent requesting action to be taken to resolve the vibration being experienced in the rental unit. No evidence was presented showing the Landlord ever investigated the Tenant's complaints by inspecting either the rental unit or unit 207 between April 2020 and April 2021.

21. In my view, the Landlord could have had the Superintendent testify as to his knowledge of the issue or whether anything was done in response to it. Without more, I find the Tenant has proven she endured an ongoing issue with a disruptive vibration in her unit and this constituted a substantial interference with her reasonable enjoyment.

22. I am not convinced the Tenant has proven on a balance of probabilities the foot stomping or the sofa bed in unit 207 has substantially interfered with her reasonable enjoyment of the rental unit. While the Tenant may have found the sounds disruptive, in my view, these are sounds that are typical when living in an apartment building. I also note the foot stomping alleged is coming from the unit below the Tenant and not above her. No audio recordings of the incidents were submitted into evidence showing these sounds to be at

such a level that would support a finding they substantially interfered with the Tenant. Without more, I do not find the Tenant has proven this claim and it will be denied.

Eavesdropping

23. The Tenant testified the tenants in unit 207 were listening in on her phone calls. She based this belief on her own movements throughout the unit while she was engaged in a telephone conversation. She stated she could hear the downstairs tenants following below her in unit 207. I found this evidence fell very short of supporting a finding the Tenant's phone calls were being listened to by anyone and as such this claim will be denied.

Remedies

24. At the hearing, the Tenant sought a rent abatement for the substantial interference she experienced with the reasonable enjoyment of the rental for the 12-month period before she vacated the unit on April 21, 2021. Abatement of rent is a contractual remedy based on the principle that if you are paying 100% of the rent then you should be getting 100% of what you are paying for and if you are not getting that, then a tenant should be entitled to abatement equal to the difference in value.

25. The Tenant's evidence was the vibration caused her a significant loss of sleep. She tried to mitigate the issue with rubber mats and sleeping in different areas of the rental unit. Her evidence was she experienced stress, eczema and vertigo from dealing with the issue.

26. At the hearing, the Tenant sought a 25% rent abatement for all of the issues claimed in her T2 application. While I find the Tenant is entitled to a rent abatement, a % approach to remedy in this case is inappropriate. I say this because while the vibration was experienced on most days by the Tenant, it was not every day. The duration of the interference also varied. It would also be impractical to assess impact for each and every day the Tenant's sleep was affected by the vibration.

27. The Board recognizes sleep disruption has a significant impact on a person's quality of life. The ability to sleep in one's rental unit without undue interference falls squarely within the notion of quiet enjoyment. I also consider the problem persisted for a year's time and the Landlord took no steps to address it despite repeated requests from the Tenant to do so. For these reasons, I find a total abatement of $1,500.00 for the issue to be fair and reasonable. This is less than the amount sought by the Tenant because it takes into account there were days the issue did not bother the Tenant while also recognizing the ongoing nature of the issue between April 2020 and April 2021.

28. At the hearing, the Tenant sought to amend their application to include general damages in the amount of $5,000.00. This request was not filed with the Board or served on the Landlord in advance of the hearing. The Landlord was opposed to the request having had no notice of it.

29. The additional remedy was contained in the Tenant's evidence brief that was given to the Landlord in advance of the hearing. This brief is 69 pages long. Nothing in the document alerts the Landlord that the evidence contains a request to amend the application. No

reason was provided as to why the Tenant, having filed their application three years prior to the hearing date, could not have complied with Rule 15 of the Board's rules of procedure and provided clear notice to the Landlord of their intention to seek this additional remedy. I also did not find it was fair to expect the Landlord to look through a 69-page evidence brief for potential amendments the Tenant might seek at the hearing. For these reasons, the Tenant's request to amend the application on the hearing date was denied.

T6 Application

30. The Tenant's T6 application concerns damaged window screens, damage to a hallway wall, the opening direction of the refrigerator door and the ceiling vent in the kitchen.

31. Subsection 20(1) of the Act provides that the landlord is responsible for providing all needed repairs and maintenance:

> 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.

32. In *Onyskiw v. CJM Property Management*, 2016 ONCA 477 , 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.

33. The Tenant testified she advised the Landlord of all of her issues in her T6 application on November 29, 2020. She submitted a copy of the letter she gave to the Superintendent and it is dated on November 29, 2020.

Window Screens

34. The Tenant's evidence was squirrels had torn the screens in her window. The Tenant submitted a follow letter dated March 16, 2021 in which she again requests repair to her window screens. She testified the Superintendent, on March 20, 2021, asked her to give him the screens to have repaired. In support of this testimony, the Tenant submitted a letter addressed to the Landlord on March 30 2021. The letter states the screens were given got he Superintendent ten days prior and to date have not been repaired. It was not disputed the screens were not repaired prior to the Tenant vacating the unit.

35. The Tenant's evidence was that during this period she could not open her window because of the risk of squirrels getting inside.

36. The Landlord acknowledged the issue with the screens but submitted the Tenant waited until late March 2021 to provide the screens to the Superintendent for repair. Additionally, they submitted the building is 70 years old and at that time, the Covid-19 pandemic was affecting repair supplies.

37. My understanding of the evidence was the Tenant gave the screens to the Superintendent in March of 2021 because he did not respond to her November 29, 2020 letter. She

followed up with a letter on March 16, 2021 and was told just after this to provide the screens for repair.

38. Again, the Landlord did not call the Superintendent to provide evidence at the hearing. Mr. Amodio had no dealings with the Tenant surrounding any of the issues claimed in these applications.

39. Based on the evidence presented, I satisfied the Tenant notified the Landlord of the torn screens in her unit on November 29, 2020. I am also satisfied the Landlord did not respond to this issue in a timely manner. I say this because the Tenant vacated the rental unit almost five months later and the screens were not repaired, only having been first addressed by the Landlord in mid March 2021. I heard no evidence that would explain why it took the Landlord almost four months to ask the Tenant for the screens so that they could be repaired.

40. In the circumstances, when I consider the impact of not being able to open a window, I am mindful four of these months were during an Ontario winter. I find the impact to the Tenant to be minimal and will order a $100.00 abatement for this issue.

Damage to the Hallway Wall

41. The Tenant's evidence was the hallway wall in the rental unit had an area of the paint removed while the Landlord replaced her refrigerator. She acknowledged the issue was cosmetic in nature and had no impact on her. As such, I do not find the Landlord's obligation under section 20(1) was triggered by and this claim is denied.

Direction of the Fridge Door Opening

42. The Tenant testified the refrigerator in her unit was replaced and the new one had a door that opened in a direction that required her to step out of the kitchen. She testified the door on this fridge was not reversible and it was meant for a unit with a reversed layout to hers. The Tenant testified the fridge was operational in all respects.

43. Based on this evidence, I am not convinced the Tenant has shown there was a maintenance issue with the fridge. It was her own evidence the fridge worked and the door was not reversible. While the Tenant may have been inconvenienced and frustrated by the direction of the door opening, in my view, this claim should have been raised on a T2 application. Since this was not a maintenance issue, this claim is denied.

Kitchen Vent

44. The Tenant testified the ceiling vent in the kitchen did not work. She told the Landlord on November 29, 2020 in the same letter used to notify them of the other maintenance issues this T6 application is subject to.

45. Mr. Amodio testified the building is 70 years old and has never had powered vents. His evidence was each unit, including the Tenant's, has an open-air channel to the exterior of the building but no powered venting system has ever been present.

46. Based on the evidence presented, I am not satisfied the Tenant has proven the existence of a powered vent in the rental unit's kitchen. Given the duration of the tenancy, I find the Tenant could have easily provided some evidence if she ever had a working powered air vent in the kitchen. Without more, I am not convinced the Tenant has proven there was any need for repair to the kitchen vent. Therefore this claim is denied.

It is ordered that:

1. Pursuant to the T2 application, the Landlord shall pay the Tenant $1,500.00 for a rent abatement.

2. Pursuant to the T6 application, the Landlord shall pay the Tenant $100.00 for a rent abatement.

3. The Landlord shall also pay the Tenant $53.00 for the cost of filing the applications.

4. The total amount the Landlord owes the Tenant is $1,653.00.

5. The Landlord shall pay the Tenant the full amount owing by May 21, 2024.

6. If the Landlord does not pay the Tenant the full amount owing by May 21, 2024, the Landlord will owe interest. This will be simple interest calculated from May 22, 2024 at 7.00% annually on the balance outstanding.

May 10, 2024
Date Issued

John Cashmore
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.