



**Order under Subsection 30 Residential
Tenancies Act, 2006**

Citation: Canuel v Tucciarone, 2024 ONLTB 61529

Date: 2024-08-29

File Number: LTB-T-034617-23

In the matter of: 563 CHAMBERLAIN ST
PETERBOROUGH ON K9J4L6

Between: Phil Canuel Tenant

And

Silvio Tucciarone Landlord

Phil Canuel (the 'Tenant') applied for an order determining that Silvio Tucciarone (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 July 4, 2024.

The Landlord and the Tenant attended the hearing.

Determinations:

1. As explained below, the Tenant proved on a balance of probabilities that the Landlord breached section 20(1) of the Act by failing to remove the brush from the fallen trees from the backyard in a timely manner. Therefore, the Landlord shall pay the Tenant \$623.00.
2. The tenancy began August 1, 2021, and ended on September 1, 2023. Rent was \$575.00/month.
3. The Tenant filed this application on April 30, 2023.
4. The rental unit is a bedroom located in a detached house. The common areas such as the kitchen, the bathroom and the backyard were shared with other tenants in the rental complex.
5. The rental complex did not have any other common area such as a living room or television room. The only common area in which to socialize or entertain guests was the backyard. The backyard was used as storage, and for recreation. The tenants of the rental complex had run garden lights, a fire pit and other recreational activities for entertaining guests or for socializing among themselves, or to relax outside. The Landlord confirmed, at the hearing, that the tenants were permitted to do this, and that all the tenants of the rental complex had shared access to the backyard.

Merits

6. The Tenant testified that on May 21, 2022, a storm felled 2 trees in the backyard. The result was that the debris from the fallen trees covered the backyard and made the yard unusable.
7. The Tenant claimed that due to the fallen trees, none of the tenants were able to use the firepit, furniture or other recreational equipment such as the horseshoe pit.
8. The Tenant testified that due to the fallen debris, he was unable to remove his kayak from the area of the yard where it was stored to use or to properly store.
9. The Tenant testified that the Landlord was aware of the fallen trees the day of the storm. However, the Landlord had not cleared all of the debris from the yard as of the date the tenancy terminated. The Landlord testified that the yard had been cleared of all of the debris as of June 2023.
10. The Tenant presented photos showing the yard substantially cluttered with debris from the fallen tree. The photos were taken by the Tenant on April 12, 2023.
11. The Tenant provided evidence that the municipality had issued Property Standards warnings to the Landlord to have the brush removed from the property. This was not contested by the Landlord.
12. The Tenant testified that the tree debris prevented use of the backyard. The Tenant testified that the brush had also caused an increase of rodents and other animals making their home around the fallen wood.
13. The Tenant is seeking a rent abatement of \$1,000.00.
14. The Landlord also testified that he had a tree company attend the property to give a professional opinion on what needed to be done with the trees. The Landlord claimed that only one tree had fallen, however four other trees on the property had died and also needed to be removed. The company quoted that it would cost approximately \$5,000.00/tree to properly cut down and remove the trees.
15. The Landlord testified that another company, which would have been less expensive than the company that made the above-mentioned quote had been hired to remove the brush, but after being hired, the company withdrew from their agreement with the Landlord. The Landlord did not present his immediate response to this withdrawal at the hearing.
16. The Landlord did not contest the Tenant's claim that the Landlord had been issued warnings by the municipal Property Standards department regarding the uncleared backyard.
17. The Landlord testified that as of April 1, 2023, all of the trees had been cut down, however the brush had not been removed from the property.

18. The Landlord testified that from May 22, 2022, until November 22, 2022, the Tenant had access to 2/3 of the 150-foot-deep backyard. The Landlord stated the storage shed, deck and the fire pit were all still accessible.
19. The Landlord testified that all of the wood had been removed from the backyard as of June 23, 2024.
20. The Landlord stated that he acted diligently to have the wood removed from the property.

Analysis

21. 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.

22. 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.
23. In this case, the Board must determine if the Landlord acted diligently and within a reasonable amount of time to remove the fallen trees, and brush that resulted from a storm in 2022.
24. Based on the Tenant's testimony and supplementary evidence, including both the photos and the Property Standards reports from the municipality, I am satisfied that the fallen trees, and brush made the backyard unusable.
25. The trees fell in May 2022. By the Landlord's own submissions, the brush was not cleared until the end of June 2023. The Tenant claimed that the wood had not been removed from the property as of the date the tenancy had terminated on September 1, 2023.
26. It is not contested that the Landlord was aware of the issue the day the tree fell in the backyard.
27. Based on the evidence before me, I am not satisfied that the Landlord responded reasonably to the fallen trees under the circumstances. I find a 6 month wait for a reaction to be unreasonable under the circumstances. I also find that the 13-month period from when the trees fell to when the Landlord has testified that the brush was cleared is excessive, and unreasonable, especially since it was well-known that the tenants of the rental complex used the backyard on a regular basis.

28. The Landlord did not provide any evidence having sought out tree removal companies until November 2022, or nearly 6 months after the trees fell in the backyard. The Landlord also failed to show that outside of researching professionals to help remove the tree, no substantive effort was made to have the brush removed from the property until 2023.
29. Regarding the date in which this issue was resolved, the Tenant claimed that the Landlord had not removed as of the date the tenancy ended, however the Landlord stated that the backyard was fully useable as of June 23, 2023.
30. The Tenant did present some supporting documentation that I found very persuasive, especially the photos from April 2023. However, the Tenant did not bring any evidence forward showing the state of the backyard after April 2023.
31. Since this is the Tenant's application, it is incumbent on the Tenant to prove their application on a balance of probabilities. Based on the evidence before me, I am satisfied that the proper disposal of the brush in the backyard was completed by June 23, 2023.

Remedies

32. The Tenant is claiming \$1,000.00 for rent arrears.
33. 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.
34. Based on the evidence before me, the Tenant paid rent for his own room, as well as shared access to the kitchen, the bathroom and to the backyard. The Tenant and the other tenants of the rental complex did not have a common room, such as a living room or dining room in which to congregate, socialize, or entertain. Outside of the Tenant's room, the only place available for the Tenant to relax, or entertain in the rental complex was the backyard.
35. Because of the fallen brush in the backyard, the Tenant did not have access to a part of the property that, by virtue of their lease agreement, had a right to utilize.
36. No evidence was presented to me suggesting that this was a year-round space to use, therefore I am not satisfied that the backyard space was available to use throughout the winter months.
37. Based on the evidence before me, I am satisfied that the Tenant utilized the backyard significantly throughout his tenancy prior to the trees falling.
38. I find that the backyard formed a substantial portion of what the Tenant was entitled to use under his lease agreement. I find that a 10% rent abatement from May to November 2022, and April to June 2023, or 10 months, is reasonable under the circumstances.
39. Therefore, the Landlord shall pay the Tenant a rent abatement of \$575.00.

It is ordered that:

1. The Landlord shall pay the Tenant is \$623.00. This amount represents:
 - \$575.00 for a rent abatement, and
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by September 9, 2024.
3. If the Landlord does not pay the Tenant the full amount owing by September 9, 2024, the Landlord will owe interest. This will be simple interest calculated from September 10, 2024, at 7.00% annually on the balance outstanding.

August 29, 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.