



Order under Subsection 30 Residential Tenancies Act, 2006

Citation: Soltani v Olukoya, 2024 ONLTB 60897

Date: 2024-08-20

File Number: LTB-T-022594-23

In the matter of: 4311, 161 ROEHAMPTON AVE
TORONTO ON M4P0C8

Between: Ardeshir Soltani Tenant

And

Oluyemisi Olukoya Landlord

Ardeshir Soltani (the 'Tenant') applied for an order determining that Oluyemisi Olukoya (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 8, 2024.

The Landlord and their legal representative, Tigran Sandukhchyan, and the Tenant and their legal representative, Babak Karimkhani, attended the hearing.

Determinations:

1. As explained below, the Tenant proved on a balance of probabilities the following allegations contained in the application: the Landlord failed to repair the dishwasher or the kitchen cabinet door after they were advised of the maintenance issues.
2. Therefore, the Landlord must pay the Tenant \$4,290.84 by September 7, 2024 and must repair or replace the dishwasher and the kitchen cabinet door by September 27, 2024.
3. This application was filed on March 25, 2023. The Board can only award remedies for the time period starting 1 year prior to the application being filed, that is March 25, 2022. If an issue began prior to March 25, 2022, remedies are only considered for the time period in which the issue continued after March 25, 2022.
4. The Landlord attempted to raise many issues about the tenancy including notices of termination which had been given to the Tenant, however a Landlord is not permitted to raise these issues at a hearing for a Tenant application. A Tenant's breach of the lease agreement or failure to pay rent does not alter the Landlord's obligations under the Act. Accordingly, the Landlord's allegations were not heard or considered, except as they related to access to the unit to complete the requested repairs.

5. I find that the Landlord failed to meet the Landlord's obligations under subsection 20(1) of the Act to repair or maintain the rental unit by failing to repair the dishwasher or repair or replace the laminate covering on a kitchen cabinet.
6. 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.
7. In this case the Tenant reported an issue with the dishwasher on or about December 4, 2022. The Landlord promptly forwarded the issue to the condo property management, who advised that the dishwasher was out of warranty and provided contact information for service centres that may be able to complete the repair. The Landlord sent this information to the Tenant and asked him to arrange the repair as she was out of the country. The Tenant responded by email on December 12, 2022

‘I won’t be able to contribute to fix your Unit’s Appliances right now, I’m so busy these days.
Please follow up ASAP,
Unit access is granted for any time.
I need it to get fix soon.’

8. The Tenant reported damage to the laminate covering on a kitchen cabinet prior to October 24, 2021. The Tenant says that he woke up one morning and the corner of the laminate had popped off. This created a sharp corner, so he removed the rest of it himself. He says this is a common problem in units in the building, which he attributes to poor workmanship and/or poor-quality building materials. The Tenant works in construction and got a quote of \$400 from a colleague to repair the kitchen cabinet. This was sent to the Landlord on November 7, 2022, almost a year after the problem was first reported in a follow up communication asking about the requested repair. The Tenant says that the Landlord sent someone in 2021, however the person who attended was an appliance technician and was not able to address the problem with the cabinet.
9. The Landlord says that the Tenant is not entitled to any abatement for the cabinet because he removed part of the laminate covering himself and it is a minimal cosmetic issue. The Landlord did not provide a valid reason for not repairing the cabinet and only presented arguments on the amount of any remedy.
10. The Landlord says that the Tenant’s email on December 12, 2022 means that the Tenant is not granting access to the unit for the repairs to be completed. This is not correct – the email clearly states ‘Unit access is granted for any time.’
11. The Landlord says that on one occasion in December 2022 she attempted to attend the unit but was late and was refused access. The next time she was able to access the unit was in August 2023. There was no explanation for why the next referenced entry attempt was eight months after the first. After the August 2023 entry the repairs were not

completed. Because the Landlord did not provide details of any other attempts to access the property, and because of the Landlord's mischaracterization of the December 12, 2022 email I find that the Landlord did not make reasonable efforts to access the property to complete the repairs. Further, because repairs were not done after obtaining access to the property, I find that delays in accessing the property were not the reason for the repairs not being done.

12. The Landlord raised several arguments in her defence: that the Tenant was using the unit recklessly, that the Tenant was subletting, that the lease agreement is for one occupant but the Tenant had more than one person living in the unit, that the Tenant could have fixed it and deducted it from the rent as he works in construction. The Landlord repeated throughout the hearing that the primary reason the dishwasher had not been fixed was that the Tenant was using it recklessly and she should not be responsible for repairing it when the rental unit was occupied by more than just the named occupant on the lease.
13. None of these defences have any legal merit. There was no evidence presented that the Tenant was using the dishwasher recklessly and had caused the problem. However, I note that even if this were the case, it would be the Landlord's obligation to repair the damage and the Landlord would have other options to address the cause of the problem and the cost of the repair. Likewise, tenants are permitted to have roommates and the number of occupants does not change the Landlord's obligations under the Act. Although the Tenant may have the technical skills to complete the repair, it is not his obligation to do so.

Remedies

14. Rent abatement is calculated as a percentage of the rent. The rent has increased three times during the requested abatement period in this application. Abatements are therefore calculated for each rental amount. The building which contains the rental unit was first occupied for residential purposes after November 15, 2018, so is exempt from limits on rent increases.
15. Therefore, I find that a rent abatement of \$4,242.84 is appropriate in the circumstances. This is calculated as a 5% abatement for the kitchen cabinet from March 22, 2022 to the date of the hearing (\$2,522.79 and a 5% abatement for the dishwasher from December 4, 2022 to the date of the hearing (\$1,720.05).
16. Although the kitchen cabinet is a small portion of the rental unit, it is in a highly visible location in a small unit. The Tenant also expressed concern about exposure to chemicals and materials in the cabinet door which would usually be covered and contained by the laminate covering. These concerns were not supported by any scientific evidence, however that does not diminish the concern experienced by the Tenant.
17. The Tenant requested a 20% abatement for the dishwasher because it represented one of 5 appliances in the unit. I find that a 5% abatement is more in line with prior similar applications before the Board.
18. As of the date of the hearing, the dishwasher continued to be non-operational, and the laminate covering had not been replaced on the kitchen cupboard. Therefore, the Landlord

must return the dishwasher to an operational state (or provide a functioning replacement) and replace the laminate covering on the kitchen cabinet door to match the other cabinetry by September 27, 2024. If the Landlord does not do the repairs or replacement by the deadline, the Tenant may deduct \$290.00 per month from the rent owing until the work is complete. This deduction is equivalent to the rent abatement ordered and can be taken for the months of May 2024 to August 2024 if the repairs have not already been completed.

19. The Tenant requested out-of-pocket expenses for his time spent hand washing dishes. This is not an out-of-pocket expense as no expense was incurred. The inconvenience of not having a functional dishwasher is already considered in the rent abatement.
20. The Landlord cannot increase the rent for this rental unit for the Tenant until the Landlord completes the work that the Landlord has been ordered to do to fix the maintenance problems.

It is ordered that:

1. The Landlord shall repair or replace the dishwasher and the kitchen cabinet door by September 20, 2024.
2. If the Landlord does not do the repairs or replacement(s) by September 20, 2024 the Tenant is authorized to deduct \$290.00 from the rent owing for the months beginning May 2024 until the repair(s) or replacement(s) are complete.
3. The Landlord shall {also} pay the Tenant is \$4,290.84. This amount represents:
 - \$4,242.84 for a rent abatement for the period ending April 8, 2024.
 - \$48.00 for the cost of filing the application.
5. The Landlord shall pay the Tenant the full amount owing by August 31, 2024.
6. If the Landlord does not pay the Tenant the full amount owing by August 31, 2024, the Landlord will owe interest. This will be simple interest calculated from September 1, 2024 at 7.00% annually on the balance outstanding.
7. If the Landlord does not pay the Tenant the full amount owing by August 31, 2024, the Tenant may recover this amount by deducting the amount from the rent owing for the done until there is no longer any money owing.

August 20, 2024

Date Issued

Dawn Carr

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.