



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

Citation: John v Singh, 2024 ONLTB 26483

Date: 2024-04-26

File Number: LTB-T-019759-22

In the matter of: 30, 83 CLEARVIEW HTS YORK
ON M6M2A3

Between: Pedra John Tenant

And

Gurpal Singh Landlords

Nirmal Singh

Pedra John (the 'Tenant') applied for an order determining that Gurpal Singh and Nirmal Singh (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 January 16, 2024.

The Tenant, the Tenant's legal representative, Marshall Yarmus, and the Landlords' legal representative Jimmy Gangadin, were in attendance. The Landlords did not attend.

When the capitalized word "Landlord" is used in this order, it refers to all persons or companies identified as a Landlord at the top of the order.

Determinations:

1. As explained below, the Tenant proved on a balance of probabilities the allegations contained in the application, namely flood damage to the unit and resulting damage to the Tenant's belongings.
2. Therefore, the Landlord must pay to the Tenant a total of \$2,808.36 which represents:

- \$451.80 for rent abatement;
- \$1,820.00 for the cost to replace destroyed property;
- \$488.56 for out-of-pocket costs, and • \$48.00 for the cost of filing the application.

Evidence and Analysis

3. The Tenant's application relates to a maintenance issue over a water leakage that she described as a flood that was in the kitchen of the rental unit, and which spread to areas of the living room and dining room area and also to a hallway leading to the bedrooms and bathroom.
4. The Tenant's allegations are the Landlord failed to satisfactorily identify the source of the issue and repair the damage caused to the rental unit by the flood, and that the Tenant incurred out of pocket costs resulting from the flood that the Landlord has not indemnified the Tenant.
5. The primary issue in this application is whether or not the Landlord breached section 20(1) of the *Residential Tenancies Act, 2006* (the 'Act') which states:

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.

6. The Tenant testified that on May 25, 2021, water had backed up into the kitchen sink in the rental unit and was not draining. The Tenant submitted an email indicating she advised the Landlord of this issue on May 25, 2021, at 10:01 PM. The Tenant submitted a photo of the water in her sink which showed the water sitting approximately 1 to 2 inches below the top of the sink.
7. The Landlord responded to the Tenant's email on May 26, 2021, at 1:57 PM and inquired when the Tenant would be home so they could view the problem. The Tenant testified she was at work at that time and when she arrived home, she found water covering the kitchen floor and flowing out to part of the living room and part of the hallway leading to the bedrooms. The Tenant testified she advised the Landlord of the flood immediately and advised the Landlord that she was home and they could enter. The Landlord responded that he was not available at that moment but would try to come soon.
8. The Tenant testified that she moved her pantry, stove, and fridge to the dry area of the living room and hallway to get them out of the accumulation of water. The Tenant testified that as a result, not only could she not use her kitchen, but she could not use her living room and could barely get by these items to utilize the hallway.
9. The Tenant testified that on May 28, 2021, the Landlord sent someone to the rental unit to investigate the problem; however, the only work done was to clean up the standing water on the kitchen floor. The Tenant testified that when she returned home from work that day

her apartment had a foul odour and that there was still water coming up from under the kitchen tiles. The Tenant submitted an email to the Landlord on this date advising of continuing problem and that her three foam kitchen floor mats and a carpet runner had to be thrown out due to water damage. The Tenant also advised the Landlord she was fearful of mold and mildew buildup. The Tenant testified that she feared health issues if she stayed in the apartment because her son had asthma and she didn't know the source

of the water. For these reasons the Tenant stated she left the apartment and stayed in a motel.

10. The Tenant testified that she sent both photos and videos to the Landlord and that on May 29, 2021, she spoke with the Landlord's wife and was told they would try to find the Tenant another unit to stay in. The Tenant further testified that no other unit was provided by the Landlord.
11. The Tenant testified that the Landlord asked her to remove the stick-on vinyl tiles in the kitchen so they could determine the damage underneath. The Tenant testified she removed 3 layers of stick-on tiles and water was visible down to the subfloor. The Tenant submitted photos showing the removal of the tiles and the damp floor underneath.
12. The Tenant submitted further emails with the Landlord pertaining to the flooding. In an email dated June 5, 2021, the Tenant advised the Landlord that there is still water actively coming from somewhere under the cupboards. In this email the Tenant also states she hired a contractor on June 4, 2021, to come to the unit but that nothing could be done because the contractor could not determine the where the water was coming from.
13. The Landlord's responded to this email on the same date. The Landlord indicated he ordered ties online from Home Depot but that he hadn't been advised of a pick-up date yet.
14. The Tenant testified she became frustrated with the Landlord's lack of action and so on June 5, 2021, she called Toronto Property Standards for assistance who opened an investigation. The Tenant submitted the Property Standards complaint and resolution record for this issue.
15. The Tenant testified she returned to the unit periodically to check on the status of the leak. On June 6th the Tenant emailed the Landlord again to advise the floor is still wet and that water is still actively coming up through the floor. In this email the Tenant also advised the Landlord that she is not able to move around the kitchen and that she has tripped over the pieces of vinyl tiles that she was asked to remove.
16. The Tenant testified that the Landlord did eventually bring in a plumber who discovered the cause of the flood to be a burst pipe. The Property Standards report indicates that a repair was completed and new ceramic tile was installed in the Tenant's unit on June 10th with the grouting to be completed on June 11th.
17. The Tenant testified she returned back to the unit on June 13, 2021. The Property Standards file was closed on June 17, 2021.

18. The Landlord's legal representative submits that there is no evidence to prove the unit was rendered uninhabitable by the issue the Tenant is alleging. The Landlord's legal representative further submits it was the Tenant who caused the unit to be uninhabitable herself by removing the tiles in the kitchen. No submissions were made in relation to the Landlord's efforts to respond to the maintenance issue and the Landlord did not attend to present defending testimony and evidence.
19. On any application before the Board, the party making an allegation in an application has the onus of proving those allegations on a balance of probabilities.
20. The standard of proof requires the party to show with evidence that "more likely than not" their assertions are true and that evidence must be sufficiently clear, convincing and cogent to satisfy the balance or probabilities test. I find the Tenant's uncontested testimony and evidence meets this test.
21. 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.
22. In this case I find there is no fault on the part of the Landlord for the flood itself; however, I find that the Landlord did not respond reasonably to the issue in the Tenant's unit. I say this because the emails submitted by the Tenant corroborate her testimony that a plumbing issue presented itself on May 25, 2021. Further correspondence confirm a flooding situation in the Tenant's unit the following day. Despite standing water in the Tenant's unit, the Landlord did not attend or send anyone to investigate the issue until two days later. While this may be a reasonable response time in some situations, I do not find it reasonable in more emergent situations such as active flooding and in any event, there was no evidence from the Landlord on this point.
23. Additionally, I accept the Tenant's testimony that when the Landlord did send someone to investigate on May 28, 2021, all that was accomplished was a clean up of the standing water on the floor of the kitchen and that no investigatory work was completed to find the source of the water to begin repairs. This position is further supported by the report of Toronto Property Standards dated June 5, 2021, wherein the Tenant is complaining about water still seeping up from the floor of the kitchen.
24. I also do not find it reasonable that the Landlord would ask the Tenant to start ripping up tile herself to determine how much damage was caused. Not only is this maintenance activity solely the responsibility of the Landlord, but it is potentially dangerous to ask the Tenant to conduct this work herself as evidenced by later emails from the Tenant confirm that she had tripped over some of the broken tile.

25. I do not accept the submissions of the Landlord's legal representative as outlined above. The Tenant submitted photos and videos of the water in the unit, a copy of the property standards investigation report, and emails which support her testimony. I have no reason to disbelieve the Tenant's testimony of the foul odour in the unit after the initial clean up of standing water on May 28, 2021. I do accept the Landlord's legal representative's submission that the Tenant did not obtain an independent air quality report to prove the existence of mold. However, I do not find it unreasonable for the tenant to have to vacate the unit due to the odour alone, regardless of the underlying cause. Additionally, the Landlord did not attend to dispute any of the Tenant's claims or to submit evidence to show the unit was habitable and there was no need for the Tenant to leave.

Remedies

26. The remedies requested in the Tenant's application are rent abatement, costs to replace damaged, destroyed or disposed of property, and out of pocket expenses.

Rent Abatement

27. The Tenant's monthly rent is \$916.00. The Tenant is seeking a 50% rent abatement for the period of May 26 to 29, 2021 and 100% rent abatement for the period of May 30, to June 13, 2021.
28. The Tenant testified her basement unit has 2 bedrooms, a combined living room and dining room area which is approximately 10 feet by 12 feet, a kitchen, 1 bathroom, and a hallway leading from the kitchen/living room area to the bathroom and bedrooms.
29. The testimony and evidence of the Tenant indicates that the active flooding of her kitchen started on May 26, 2021. The Tenant had to move her pantry, stove and fridge into the dining room/living room area which also partially blocked the hallway leading to the bedrooms and bathroom. Given the size of the Tenant's unit, and because she could not use her entire kitchen and part of her living area, I find a 50% rent abatement to be appropriate in the circumstances for the dates of May 26, 2021, to when the Tenant vacated the rental unit on May 29, 2021. The Tenant's daily rent amount is \$30.12 (\$916.00 x 12 months divided by 365 days). Therefore, a rent abatement of \$90.36 will issue for the period of 3 days.
30. The Tenant testified that due to the odour in the unit following the initial clean up of standing water and because of the water that was still seeping up through the floor of the kitchen, that she was forced to vacate her unit on May 30, 2021, and did not return until the repairs were completed on June 13, 2021. The Tenant is seeking 100% rent abatement for this period. I accept the Tenant's uncontested testimony that she could not live in her unit and that, despite the Landlord's offer of another unit for her to occupy temporarily, no such

unit was provided. The property standards report indicates that on June 11, 2021, all repairs were completed except for grouting on the new floor tile.

Awaiting grouting work would not prevent the Tenant from staying in her unit and therefore, I find the Tenant could have returned on June 11, 2021. Therefore, an order for 100% rent abatement for the 12-day period from May 30, 2021, to June 10, 2021, in the amount of \$361.44 will issue.

Costs to replace damaged/destroyed property

31. The Tenant testified that 3 foam kitchen mats, an area rug, and a carpet runner were destroyed due to the flooding in the unit. The Tenant testified that the kitchen mats were foam and soaked up water to the point that they could not be salvaged. The Tenant also testified that she tried to clean and dry out the area rug and the carpet runner but that she could not remove the odour. The Tenant also testified that the carpets became "crispy"

when they dried and that they would no longer lay flat. The Tenant provided a receipt for the purchase of the kitchen mats and carpets which was dated Aug 15, 2020, in the amount of \$1,820.00. No tax was charged on the receipt. The Tenant testified she had placed the items on layaway and did not actually complete the purchase until December 2020. In cross examination, the Tenant explained that she paid cash at a flea market for these items which is why she was not charged tax.

32. The Landlord's legal representative submits that the Tenant failed to mitigate her losses by not removing these items when the Tenant saw water backing up into the sink. I do not accept the Landlord's legal representative's submission. The Tenant would have no way of knowing that the standing water that was one inch below the top of the sink would lead to a full kitchen flood which would damage floor mats and carpets. Additionally, I accept the Tenant did try to mitigate her losses by contacting the Landlord and attempting to clean and dry the carpets but was unsuccessful. Therefore, the Tenant is entitled to the cost of the property that was destroyed in the amount of \$1,820.00.

Out-of-Pocket Expenses

33. The Tenant incurred the costs for staying in a motel as well as take out food for her and her son for the period of May 30, 2021 to June 13, 2021 when she returned back to the rental unit. The Tenant did not provide receipts for these costs and testified that for this reason, she is not claiming the full amount of her costs but rather a conservative estimate. The Tenant is claiming \$600.00 for motels and \$250.00 for food costs for this period. I have already determined that the Tenant could have returned to the unit on June 11, 2021, and when assessing the Tenant's claimed costs for those 12 days, I do not find \$600.00 (\$50.00 per day) to be unreasonable. However, because I have already determined the Tenant is entitled to a rent abatement for the period she was unable to stay in the unit, the rent abatement amount (\$361.44) shall be subtracted from the Tenant's claimed motel expenses. This would put the Tenant back in the position that they would have been in had the Landlord not breached their maintenance duties. I do not find \$250.00 in food costs or

\$20.83 per day for 12 days to be unreasonable. Accordingly, an order for those costs will issue.

34. The Landlord's legal representative submits that the Tenant cannot not prove these costs because she does not have receipts. I accept the Tenant's testimony on her out-of-pocket costs for lodging and food. Although she did not present receipts, it is not unreasonable that the Tenant would not be able to find receipts or obtain copies given the amount of time that has passed. I also do not find any of the Tenants claimed out of pocket expenses to be unreasonable and I am satisfied that she incurred them. In all of the circumstances an order will issue for the total cost of \$488.56. This represents the Tenant's motel costs of \$600.00 minus the rent abatement of \$361.44 and the Tenant's claimed food costs of \$250.00.
35. This order contains all of the reasons for the decision within it and no further reasons will be issued.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$2,808.36. This amount represents:
 - \$90.36 for 50% rent abatement for the period of May 26 to 29, 2021.
 - \$361.44 for 100% rent abatement for the period of May 30 to June 10, 2021.
 - \$1,820.00 for the costs to repair destroyed property.
 - \$488.56 for out-of-pocket costs.
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by June 30, 2024.
3. If the Landlord does not pay the Tenant the full amount owing by June 30, 2024, the Landlord will owe interest. This will be simple interest calculated from July 1, 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.

April 30, 2024
Date Issued

Melissa Anjema
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.