



Order under

Subsection 30 and 31

Residential Tenancies Act, 2006

Citation: De Neve v Lemieux, 2024 ONLTB 26853

Date: 2024-04-

22 File Number: LTB-T-017661-22

2024 ONLTB 26853 (CanLII)

In the matter of: 227 MURRAY ST
OTTAWA ON K1N5M9

Between: Arielle De Neve
Jamison Ecker
Laura Martin
Tenants

And

Gaetan Lemieux Landlords
6045561 CANADA INC.

Arielle De Neve, Jamison Ecker and Laura Martin (the 'Tenants') applied for an order determining that Gaetan Lemieux and 6045561 CANADA INC. (the 'Landlords') failed to meet the Landlords' maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards.

The Tenants also applied for an order determining that the Landlords, landlords' agent or superintendent entered the rental unit illegally and substantially interfered with the Tenants' reasonable enjoyment of the rental unit.

This application was heard by videoconference on April 2, 2024.

Only the Tenants attended the hearing.

As o 9:29 a.m., the Landlords were not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenants' evidence.

Determinations:

1. As explained below, the Tenants proved on a balance of probabilities the following allegations contained in the T2 application: the Landlord illegally entered the rental unit and substantially interfered with the Tenants' reasonable enjoyment of the rental unit. The Tenants also proved on a balance of probabilities the allegations contained in the T6 application, that the Landlords breached their maintenance obligations. Therefore, the Landlords must compensate the Tenants as ordered below.

Preliminary issue

2. The Tenant submitted an amended T2/6 application prior to the hearing date, as such, the amended application is accepted, and this order is based on it.

Tenants' testimony and evidence

3. The Tenants moved into the rental unit on April 26, 2021. On May 1, 2021, the Tenants gave a 60-day notice of termination. The notice indicated that if their last month rent deposit was refunded, they would be willing to move out May 1, 2021. It also indicated that they were not pleased with the living situation, specifically the bedbugs in Arielle De Neve's bedroom; she has been bitten since they moved in. The Tenants vacated the rental unit on June 1, 2021, at approximately 5:30 p.m.
4. The rental unit consisted of a four-bedroom house; each Tenant had their own bedroom. The rent for the entire house was \$1,950.00; all Tenants signed the lease. Although listed as Tenants on the lease, Craig De Neve was Arielle De Neve's father and Anna Martin was the mother of Laura Martin (LM); they were their co-signers. The rental complex consisted of approximately 10 buildings.
5. Arielle De Neve (ADN) testified on behalf of all the Tenants, to the following timeline of events. The Tenant Jamie Ecker (JE) testified with respect to the A/C issue.

T2 application

- April 26, 2021: The Tenants noticed the unit was not very clean as portrayed by the pictures in evidence, and the washing machine was leaking. The Landlords were notified.
- April 27, 2021: The Landlord, Gaetien Lemieux (GL), entered the rental unit without notice or knocking; the Tenants were cleaning and unpacking; he said he needed the house rules signed. This made them very uncomfortable. He said he would be back on April 29, 2021 and put a copy of the signed rules in the spare room.
- April 28, 2021, ADN noticed she was being bitten; there were bedbugs in her room.
- April 29, 2021, ADN advised the Landlords about the bedbugs.

- May 1, 2021: ADN emailed GL to follow-up about when bedbug treatment would be done. The Tenants also gave their notice to terminate.
- May 4, 2021: GL entered the rental unit at approximately 10:30 a.m., without notice while the Tenants were sleeping. He knocked on ADN and Laura Martin's bedroom doors and said they was there to start the bedbug treatment. The treatment was not done because no notice had been given, therefore the unit was not prepared.
- May 5, 2021: GL and a maintenance person, entered the rental unit, based on the verbal notice he had given the day before, to do a bedbug treatment. When the verbal notice was given on May 4th, it did not give a timeframe; they just walked in while the Tenants were doing their classes via ZOOM. GL gave ADN 1 hour to move her things into another room.
- May 10, 2021, ADN emailed GL that the Tenants wanted proper written notice. GL replied that bedbugs were considered an emergency, therefore no notice was required. ADN also asked when she was able to return to her old room; GL told her it was fine to do so. GL said he wanted ADN to bring the old mattress that had been brought outside back into the room, ADN replied she was not comfortable with this, therefore he said to bring the one from the room she had moved to during treatment. Upon return to her first room, ADN saw a can of bug killer, the Landlords had a brick sitting on top of it so the spray inside would disperse until the can was empty; this was the treatment that had been done.
- May 16, 2021: the Tenants told the Landlords they needed the A/C turned on due to the unusually hot weather. The A/C control was in a locked box that the Tenants could not access. The Tenants were told it would be turned on.
- May 17, 2021: the A/C was still not on. JE emailed the Landlords; the A/C portion of the email was not responded to, only the part not related to the request.
- May 18, 2021, JE called the Landlords about the A/C because ADN and LM had messaged him about the extremes heat in the unit. The phone call turned hostile with the Landlord being very aggressive and rude; the Landlord told. JE the A/C would only be turned on if the unit was inspected and found to be in a clean state; if the unit was not too the Landlords standard, then the A/C would not be turned on. This was all very stressful and confusing as the unit was in the same state it had been when the Tenants moved in.
- May 19, 2021: ADN told GL and told the property manager that she was getting bit again.
- May 21, 2021: ADN followed up with the property manager about getting bitten, he gave her information on exterminators and told her to make the arrangements for a spray. ADN emailed an exterminator the same day and made an appointment for May 25, 2021.
- May 25, 2021: A bed bug inspection and treatment was done by pest control technician Doug Zeniowski; it cost ADN \$200.00, which she paid. As there was only evidence of bed bugs found in ADN's room, it was the only room sprayed. The same day, the dryer suddenly stopped working while ADN was washing her

belongings after the exterminator came. She called the property manager and was told her to check the fuse box, but she was not comfortable doing this.

- May 27, 2021: the property manager came and switched out the plugs for the washer and dryer. The dryer worked for a bit, then stopped again. Nothing more was done about the problem; it was still broken when the Tenants moved out.
 - May 30, 2021, GL entered without notice. He just walked in, but when he saw the Tenants JE and LM in the living room, GL just walked back out without saying anything.
6. ADN submitted that all the entries by the Landlords were illegal and substantially interfered with their reasonable enjoyment. The Tenants were always on edge, not knowing when the Landlord was going to show up. GL even entered the unit without notice and for no apparent reason after being told they wanted proper written notice. It also seems there had been a prior bug issue in her room, because while unpacking she found an empty bug spray can in the bathroom.
 7. JE submitted that the way the Landlords handled the AC issue substantially interfered with the Tenants' use of the rental unit because for the 16-day period from May 16 to June 1, 2021 the unit was 29 to 30 degrees on a daily basis. Plus, LM has asthma and ADN has ADHD, therefore the heat made it worse for them, in particular, LM had trouble breathing. It was also too hot for the Tenants to do much in respect of household chores, including cooking inside; they had to eat out. All the Tenants have classes, and all were via ZOOM because of COVID; the heat made it almost impossible to concentrate during class and on homework. The Landlords never turned the A/C on while they were in the unit, the unit was not up to their standard, even though it was probably cleaner than when they moved in.
 8. In respect of the maintenance issues, ADN submitted that how the Landlords handled the bed bug issue in her room was not reasonable; a bug spray was used first, then when that did not work, she was told to make her own arrangements for a professional spray, that she had to pay for. AS for the dryer, it was never properly fixed and was broken from May 25 to June 1, 2021, with the exception of a tiny bit of time on the 27th right after the plug was changed.
 9. ADN further submitted that the Tenants not being able to use the dryer from May 25 to when they vacated on June 1, 2021, a 6-day period, was substantial interference and a breach of the Landlords' maintenance obligations.
 10. The Tenants submitted a 94-page book of documents that supported the above testimony. The book of documents was served upon the Landlord.

Analysis

11. The T2 application is based on the rights and obligations set out in section 22 and 27 of the *Residential Tenancies Act, 2006* (Act) which say:

22. A landlord shall not at any time during a tenant's occupancy of a rental unit and before the day on which an order evicting the tenant is executed substantially interfere with the reasonable enjoyment of the rental unit or the residential complex in which it is located for all usual purposes by a tenant or members of his or her household.

27(1) of the Act states that a landlord may enter a rental unit in accordance with written notice given to the tenant at least 24 hours before the time of entry.

12. I find the following incidents to be illegal entries: April 27, 2021; May 4, 2021; May 5, 2021; May 17, 2021; and May 30, 2021. Section 27 of the Act is clear, a Landlord must give the notice minimum 24-hour notice and the notice must be in writing. Here, there was no notice given for all dates except May 17, 2021. However, the notice for May 17th was via telephone, therefore it was also contrary to the Act. Of further note, after being notified that the Tenants wanted proper notice of entry in accordance with the Act, the Landlord still entered on two latter occasions. As for the Landlord's statement to the Tenants that bed bugs are considered an emergency and no notice was required, I accept AND's testimony that finding empty bug spray in her bedroom points to the likelihood of this being a previous issue, particularly when the Landlord used over-the-counter bug spray when he sprayed the bedroom. As a side note, the Landlord's view on this appears to be contrary to landlords generally, whereby tenants are given proper notice of entry before a spray; this is logical, as the unit needs to be prepared prior to a spray which requires time.
13. The above incidents also substantially interfered with the Tenants reasonable enjoyment of their rental unit. The Tenants have the right expect the Landlord to Act according to the law, he did not do this. The illegal entries started the day after the Tenants moved in, and on May 4 and 17, 2021, entry was when the Tenants were sleeping; it is more than reasonable that such behaviour made the Tenants extremely uncomfortable, particularly when they occurred within the first 33 days of their tenancy.
14. The T6 application is based on section 20 of the Act which says 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." The standard of "fit for habitation" has a subjective element. In *Quann v. Pajelle Investments Ltd.*, 1975 CanLII 388 (ON SC), [1975] O.J. No. 2248 (Ont. Co. Ct.), the concept of "fit for habitation" includes the effect on the physical, mental and psychological health of the tenant.
15. 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.

16. I find the Landlords failed to meet their obligations under subsection 20(1) of the Act to repair and maintain the rental unit. The Landlords did not act in a reasonable manner with respect to the bed bugs in ADN's room; it was not professionally treated until after the Tenants requested such a spray, and the Landlords made the booking and cost of the appointment ADN's responsibility. It is also noteworthy that there appear to have been a previous issue in the same room, as ADN testified that upon move-in she found empty cans in her bathroom. In respect of the dryer, as the issue was not fixed during the Tenants tenancy, is a breach of the Landlord's maintenance obligations.
17. The A/C issue is the Landlords refusing to turn on the system unless the Tenants passed a test, having the unit cleaned to his standards before they would start the system. The uncontested testimony and evidence before me establish that because of the extreme heat in the house the Tenants could not properly attend to their schoolwork and/or classes or do necessary household chores.
18. Based on the Tenants' uncontested evidence, I find the extreme heat in the unit because of the Landlords' refusal impacted their physical well-being; it was extremely uncomfortable in the unit, making it almost impossible to do every-day living tasks which included schoolwork. Therefore, the Landlords breached their obligations under the Act to maintain the rental unit in a state fit for habitation.

Remedies

9. The Tenants requested a rent abatement of \$585.00, I find this is more than appropriate in the circumstances; the Tenants were unable to reasonably enjoy their rental unit and during the extreme heat had difficulty functioning all of which are a result of the Landlords actions and/or inaction.
10. The Tenant ADN incurred Out-of-pocket expenses in the amount of \$200.00 because of the Landlord's breach, as she had to pay for the pest control company spray. Therefore, the Landlord must pay the Tenant \$200.00 for these out-of-pocket expenses.
11. The Tenants also requested the Board fine the Landlord based on his breaches under the Act. According to the Board's Interpretation Guidelines, "an administrative fine is a remedy to be used by the Board to encourage compliance with the Act, and to deter landlords from engaging in similar activity in the future. This remedy is not normally imposed unless a landlord has shown a blatant disregard for the RTA and other remedies will not provide adequate deterrence and compliance. Administrative fines and rent abatements serve different purposes. Unlike a fine, a rent abatement is intended to compensate a tenant for a contravention of a tenant's rights or a breach of the landlord's obligations." In the circumstances at hand, a fine is not appropriate with the testimony being uncontested as I am not satisfied that the Landlord will fail to comply after the issuance of this order.

It is ordered that:

1. The Landlords shall pay the Tenants \$833.00. This amount represents:
 - \$585.00 for a rent abatement.
 - \$200.00 for the reasonable out-of-pocket expenses that the Tenants have incurred..
 - \$48.00 for the cost of filing the application.
5. The Landlords shall pay the Tenants the full amount owing by May 3, 2024.
8. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

April 22, 2024

Date Issued

Diane Wade
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.