Tribunals Ontario
Landlord and Tenant Board

Tribunaux décisionnels Ontario
Commission de la location immobilière

2024 ONLTB 13848 (CanLII)

;Order under Subsection 135
Residential Tenancies Act, 2006

Citation: Ornellana Ureta v York Condominum Corporation No. 340, 2024 ONLTB 13848
Date: 2024-04-10
File Number: LTB-T-056155-22

In the matter of: 141, 366 The East Mall Etobicoke
ON M9B6C6

Tenants

Between: Manuel Ornellana Ureta
Sylvana Monteverde Castillo

And

Landlord

York Condominum Corporation No. 340

Manuel Ornellana Ureta and Sylvana Monteverde Castillo (the 'Tenants') applied for an order determining that York Condominum Corporation No. 340 (the 'Landlord'):

- Collected or retained money illegally (T1 Application);
- Substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household; harassed, coerced, obstructed, threatened or interfered with the Tenants; and withheld or deliberately interfered with the reasonable supply of a vital service that the Landlord is obligated to supply under the tenancy agreement (T2 Application); and
- 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 (T6 Application).

This application was heard by videoconference on November 15, 2023.

The Landlord, the Landlord’s legal representative, Mr Corenberg, the Tenants, and the Tenants’ legal representative, Mr English, attended the hearing.

Determinations:

T1 Application

1. The Tenants allege that the Landlord collected an illegal charge in the amount of $500.00 and that the Landlord owes them interest on their last month's rent deposit.

2. At the time this tenancy was entered into the Landlord collected a last month's rent deposit in the amount of $1,400.00. The Tenants' complaint asserts that there was an irregularity

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with respect to the collection of the last month's rent deposit insofar as a member of the Landlord's Board of Directors received a portion-$500.00- of that deposit separately.

3. The amount of the rent deposit was not increased in any fashion, and the Landlord acknowledged that the Tenants had paid the full amount of the rent deposit required, and no more. The Tenants were not prejudiced in any manner by this irregularity if such there was. Accordingly, this portion of the Tenants' claim is dismissed.

4. It was not contested that the Landlord failed to pay the Tenants interest on the last month's rent deposit, as required by the Act. As such, the Landlord shall be ordered to pay the Tenant $160.57 as interest owing on the last month's rent deposit.

T6 Application

5. The Tenants allege the Landlord breached the obligation under subsection 20(1) of 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. It is important to note that subsection 20(1) of the Act does not contain an element of fault. Therefore, the reasons for a landlord's breach are not relevant. In *Onyskiw v. CJM Property Management Ltd*. 2016 ONCA 477 (CanLII), however, the Court of Appeal rejected the idea that any service interruption amounts to an automatic breach of the Act. Instead, the Court urged the Board to make a "contextual analysis" in each case, looking at all the facts before finding that a landlord breached the Act. As part of this analysis, the Court directed the Board to look at the essential nature of a tenant's complaints and what steps, if any, were taken by the landlord.

7. Formal requests for repairs were made by the Tenants on two separate occasions. The first was submitted in September, 2021. Part of the request was made through an e-mail to the Landlord dated September 17, 2021.That E-mail referenced damages to the living room floors of the rental unit associated with outside work at the residential complex. Waterproofing that was on the wall outside of the Tenants' rental unit had been removed.

The complaint from the Tenant referenced damage to the living room floors apparently caused by the leakage of water from the outside of the unit into the living room.

8. It is apparent from the evidence that the Tenants had by other means requested additional repairs to the unit in September 2021 associated with mold near the window, a water damage stain on the ceiling of the stairs, a crack in the den's ceiling, and overall high humidity.

9. The evidence shows that these matters were acknowledged by the Landlord in correspondence and addressed by the Landlord by November of 2021. Some of these repairs, those relating to mold, required that the Tenants vacate the unit for three days. Some delay in performing the repairs arose as the parties were negotiating who would pay for the Tenants' alternate accommodation for this brief period, the Landlord or the Tenants' tenant insurance. Evidence from the Landlord indicates that COVID-19 restrictions, and the Tenants' schedule delayed the repair work somewhat.

10. In an Email to the Landlord dated October 21, 2021 the Tenant acknowledged completion of the work on the floors.

11. Landlords are obliged to be reasonably diligent and effective in responding to repair requests. The interval between the complaints by the Tenants and the resolution of the issues is not unreasonable, especially given the nature of the repairs required. The mold remediation required assessment of the issue by experts, and the development of a detailed plan for remediation.

12. The second request for repairs was made on February 8, 2022 by Email from the Tenants' paralegal. This correspondence identified the following repair issues:

    - Master bedroom toilet leaks
    - Main bathroom runs constantly
    - Rubber ring in washing has mold
    - Dryer does not shut off when dryer door open
    - Excess condensation in kitchen
    - Crack in the wall in the den
    - Partially unusable balcony
    - New flooring issues
    - Ceiling in stairwell needs repair

13. The Landlord responded to this correspondence on February 16, 2022. That correspondence evidenced that the Landlord had reached out to the Tenants to arrange an

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inspection of the rental unit. The Tenants provided access on February 85, 2022 and a schedule was outlined to address the outstanding issues. It was acknowledged that full use of the balcony could not be provided until Summer, 2022 due to its dependence on weather conditions.

14. The evidence before me suggests that the Landlord appears to have responded reasonably diligently to most, if not all of the issues raised by the Tenants between September, 2021 and the date of application.

15. The amount of abatement to be awarded in any given case is necessarily an estimation of the degree to which the Tenants' enjoyment of the rental unit was compromised as a result of the deficiencies. There is no magic formula that provides a definitive answer as to how much abatement should be awarded in any given case.

16. In the instant case, the Tenants assert that their enjoyment of the rental unit was completely undermined by the deficiencies they had identified. This assertion does not bear much scrutiny. First, it is clear from the evidence that a number of the items were dealt with and resolved by the Landlord within a relatively short period of time after they were brought to the Landlord's attention. The items raised in September of 2021 were largely resolved within a month or two of being first aired by the tenants. There is nothing in the record to suggest that the Landlord did not apply reasonable diligence in addressing these issues. The issue of mold resurfaced in 2022, and the balcony, an amenity of the rental unit, was only partially available to the Tenants throughout the period.

17. There is no evidence before me that would substantiate a claim by the Tenants that their enjoyment of the unit was completely undermined by the deficiencies they raised in September of 2021, February 2022, or thereafter. A number of the issues were of relatively low impact. and, while annoying to some degree, these deficiencies are not of such a nature as to materially compromise the Tenants' use and enjoyment of the rental unit. A more detailed and substantial description of impacts associated with these deficiencies would be required before such a finding could be made.

18. In assessing the evidence that is before me, I find that a total rent abatement of 10% of rent paid between September 2021 and the date of application, amounting to $1,260.00, is the appropriate reflection of the Tenants' loss of enjoyment associated with these deficiencies. In addition to the rent abatement, I find that the Tenants are entitled to reimbursement for the costs associated with damage to property in the amount of $198.21 and costs related to accommodation when the Tenants were required to leave the rental unit, in the amount of $1,181.45.

19. There will be no separate award of General Damages.

20. The additional requests made by the Tenants with respect to the Landlord's obligation to complete repairs are denied. The Landlord has an ongoing obligation to maintain the rental unit, which is independently enforceable. The Tenants' request to pay ongoing rent into the Board is also denied. There is no evidence suggesting that the Tenants' contractual obligation to pay rent to the Landlord should be interfered with.

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T2 Application

21. There are two components to the Tenants' claim respecting harassment.

22. For the first component, the Tenants assert that a series of letters delivered to the rental unit originating with the Landlord constituted harassment. These letters were dropped off at the rental unit. On the evidence before me it appears that one of the letters was specifically addressed to the previous tenant of the rental unit, who happened to be Superintendent for the residential complex. This letter required that person to vacate the unit in connection with the termination of his employment. The other letters were not specifically directed to that person, but simply to the rental unit itself. On the advice of their then legal representative, the Tenants ignored these letters, realizing that they were not genuinely intended for them. The Landlord had directed these letters to the rental unit as the result of an administrative error which led the Landlord to mistakenly believe that the former tenant was still in occupation of the rental unit.

23. The second component of the Tenants' harassment claim concerns an assertion that two employees or agents of the Landlord had separately sexually harassed the female Tenant. In one instance, the female tenant observed outside the window of the rental unit a person who appeared to be a contractor's employee engaging in a sexual act. The Tenants reported this incident to the Landlord immediately, and the evidence was to the effect that this person did not return to the residential complex thereafter.

24. In the second instance, a person who was an employee of the Landlord, acted in a manner that the female Tenant regarded as suggestive and inappropriate. This included initiating conversation with the female Tenant, adopting a more personal attitude towards the female Tenant than she was comfortable with, and culminated in this person offering the female Tenant a ride in his vehicle when she was walking with her son. Once again, the Tenants notified the Landlord with respect to this behavior after the last incident. The evidence before me indicates that this person was removed from any duties in any areas near the Tenants' rental unit, and, following a labour relations process mandated by the union contract governing this person, he was terminated.

25. The term harassment is not defined in the Act. The Board applies the definition provided by the Ontario Human Rights Code. That definition defines harassment as a course of behavior that is known or ought to be known as vexatious. In some instances a single act can constitute sexual harassment. The acts of an employee or agent can be imputed to the employer or principle as the case might be.

26. As to the first instance of harassment, that related to the letters dropped off at the rental unit with respect to the termination of the tenancy of the former superintendent, I cannot conclude on the evidence before me that this constitutes harassment of the Tenant. It was the Tenants' evidence that he ignored the letters, realizing that they were not meant for him, but for the previous occupant of the rental unit. There clearly was no intention on the part of the Landlord to upset or vex the Tenants. These letters originated as an administrative error.

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27. As to the second claim-that relating to the sexual harassment of the female Tenant, I similarly cannot conclude on the evidence before me that these incidents constitute a course of behaviour attributable to the Landlord that was known or ought to be known to be vexatious. The first incident was unrelated to the second, involved a contractor's employee, and was dealt with definitively by the Landlord.

28. The second incident, the contacts made by a Landlord employee to the female Tenant, also does not meet the definition of harassment. Once the Landlord was made aware of these contacts the Landlord took definitive steps to ensure that there was no further contact, and the process culminated in the employee's termination.

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It is ordered that:

1. The total amount the Landlord shall pay the Tenants is $2,853.23. This amount represents:

   - $1,260.00 as rent abatement. ○ $1,379.66 as specific damages. ○

   $160.57 for interest on the last month's rent deposit.

   - $53.00 for the cost of filing the application.

2. The Landlord shall pay the Tenants the full amount owing by April 21, 2024.

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

4. If the Landlord does not pay the Tenants the full amount owing by April 22, 2024, the Tenants may recover this amount by deducting it from rent owing to the Landlord for May 2024 and June 2024.

5. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

April 10, 2024
Date Issued

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Paul Sommerville
Member, Landlord and Tenants 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.

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