



Order under Section 31 Residential Tenancies Act, 2006

Citation: WOUDENBERG v EWALD, 2024 ONLTB 21836

Date: 2024-03-28

File Number: LTB-T-048798-22

In the matter of: UPPER, 270 KING STREET CHATHAM
ON N7M3N6

Between: Jessica Woudenberg Tenant

And

Dave Ewald
Landlord

Jessica Woudenberg (the 'Tenant') applied for an order determining that Dave Ewald (the 'Landlord'):

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.

This application was heard by videoconference on March 18, 2024. The Landlord and the Tenant attended the hearing.

On consent of the parties, Ewald Homes Ltd was removed as a named Landlord included in the application. This order reflects that change.

Determinations:

1. As explained below, the Tenant proved some of the allegations contained in the application on a balance of probabilities. Therefore, the application is granted, and the Landlord must:
 - Pay to the Tenant \$553.00 which represents \$500.00 for a rent abatement and \$53.00 for the costs of filing the application.

2. The Tenant filed an amended application with the Board on September 18, 2023, this order reflects that amendment.
3. The Tenant raises the following concerns in their application:
 - Barbecue grills and propane stolen by another tenant
 - Damaged trampoline pools and mat
 - Damage to the Tenant's pool • Damage to the Tenant's shed
 - Landlord's failure to properly address the Tenants complaints against another tenant.
4. The residential complex is split into two units; an upper and a lower unit. The Tenant resides in the upper unit.

Barbecue Grills and Propane Tank:

5. The Tenant requests to be compensated \$140.00 for the replacement of a barbecue as a result of another tenant in the residential complex stealing the grills and propane tank. As the grills could not be replaced, she asks for the replacement cost of the barbecue.
6. For the following reasons, this claim in the Tenant's application is dismissed. The conduct complained about is solely based on the actions of another person who is not the Landlord. If the Tenant believes that another tenant stole her items a reasonable course of action would be to complain to law enforcement and or make a claim against that person. As this is largely unrelated to the conduct of the Landlord and this event is not one the Landlord could have reasonably foreseen, I do not find them liable. Furthermore, other than the Tenant's bold statement, she produced no evidence to establish that it was this other tenant who stole the barbecue grills.

Trampoline Pools and Mat:

7. Originally the Tenant says that she had exclusive use of the front yard and the lower unit had exclusive use of the backyard. However, sometime during the COVID-19 pandemic, the Tenant says there was a verbal agreement to allow her to have use of the back yard so that she could install a pool and fencing and use her trampoline. The Tenant purchased a pool and installed fencing as required by municipal by-laws.
8. The Tenant says that she never gave permission for the other Tenant to use her trampoline and the lower Tenant moved the trampoline damaging the pools and the mat. She requests \$146.00 for the cost to replace the damaged property caused by the lower Tenant. For the following reasons this claim is also dismissed.

9. Similar to the barbecue, this is another incident based on activity of someone other than the Landlord. There was no evidence presented that would suggest that the trampoline was at the instruction of the Landlord or that he permitted these tenants to use the trampoline. The Tenant also did not provide receipts to establish the replacement cost of the damaged property.

Damage to the Tenant's Pool and Shed:

10. The Tenant says that on July 5, 2022, the lower tenant broke into her shed damaging the door. Additionally on August 24, 2023, a tree that was on the property of the residential complex fell onto the shed, destroying it. The Tenant requests \$1,011.35 which represents the replacement cost for the shed or alternatively \$500.00 for the cost of her insurance deductible that she has not yet paid.
11. The Tenant says that the tree was unhealthy, and the Landlord should have taken reasonable steps to maintain the tree. The Landlord says that he had an arborist attend the property in June 2022 and that the tree was healthy. The tree fell due to a severe windstorm on August 2023 and was unforeseen that this would happen.
12. On any application before the Board the applicant bears the burden to lead sufficient evidence to establish that their version of events is more likely than not true. There was no evidence submitted by the Tenant for me to conclude that the Landlord knew or ought to have known that the tree was unhealthy. The Landlord provided me with a reasonable explanation as to why the tree fell, which was a windstorm. Therefore, I do not find that the shed was damaged as a result of the Landlord's conduct, nor do I find that the tree damaged the Tenant's shed as a result of the Landlord's negligence.
13. With respect to the damage done to the pool. The Tenant says that as a result of the behaviour of the lower tenant she could no longer use the backyard and therefore could not maintain the pool and is now unable to be used. The Tenant requests that the Landlord pay her \$762.70 for the cost of the pool. For the following reasons this claim is also dismissed.
14. There is no dispute that the pool was installed by the Tenant. The Tenant claims that she loss use of her back yard due to the actions of the lower tenant, which may be true to some degree (and I will address that issue below in this order), but I believe the Tenant holds some accountability for not taking any reasonable steps to generally maintain the pool. I am not persuaded that the Tenant loss 100% use of the backyard for 100% of the time. Therefore, I would assume that there was some opportunity whereby the Tenant could have maintained the pool (i.e when the lower tenant was not home or not using the backyard).
15. There was also no proof of payment, receipt or like document presented to confirm replacement cost. I would expect that if the Tenant wanted to be reimbursed for this

expense, she would retain these documents. There was also no evidence to show that the pool could not be repaired, rather than replaced. It is common for pools to be neglected from time to time, parts needing to be replaced, but that does not mean that the Tenant is entitled to full replacement cost.

16. I would also expect that if the Tenant was considering installing expensive items on the property on her own initiative, those items would be insured. Which in situations like these, the Tenant could make a claim to the insurer to be reimbursed for these expenses.
17. Section 16 of the Act outlines that a person who is entitled to a claim has a duty to minimize their losses (mitigate) and I do not see that the Tenant, in this case, took reasonable steps to mitigate her losses.

Properly Addressing the Tenant's Complaints:

18. In my opinion, the core issue with respect to the Tenant's application was the Landlord's failure to properly address her complaints with respect to the lower tenant. I think this is largely supported by the pleadings in the applications, the testimony provided at the hearing, and the emotional state of the Tenant when speaking about this issue. It is abundantly clear that the Landlord failed to duly investigate and take reasonable steps to address the Tenant's complaints.
19. Section 22 of the Act states:

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.
20. There is no mechanism in the Act that allows a Tenant to bring a claim to the Board against another tenant when their behaviour is interfering with their reasonable enjoyment of the rental unit. The tenant must therefore complain to the landlord, who has the obligation to investigate the complaints and take all reasonable steps and act accordingly.
21. The parties and I spent a considerable amount of time in the hearing on this issue. Based on the evidence of the Landlord he understood the negative relationship between this Tenant and the lower tenant, knew the issues that needed to be addressed, and how it impacted the Tenant. The Landlord says he did not know the processes available to him or how to navigate the different Board processes.
22. Ignorance of the law is not an excuse. A person who is a landlord is expected to know the law. The Landlord acknowledged that he served multiple notices of termination

(approximately 4 N5 notices, last one being served October 22, 2023) but believed since the complaints were never within a 7-day voiding period, he could not file the appropriate applications. During the hearing, I explained to the Landlord that this is not particularly true and explained in depth the N5 notice of termination process.

23. The Tenant has made numerous phone calls to the police, sent several text messages, and had many phone calls with the Landlord regarding the behaviour of the lower tenant. The Tenant says that as a result of the Landlord's continued failure to take appropriate action she has stopped making these complaints to the Landlord.
24. Although, the majority of the Tenant's claims on this issue were out of time in accordance with section 29 of the Act. I find that the Landlord was given sufficient notice of the Tenant's concerns and also had multiple opportunities to advance these concerns but failed to do so. I find that by the Landlord failing to take reasonable steps which could include serving proper notices, filing applications, or obtaining independent legal advice amounts to substantial interference.
25. An abatement of rent is a contractual remedy that recognises the idea that if a tenant is paying rent for a bundle of goods and services and is not receiving everything being paid for then they are entitled to an abatement proportional to the difference between what is being paid for and what is being received. I find an abatement of \$500.00 to be fair in the circumstances as a result of the Landlord's breach of the Act.
26. In the future the Landlord should be more diligent with respect to addressing legitimate concerns of his tenants and seek assistance from the resources that are available to him.

It is ordered that:

1. The Landlord shall pay to the Tenant \$500.00 as a rent abatement as a result of the Landlord's breach.
2. The Landlord shall pay to the Tenant \$53.00 for the cost the Tenant incurred for filing the application.
3. The total the Landlord owes the Tenant is \$553.00.
4. The Landlord shall pay the Tenant the full amount owing by April 8, 2024.
5. If the Landlord does not pay the Tenant the full amount owing by April 8, 2024, the Landlord will owe interest. This will be simple interest calculated from April 9, 2024 at 7.00% annually on the balance outstanding.

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6. If the Landlord does not pay the Tenant the full amount owing by April 9, 2024, the Tenant may recover this amount by deducting \$553.00 from the monthly rent for May 2024, or June 2024 if May 2024 rent has already been paid to the Landlord.
7. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

March 28, 2024

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

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Member, Landlord and Tenant Board

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.