



Order under Subsection 30 Residential Tenancies Act, 2006

Citation: Pinsonneault v Paragon Property Management & Maintenance, 2023 ONLTB 80776

Date: 2023-12-21

File Number: LTB-T-071607-22

In the matter of: 125 Howard Road
Chatham ON N7M0A4

Between: Anne Marie Lynn Pinsonneault Tenant
Jason Allen Moninger

And

2100580 Ontario Ltd Landlord
Paragon Property Management &
Maintenance

Anne Marie Lynn Pinsonneault and Jason Allen Moninger (the 'Tenant') applied for an order determining that 2100580 Ontario Ltd and Paragon Property Management & Maintenance (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 December 5, 2023.

The Landlord's Legal Representative Devon Wagenaar and both of the Tenants attended the hearing.

Determinations:

1. At the commencement of the hearing, the Tenant Anne Marie Lynn Bechard requested an amendment to the proceedings as her surname is now "Pinsonneault". There was no opposition to this request by the Landlord's Legal Representative. Accordingly, the amendment was granted and the proceedings have been amended to reflect the Tenant's surname change.
2. In this T6 application, the Tenants claim that the Landlord breached its maintenance obligations with respect to the following:
 - Cleanliness of home;
 - Grass/weeds on side of house;
 - Garage door dented at bottom;
 - Automatic garage door opener not installed;
 - Kitchen particularly dishwasher, icemaker, hood vent and wires;
 - Smoke detectors beeping;

- Basement living area, particularly missing wall plugs, holes in ceiling, lighting issues, unfinished basement window and esthetic items;
- Basement bedroom #1 particularly hole in the ceiling, missing closet bar, pot lights and unfinished window;
- Basement bedroom #2 particularly hole in vent in ceiling, missing plugs, unfinished window and missing closet bar;
- Basement shower area;
- No central vacuum system;
- On demand water system not programmed;
- Dust from air conditioning unit being run while drywalling;
- Dryer vent becoming disconnected;
- Downspout at side of house not directing water away from house; and
- Plug in laundry room not properly secured to wall.

3. For the reasons that follow, the Tenants' T6 application is partially granted.
4. The tenancy commenced on September 1, 2022 however, the Tenants state they received the keys to the rental unit on August 31, 2022 around 12:30 p.m..

Cleanliness of home:

5. The rental unit is a newly constructed home and upon entering the unit on August 31, 2022 observed that it had not been properly cleaned as there was still drywall dust and construction material laying around inside and on the front step. After informing the Landlord on August 31, 2022 around 2:00 p.m., the Landlord had a cleaning crew attend the rental unit on September 1, 2022 for approximately two hours. The Tenants submit that the cleaning crew did their best but there was drywall dust remaining in the vents. As a result of the cleaning crew attending on September 1, 2022 in the morning, the Tenants had to delay moving into the rental unit for approximately four hours.

Weeds:

6. The Tenants submit that the weeds between the rental unit and the neighbouring home was so high that the air conditioning unit could not be seen and it was unsightly. They informed the Landlord on August 31, 2022 and on the same day, the Landlord attended and cut the weeds. The Tenants state that they raked up the leftovers on September 1, 2022 in an attempt to "make it look decent" and they continued to cut the grass on a regular basis.

Garage door – dent and opener:

7. The Tenants testified that while the garage door's functionality was not impacted, there is a dent at the bottom of the door and they do not want to get blamed for the damage. The Tenants also state that they did not get a garage door opener installed until November, 2022. The Tenant states that it was an inconvenience to open the door manually as one Tenant has a shoulder injury and could not open the door.

Kitchen Issues:

8. The Tenants submit that the dishwasher drain hose came off because it was not installed properly. As the Tenants turned the dishwasher on before retiring for the night, the kitchen floor had $\frac{1}{4}$ inch of water on it in the morning and the cabinet under the sink also took on water. The Landlord was informed of this event on September 2, 2022 and also in an email to the Landlord's Property Manager on September 6, 2022. The Tenant states that they fixed the issue themselves on September 2, 2022.
9. The Tenants testified that they noticed on September 2, 2022 that the icemaker in the refrigerator was not working as the hose was kinked due to it being too long. The Tenants fixed this issue themselves by unkinking the hose on the same day.
10. The Tenants state that under counter lighting was installed by the builder and painter tape was used to tuck some of the wires up however some were left hanging. The Tenants informed the Landlord of this issue in an email dated September 6, 2022. In the meantime, the Tenants moved the wires out of the way at which time it was learnt to be "signal" wires and not live. The Tenants state this issue was not resolved until October 17, 2022 when the Landlord's electrician attended. The Tenants state that this issue was primarily a cosmetic issue but there was some functionality of the counterspace compromised until the wires could be moved out of the way.
11. The Tenants testified that the kitchen range hood is not installed correctly so that when it is windy outside, a banging sound is heard. The Tenants told the Landlord on September 6, 2022 and also on November 27, 2022. A maintenance person attended who reported that there was nothing to be repaired, there was nothing wrong with the hood but if the Tenants were bothered by the noise, a towel could be inserted to stop any noise.
12. The Tenants state that smoke detectors began to chirp suggesting the battery life was ending and there was a constant beeping sound. They informed the Landlord of this issue on August 31, 2022. Within the first week of moving in, the Tenants removed a smoke detector which was outside the main bedroom door as there was a second smoke detector inside the main bedroom. The Tenants state that as of November 29, 2022, the detectors had not been replaced. The Landlord states that there was a "bad batch of detectors" and that after the Tenants' calls to the Fire Department and finding out that some of the detectors were not properly hard wired, this issue was completely resolved as at August 10, 2023 when new detectors were installed.

Basement Living Area:

13. The Tenants state there were a number of issues in the basement living area. One of the issues identified was that there were missing wall plugs and that by code there was to be a wall plug every 12 feet. The Tenants reported this issue to the landlord in an e-mail on September 6, 2022 and are unsure as to when this issue was rectified. The Tenants state that as a result of missing plugs, they ran extension cords to the available plugs.

14. The Tenants also state that there were holes in the ceiling which impacted the Tenants on a cosmetic basis but also that they believed wires in the hole were live. The Tenants submit that this issue was rectified on October 17, 2022.
15. The Tenants state that due to the electrical wiring of the lights that could dim and the type of lighting installed, when one of the bedrooms light would be turned on, the light would flash constantly, similar to a strobe light. The Tenants state they informed the Landlord of this issue within the first week of moving into the rental unit that that they were informed it is just the type of lighting. The Tenants state they cannot dim the lights and use all the lighting at the same time otherwise the light will start to flash. The Tenants submit this issue has never been fixed.
16. The Tenants submit that the basement windows in the living area and also in the two bedrooms were unfinished and told the Landlord on September 6, 2022. The Landlord rectified this issue on October 17, 2022 by applying caulking around the windows. The Tenants state that with the windows being unfinished, it was cosmetically unappealing and "looked awful". At the hearing, the Tenants indicated they would not proceed with their complaint regarding painting.

Basement bedrooms:

17. The Tenants state that the bedrooms had holes in the ceiling, had a pot light that had fallen out, were missing closet bars and one bedroom was missing plugs. The Tenants acknowledged that these issues were mainly cosmetic however, most of these issues were fully rectified by October 17, 2022.

Basement Bathroom:

18. The Tenants state that the basement shower door and frame were not installed correctly and they informed the Landlord on August 31, 2022. There was an initial repair completed on October 17, 2022 but then the Landlord had to order another with the new shower door and frame being installed on January 9, 2023. The Tenants submit that as a result of the disrepair to the shower, they could not use the shower. The Tenants also state that the electrical outlet above the sink was not initially GFI but it was repaired in October/November, 2022.

Central Vacuum System:

19. The Tenants acknowledged that their complaint regarding a central vacuum system was not a maintenance issue, therefore, this complaint will be disregarded.

On Demand Water System:

20. The Tenants report that they were having issues with the on demand hot water system as it took a long time for the water to get hot. They informed the Landlord of this issue on September 18, 2022 with someone attending the rental unit the next day to have the system re-programmed.

Drywall dust in Ductwork/Furnace:

21. The Tenants state on September 19, 2022, the furnace was observed to have white drywall dust on top of the furnace and upon opening up the furnace, there was white drywall dust all throughout the furnace and in the ductwork. It was suggested that the air conditioning unit was running when drywall work was being completed so that drywall dust was all throughout the system. The Tenants report that they still have dust in the house and they are unsure of what the result will be on their health from breathing in the dust particles.

Dryer vent:

22. The Tenants state that as the dryer vent was never secured properly, the dryer vent became disconnected on October 19, 2022 so that the dryer was venting into the rental unit. This issue was rectified the next day on October 20, 2022.

Downspout:

23. The Tenants state that the downspout at the side of the house has no extension to lead water away from the rental unit so that a hole has been created. The Tenants testified that this had no impact on them other than they were trying to look after the Landlord's interests and perhaps someone might fall.

Laundry plug:

24. The Tenants testified that the plug in the laundry room is not mounted correctly so that it moves back and forth when trying to plug something into it. The plug was described as being mounted to one stud in the basement wall but not being secured on the other side. The Tenants state that they told the Landlord of this issue on September 6, 2022 and it has not been rectified.

Landlord's evidence:

25. The Landlord was not in attendance to provide evidence or submissions in response to the Tenants' application however, the Landlord's Legal Representative submits that the Landlord attempted to renovate the basement but it was not to the satisfaction of the Tenants.

26. The Landlord's Legal Representative submits that the Landlord held a lot of discontent towards the Tenants as due to their actions, there are a number of items within the rental unit that had their warranties voided. The Landlord's Legal Representative submits that a number of issues were responded to in a timely manner, are cosmetic in nature or very minor as to not be considered a breach of the Act and that the Landlord had to go through the warranty process which delayed some repairs as ultimately, some of the warranties were voided.

Analysis:

27. A number of photographs were tendered at the hearing depicting the condition of the rental unit and the alleged disrepair. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.

28. Section 20(1) of the *Residential Tenancies Act, 2006*, (the 'Act') sets out a landlord's maintenance obligations; it states:

A landlord is responsible for providing and maintaining a residential complex, including their rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.

29. 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.

30. Timeliness of response by the Landlord depends on a number of facts, but principally on the seriousness of the state of non-repair and its possible effects on the Tenants and the availability of materials and possibly contractors to do the repairs.

31. With respect to the issues of the dishwasher and icemaker, the Tenant provided no opportunity to the Landlord to address these issues as the Tenant immediately repaired them. I am also not satisfied that the issues relating to the garage door, closet bars and central vacuum system are breaches of section 20 of the *Act* and therefore will deny those claims.

32. While I have no doubt the Tenants would have been inconvenienced by a number of these issues, I am satisfied on a balance of probabilities that the issues as noted below are of a minor or cosmetic nature such that it does not, in my view, breach section 20 of the *Act*, and/or the Landlord responded reasonably in the circumstances and in a timely manner to the Tenants' request for maintenance of these issues. As a result, I am not satisfied that the Landlord breached subsection 20(1) of the *Act* by failing to maintain the rental unit in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards with respect to the following issues:

- Cleanliness of home;
- Grass/weeds on side of house;
- Basement living area - holes in the ceiling, unfinished windows;
- Basement bedroom #1 (which the Tenants stated were "mainly cosmetic issues");
- On demand water system not programmed;
- Dryer vent becoming disconnected;

- Downspout at side of house not directing water away from house (which the Tenant stated they were “trying to look after the Landlord’s interests”); and
- Plug in laundry room not properly secured to wall.

33. It is clear that the Tenants were not happy with some of the repairs that were completed by the Landlord, however, the Tenants have no right to insist upon a standard of perfection regarding repairs.

34. The following issues therefore remain and I am satisfied, based on the evidence and submissions before me and on a balance of probabilities, that the Landlord failed to maintain the rental unit in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards by not repairing the following issues and that the Landlord breached section 20 of the *Act*:

- Kitchen hood vent and under counter wires;
- Smoke detectors beeping;
- Basement living area missing wall plugs and lighting issues;
- Basement bedroom #1 and 2 for missing plugs;
- Basement shower area;
- Dust from air conditioning unit being operated while drywalling;

35. In my view, it should not have taken over a month to address these repairs particularly as some of them are electrical in nature which presents a potential significant safety risk, some are potentially life threatening (ie: non functioning smoke detectors). Further, photographs tendered at the hearing show the extent of drywall dust which should have been rectified in a more timely manner.

Remedies:

36. As the Landlord’s conduct caused some disruption to the Tenants’ ability to normally reside in the rental unit with respect to the above noted issues, I find that the Tenants are entitled to a rent abatement.

37. Abatement of rent is the most common remedy awarded to tenants in these situations. It is intended to reflect the idea that if a tenant is paying rent for a bundle of goods and services and not receiving everything being paid for, then the tenant is entitled to abatement of the rent proportional to the difference between what is being paid for and what is being received.

38. The Tenants seek a 100% rent abatement for a period commencing September, 2022 until January, 2023. The Divisional Court found in *Toronto Community Housing Corp. v. Vlahovich*, [2010] O.J. No. 1463, 2010 ONSC 1686 (Ont. Div. Ct.) that:

In light of the one year limitation period in s.29(2), the Board can only make a determination that a landlord has breached an obligation under s.20(1) during the one year period before the making of the application. Accordingly, the remedy that

may be granted may only be granted in relation to breaches during that one year period.

39. Further, a 100% rent abatement is usually awarded where the rental unit is uninhabitable and that is not the case here. Based on the nature and duration of the problems and the impact on the Tenants, as well as based on my experience and similar cases decided by the Board, I find that the Tenants are entitled to a lump sum rent abatement of \$1,750.00 for the Landlord's failure to reasonably respond to the identified issues claimed in the Tenants T6 application.
40. The Tenants seek the amount of \$500.00 with respect to repairs and other work they performed, particularly with respect to their time in relation to the dishwasher, icemaker, cleaning up construction debris and raking up grass and weeds. Insufficient evidence was provided to me in order to substantiate these claims therefore, no remedy will flow.
41. The Tenants stated that they would not proceed with remedy #6 as indicated in their T6 application.
42. As I do not find that there is any work necessary to fix any serious maintenance problems that is being ordered to be completed by the Landlord, the Tenants request for remedy #7 in their T6 application is denied.
43. The Tenants paid \$48.00 to file their application and is entitled to reimbursement of those fees.
44. This order contains all of the reasons within it and no further reasons will be issued.

It is ordered that:

1. The Landlord shall pay to the Tenants a rent abatement in the amount of \$1,750.00.
2. The Landlord shall pay to the Tenants \$48.00 representing their filing fee for this application.
3. The total amount the Landlord owes to the Tenants is \$1,798.00.
5. The Landlord shall pay the Tenants the full amount owing by January 1, 2024.
6. If the Landlord does not pay the Tenants the full amount owing by January 1, 2024, the Landlord will owe interest. This will be simple interest calculated from January 2, 2024 at 7.00% annually on the balance outstanding.
7. If the Landlord does not pay the Tenant the full amount owing by January 1, 2024, the Tenants may recover the full amount by deducting the amount of \$1,798.00 from the rent owing for the month of February, 2024 at which time there will no longer be any money owing.

December 21, 2023
Date Issued

Heather Chapple
Member, Landlord and Tenant Board

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