2023 ONLTB 81644 (CanLII)

Order under Section 31
Residential Tenancies Act, 2006

Citation: Baracetti V Chandler, 2023 ONLTB 81644
Date: 2023-12-15
File Number:
LTB-L-077950-22

In the matter of: 7 JUSTINA COURT
WELLAND ONTARIO L3C7E4

Tenant

Between: Chris Chandler

And

Landlord

Ellen Baracetti

***Despite being designated as the Landlord's application; it is actually the Tenant's application ***

Chris Chandler (the 'Tenant') applied for an order determining that Ellen Baracetti (the 'Landlord'):

- Illegally retained money from the Tenant ('T1 application)
- Substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household ('T2 application)
- Failed to maintain the rental unit or residential complex in a good state of repair and fit for habitation ('T6 application')

These applications were heard by videoconference on November 9, 2023. The Landlord and Tenant attended the hearing. The Tenant was represented at the hearing by Mandip Grewal. The Landlord was represented at the hearing by Josh McDougall

Determinations:

Preliminary Issue – Witness

1. Prior to the hearing the Landlord had served a summons on Chad Gale, requiring him to attend the hearing. Mr. Gale did not attend the hearing.

2. Despite Mr.Gale's non-attendance, the Landlord's representative elected to proceed with the hearing. I am satisfied the Landlord's representative was aware of the consequences of proceeding without with the witness. The hearing proceeded to be heard as scheduled.

T1 Application

3. There are multiple grounds for the Tenant's T1 application. As explained below, the Tenant's T1 application is granted in part.

Last Month's Rent Deposit

4. Pursuant to s. 106 of the *Residential Tenancies Act, 2006* (the 'Act) the Landlord is required to pay the Tenant interest on her last month's rent deposit equal to prescribed amount.

5. The Landlord acknowledges not paying the Tenant interest as required by the Act. Interest owing to the Tenant is $94.81. The Landlord shall pay that amount to the Tenant.

Compensation

6. The next ground of the T1 application has to do with compensation under s.48.1 of the Act. Section 48.1 says:

> *A landlord shall compensate a tenant in an amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if the landlord gives the tenant a notice of termination of the tenancy under section 48.*

7. The Landlord served the Tenant with an N12 notice of termination dated September 30, 2020. The notice, served under s.48 of the Act, set out a termination date of November 30, 2020.

8. The Tenant claims when she vacated the rental unit, she did not receive one month's compensation under s.48.1 of the Act. The difficulty with the Tenant's claim is she accepted an offer on another rental unit offered by the Landlord.

9. Section 48.1 of the Act does not require the Landlord to pay the Tenant one month's compensation if the Tenant is offered another rental unit that is acceptable.

10. Prior to the Landlord selling the rental unit there were a series of text messages about a new rental unit. An offer of a two-bedroom rental unit for $1400.00 was made to the Tenant. The Tenant replied, "I'll take it."

2023 ONLTB 81644 (CanLII)

11. I find the Tenant's testimony confirmed the Tenant's intention to take the new rental unit. She told the Board she planned to move into the rental unit, until she subsequently discovered the upper unit has children.

12. I find the rental unit offered to the Tenant was an acceptable to her. She was getting a new rental unit for less money. She was seemingly happy with this arrangement until the Tenant discovered there were children that resided in the upper unit.

13. I find since the Tenant initially accepted an agreement to rent a new unit, the Landlord has complied with s.48.1 of the Act.

14. It was the Tenant the unilaterally repealed the new rental agreement. In my view, it would be unfair to require the Landlord to pay the Tenant's one month's compensation when a different rental unit was offered to and accepted by the Tenant. Therefore, this portion of the Tenant's application is dismissed.

Ceiling Fans

15. The final ground of the T1 application has do with the ceiling fans that were allegedly retained by the Landlord.

16. There Tenant's application claims she purchased ceiling fans for the rental unit. When the Tenant vacated the rental unit, she left them behind. The Tenant claims the Landlord agreed to pay her $200.00 for the ceiling fans.

17. The Tenant provided a copy of a text message, where the Landlord tells the Tenant, "Those fans are mine, but I will compromise. How much do you want for the fans to leave them there?" The Tenant replied, "$100.00" for both. The Tenant's testimony confirmed this exchange.

18. Noting the Landlord provided no testimony in this regard, I accept the Tenant's evidence that the Landlord was willing to pay the Tenant $100.00 if she left the fans behind. Therefore, the Landlord shall pay the Tenant $100.00

Maintenance Issues

19. The Tenant's T6 application claims there was a broken screen in one of the windows of the rental unit since 2017. Her application also claims there was mould in the bottom of the bathtub. In support of her position the Tenant provided a picture of broken screen and the mould in the bathtub.

20. Noting the Landlord did not testify at the hearing, I accept the Tenants evidence that there was a broken screen in the bedroom and mould in the bathtub. Accordingly, I find the

2023 ONLTB 81644 (CanLII)

Landlord breached s.20(1) of the Act by failing to keep the rental unit in a good state of repair.

21. The Tenant seeks a rent abatement of $3,720.00. I find the amount claimed to be unreasonable. I reviewed the pictures. The hole in the screen is relatively small and find it minimally impacted the Tenant's ability to enjoy the rental unit. Given the minimal impact I find a $100.00 rent abatement to be appropriate to compensate the Tenant for the broken screen in the rental unit.

22. Similarly, I find the impact of the mould in the bathtub to minimal. While it was inconvenient for the Tenant to clean, the Tenant still had full use of the bathroom. Given the circumstances, I find a $100.00 rent sufficiently compensate the Tenant for the inconvenience of having to live with the mould in the bathtub.

Substantial Interference

23. The Tenant's T2 application alleged the Landlord's agent harassed and substantially interfered her reasonable enjoyment of the rental unit. Both grounds of the T2 involve the Landlord's real estate agent bringing potential buyers into the rental unit that were unmasked during the covid pandemic.

24. Section 23 of the Act states that a landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant. While 'harassment' is not defined in the Act, the Board typically adopts the Ontario Human Rights Code (the "Code") definition of 'harassment.'

25. The Ontario *Human Rights Code* defines "harassment" as:

> *"Engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome."*

26. It is not clear that the Landlord's real estate agent engaged in a course of conduct that was reasonably known to be unwelcome. The Tenant claims masks were mandatory at the time of the showings. I do not find this to be the case.

27. The showings of rental unit took place in August 2020, the early stages of the Covid-19 pandemic. At this time the Provincial regulation requiring the use of masks in public places had not yet taken effect. The Tenant claims there was a municipal by-law in place at the time of the showings. That may be the case, but I was not provided with a copy of the municipal by-law.

28. In HOL-07297-20 the Board found:

> *"It is not incumbent upon the Board to take administrative notice of any COVID-19related restrictions that may have been in place at a certain location at a certain*

2023 ONLTB 81644 (CanLII)

time. The onus remains on the party raising the allegation, in this case, the Tenants, to point to the specific restrictions that may have been in place and how the Landlord was in breach of its obligations under the Act as a result of these restrictions."

29. I find this principle applies here. The matter was stood down so the Tenant's representative could provide me a copy of the municipal by-law that was in effect in August 2020. No such copy was provided. Instead, the Board was provided with a policy document that suggests masks were required. However, it insufficient for the Board to rely on a policy interpretation to determine the Landlord's real estate agent was in breach of Covid-19 restriction.

30. Ultimately, I find there is insufficient evidence to determine that the Landlord's real estate agent engaged in conduct that harassed the Tenant.

31. Similarly, I do not think the Landlord's real estate agent engaged in conduct that substantially interfered with the Tenant's reasonable enjoyment of the rental unit.

32. Section 22 of the Act states that a landlord shall not at any time during a tenant's occupancy of a rental unit substantially interfere with the reasonable enjoyment of the rental unit or the residential complex for all usual purposes by a tenant or the tenant's household.

33. I find there was insufficient evidence that the Landlord's real estate agent engaged in conduct that substantially inferred with the Tenant. It may have been discourteous for the Landlord's real estate to not require potential buyers to wear masks. However, I do not feel this conduct rises to the level of substantial interference contemplated by the legislature under s. 22 of the Act. A minor inconvenience or disruption for a brief period of time does not normally result in a breach of s.22 of the Act. Accordingly, the Tenant's T2 application is dismissed.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is $447.81. This amount represents:

    - $200.00 for a rent abatement.
    - $100.00 for the cost of the fan left in the rental unit by the Tenant.
    - $94.81 for interest on the last month's rent deposit.
    - $53.00 for the cost of filing the application.

2. The Landlord shall pay the Tenant the full amount owing by December 26, 2023.

3. If the Landlord does not pay the Tenant the full amount owing by December 26, 2023, the Landlord will owe interest. This will be simple interest calculated from December 27, 2023, at 7.00% annually on the balance outstanding.

2023 ONLTB 81644 (CanLII)

December 15, 2023
Date Issued

_____
Bryan Delorenzi
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.

2023 ONLTB 81644 (CanLII)