Order under Section 31
Residential Tenancies Act, 2006

Citation: Laurie v Jassal, 2023 ONLTB 70055
Date: 2023-12-06
File Number: LTB-T-000728-23

In the matter of: 31 REVELL DR
GUELPH ON N1G0B2

Between: Briana Laurie — Tenant

And

Gurwinder Jassal — Landlord

Briana Laurie (the 'Tenant') made two applications against Gurwinder Jassal (the 'Landlord').

In a T2 application, the Tenant asked for an order determining that the Landlord: (i) substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household, and (ii) harassed, obstructed, coerced, threatened, or interfered with the Tenant.

In a T6 application, the Tenant asked for an order determining 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.

Both applications were heard by videoconference on October 5, 2023. The Landlord and the Tenant attended the hearing.

Preliminary:

1. Both applications apply to a single-family dwelling (the 'Tenancy') in which the Tenant continues to reside.

2. The version of the form T2 application which the Landlord received in advance of the application did not contain all the Tenant's application. By way of screen-sharing, the Landlord was shown the full text of the Tenant's application in the course of the videoconference. The Landlord confirmed that he was content to proceed with the hearing on that basis, even though he had not seen those specifics before that time.

3. A portion of the hearing was presided over by co-chair Vice-Chair Ruth Carey. However, Vice-Chair Carey was not able to complete the hearing as a result of other pressing Board obligations. The parties agreed that the hearing would continue with me only presiding.

4. On the applications, the Tenant had indicated that she, Nicole LaBelle, and William Paisley were all tenants; however, only the Tenant signed the applications. I have amended the applications to remove them.

T2 Application:

1. The application is amended to indicate all events on the T2 which refer to 'January' actually are with respect to January, 2023.

2. The Tenant pointed to three separate events as the basis for her T2 application:

    a. She alleges than on January 3, 2023, the Landlord told a PSW service that they were not permitted to attend at the Tenancy. That PSW service was at that time regularly attending to provide services to Mr. Paisley, who was then residing in the Tenancy.

    b. She alleges that the Landlord illegally attended at the Tenancy on January 28, 2023, and demanded his mail, causing a verbal altercation.

    c. She alleges that the Landlord, in a phone call on December 27, 2022, stated that "briana is lucky to be a women because if i wasnt he would speak and treat me alot different" ('Comment'), and that this made her fear for her safety as a woman.

3. The parties agree that in late 2022, the Landlord served the Tenant with a form of N12 notice, pursuant to which he sought to evict the Tenant and the other tenants. The Tenant describes the form as illegal. The Landlord says he served multiple forms which were proper and that he has commenced an L2 application to evict the Tenant on that basis, but that it has not yet been set for a hearing. No N12s were in evidence. Whether or not the N12 is actually proper, and whether or not the Tenant should be evicted are not before me, and I make no determination in that regard.

4. What is clear is that following the service of the N12, the relationship between the Tenant and the Landlord changed dramatically. Both parties agree that their prior relationship was friendly and cooperative. Afterwards, it was not. The Tenant candidly conceded that the N12 lead to her being far more guarded and strict about their relationship.

The PSW Company

5. With respect to the PSW company, the Tenant relied mainly on hearsay. She was repeating what employees of the PSW company told her, but she did not call any of them as witnesses.

6. The Landlord denies prohibiting the PSW company from attending, but rather says that he told them that the tenancy had terminated, and therefore his obligations to them had changed and he was not longer legally responsible for their safety if they chose to attend at the tenancy.

7. I find that the Landlord did not purport to prohibit the PSW company from attending, as it would have made no sense for him to do that and would have been out of character from their prior relationship.

8. However, I do find that he did tell them that the tenancy had been terminated. That statement was legally incorrect, as the Landlord-Tenant relationship remained unchanged

   as a result of the service of an N12 notice (regardless of whether it was legally effective) and may well have given the PSW workers some concerns about attending. However, I do not find that doing so rose to the level of harassment or substantial interference.

The Mail

9. The Landlord and the Tenant agree that until late 2022, the Landlord had periodically attended at the Tenancy to collect his mail without incident.

10. Following service of the N12, the Tenant demanded that the Landlord redirect his mail. Shortly prior to January 28, 2023, the Tenant advised the Landlord that mail had arrived for him. The Landlord arranged to have the Tenant leave the mail on the porch for him. However, the Tenant now demanded that he provide 24 hrs notice before arriving to collect the mail. When the Landlord attended the next day and could not locate his mail because, despite their arrangement, the Tenant had not left the mail on the porch. The Landlord and the Tenant spoke at the front door and a verbal altercation ensued. The Tenant called the police.

11. Instead, I find that the unfortunate altercation was the result of the-then brewing hard feelings between Tenant and Landlord as a result of the N12. The Landlord's behaviour was not harassment.

12. Since then, there have been no further issues with the mail. The Tenant has periodically asked the Landlord to attend for maintenance, and on those occasions, she has agreed to provide the mail to him.

The Comment

13. The Landlord does not deny making the Comment. However, he explains that it was in the context of having first been told words to the effect that "he did not know how to speak properly to a woman".

14. I find that the Landlord and Tenant had a heated exchange on the phone at a time of acute bad-feelings as a result of the service of the N12, and that the words spoken between them

were consistent with the conversation that both were engaged in. While possibly intemperate, I do not find that the Landlord's comments rose to the level of harassment or abuse.

Result of T2 Application

15. The Tenant bears the burden of proving that the conduct of the Landlord was sufficiently serious that it rose to the level of harassment, or that it substantially interfered with the Tenant's ability to enjoy use of the Tenancy. I have found that she has not borne that burden, and therefore dismiss her T2 application.

T6 Application:

16. The basis for the Tenant's T6 application is her allegation that the Landlord failed to perform the following maintenance items in the period prior to January 30, 2023, the date of her application:
    - Failing to clear snow
    - Failing to cut grass
    - Inadequate or missing CO2 and smoke detectors
    - Failing to repair a broken shower
    - Failing to repair a broken window
    - Failing to repair the back patio, which has heaved and is a tripping hazard
    - Failing to repair back stairs to the patio which are broken
    - When she took possession initially, the Tenancy was filled with old food and was unclean
    - Failing to repair a broken couch
    - Failing to install a privacy curtain on the front door

17. S. 20(1) of the Act states that 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." S 30(1) provides for several possible remedies in the event that I find a breach of s. 20(1) by the Landlord; however, the Tenant sought only a rent abatement. S. 30(2) says that I must consider, in determining a remedy, whether the Tenant advised the Landlord of the breaches before commencing her application.

Snow and Grass

18. Although the lease was not in evidence, it is common ground that the lease provided that the Tenant would mow the grass and clear snow. The parties agree that until late 2022, the Tenant dealt with grass and snow without incident or complaint.

19. After service of the N12, the Tenant demanded that the Landlord remove any snow, insisting that the Landlord was legally obliged to do so, regardless of the terms of the Lease.

20. It is not clear whether the Landlord was or was not obliged to clear the snow.

21. There is no blanket obligation, imposed on a Landlord in Ontario, to remove snow and ice. Whether or not, in any particular circumstance, the obligation would fall on the Landlord would depend on a number of factors. For example, the regulations in section 26(1)(5) of O. Reg. 517/06: Maintenance Standards, which require a landlord to keep exterior common areas free of unsafe accumulations of ice and snow, apply only to a unit located in a geographical location in Ontario to which section 224(1) of the Act applies. *Montgomery v. Van*, 2009 ONCA 808, para. 7. I was provided with no submissions, and no applicable municipal regulations, from which to determine whether or not there are any regulations applicable to this unit in this location.

22. Similarly, the Board and the Superior Court have determined that even where section 26(1)(5) of O. Reg. 517/06 does apply, it does not require a landlord to clear ice and snow when – as is the case here - the entire residential complex consists of a single unit, and therefore there is no exterior "common area". See *e.g. Perreault v C/o Sentinel Management Inc.,* 2021 CanLII 148914 (ON LTB)*, Crete et al. v. Ottawa Community Housing Corporation et al.*, 2023 ONSC 5141, para. 51.

23. For the reasons below, I need not resolve that legal obligation, because I find that the Landlord did remove the snow when asked, and in once instance, there is not enough evidence to prove that he failed to do so.

24. I find that in late November, the Landlord removed the snow, as demanded, and I find that the Landlord again removed snow, a few days following a snowfall at the end of December, both as confirmed by messages between the parties and by testimony at the hearing. There is insufficient evidence to determine whether the Landlord failed to remove a third snowfall, in the early months of 2023, in a timely fashion.

25. As for the grass, I find that the Landlord either did attend in the Spring and Summer of 2023 to cut the grass, or arranged for the neighbour to do so. Indeed, he was required to deal with the Tenant's garden furniture, and droppings from the Tenant's dog, in order to complete that work.

26. Accordingly, I find that the Landlord did not fail to abide by his obligations under s. 20(1) in connection with snow and grass, such as they were.

CO2 and Smoke Detectors

27. s. 20(1) of the Act obliges the Landlord to provide adequate CO2 and smoke detectors. I find that the Landlord fulfilled his obligation to do so.

28. The Tenant and the Landlord discussed detectors on a number of occasions. On each occasion, I accept the Landlord's evidence that he provided any missing or malfunctioning

detectors. To the extent that any appeared to be missing from time to time, I find that they had been removed by the Tenant or other residents of the Tenancy.

Shower

29. The Tenant advised the Landlord that the faucet for a shower in the Tenancy was no longer operative. I accept the Landlord's evidence that he promptly attended, concluded that the water fixture required replacement, and that he replaced it.

Window

30. The Tenant complained that a casement window did not close fully, so that it could not be locked. The Landlord attended on several occasions and attempted to repair it. There was conflicting evidence over whether, and if so when, the problem was fixed. In the circumstances, I find that the Tenant has not satisfied me that it is more likely than not that the Landlord failed to address the malfunctioning window mechanism in a reasonable manner.

Back Patio and Stairs

31. The Tenant complained to the Landlord about a heaved portion of the back patio, and introduced a picture into evidence showing that the surface of one portion of the patio is higher than the adjacent portion. The Tenant also gave evidence that a single step from the kitchen down to the back patio is not solidly held in place, but rather "wiggles" when stepped upon.

32. The Tenant concedes that she complained about both only after the Landlord served his N12, and that she has not renewed her complaints since serving her application.

33. For his part, the Landlord reviewed both, and reached his own conclusion that neither constituted a hazard or disrepair. He has therefore made no effort to address either issue.

34. I accept that, in certain circumstances, uneven pavers or loose stairs could constitute a hazard, and may well fall below applicable standards. I also accept some uneven pavers or loose stairs might be so obviously dangerous that they would fall below the requirements of s. 20(1) on their face.

35. That is not the case here.

36. The photographs do not show a patio that is unquestionably dangerous, and there is no evidence before me regarding the step other than the Tenant's testimony. As well, I have no evidence before me that these specific problems fall below any standards which may apply to a structure in the City of Guelph.

37. As a result, I find that the Tenant has not satisfied me that it is more likely than not that the Landlord breached s. 20(1) with respect to the back patio or the stair.

Other Issues

38. Problems with the condition of the Tenancy at the time that the Tenant took possession occurred more than one year before her T2 application. S. 29(2) states that a Tenant cannot apply for relief for a breach of s. 20(1) more than one year after the relevant events.

39. The Tenant did not challenge the Landlord's evidence that the couch had been abandoned by the prior tenant, and that the Landlord invited the Tenant to either keep it for herself or to throw it out at the commencement of the lease. The Tenant apparently kept the couch, which means that it was hers. The Landlord had no obligation to repair her couch when it broke.

40. I accept that the Tenant would prefer a privacy curtain over her front door. However, there is no obligation under the Act that requires the Landlord to provide one. I need not decide whether the Tenant has a right to install her own curtain.

41. As a result, none of these other issues demonstrates any failure by the Landlord to fulfil his obligations under s. 20(1) of the Act.

Result of T6 Application

42. The Tenant bears the burden of proving that the Landlord failed to keep the Tenancy at a level of repair required by s. 20(1) of the Act. I have found that she has not borne that burden, and therefore dismiss her T6 application.

IT IS ORDERED THAT:

43. Both of the tenant's applications as dismissed.

December 6, 2023

Jonathan Rosenstein
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.