Order under Sections 30 and 31
Residential Tenancies Act, 2006

Citation: Cho-Yee v Ramos, 2023 ONLTB 77158
Date: 2023-12-01
File Number: LTB-T-008739-22

In the matter of: 1409, 235 SHERWAY GARDENS RD
ETOBICOKE ON M9C0A2

Tenant

Between: Tracy Cho-Yee

And

Landlords

Digna Ramos
Joselito Ramos

Tracy Cho-Yee (the 'Tenant') applied for an order determining that Digna Ramos and Joselito Ramos (the 'Landlords') substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household and harassed, obstructed, coerced, threatened or interfered with the Tenant (T2 Application).

Tracy Cho-Yee (the 'Tenant') also applied for an order determining that Digna Ramos and Joselito Ramos (the 'Landlords') 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 16, 2023.

The Landlords Digna Ramos and Joselito Ramos and the Landlords' Legal Representative Jeremy Delfin and the Tenant Tracy Cho-Yee and the Tenant's Legal Representative Kristopher Flores attended the hearing.

Determinations:

1. The rental unit is a one bedroom plus den condominium. The Tenant moved into the unit in 2015 and vacated the rental unit on February 1, 2022. The monthly rent was $1,400.00.

T6 Application

2. The Tenant's T6 application concerns the following maintenance issues: (1) a leak in the kitchen faucet; (2) inadequate hot water and water pressure in the bathroom; (3) the toilet not functioning properly; (4) the malfunction of the air condition; and (5) a hole in the wall from repairs;

3. Subsection 20(1) of the *Residential Tenancies Act, 2006* (the Act) provides that the landlord is responsible for providing all needed repairs and maintenance:

> 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.

4. In *Onyskiw v. CJM Property Management*, 2016 ONCA 477 , the Court of Appeal determined that a contextual approach should be adopted when considering a landlord's potential breach of subsection 20(1) of the Act and a breach will not be found if the landlord's response to a maintenance issue was reasonable in the circumstances.

Kitchen Faucet Leak

5. It was not disputed the kitchen faucet began leaking on February 20, 2021 and the Landlords were notified of the issue that same day. The Landlords responded to the Tenant approximately three to four hours after the issues was reported by the Tenant. By February 22, 2021 the Landlords had arranged for the leak to be repaired and this was done on February 23, 2021.

6. The Tenant's position was the repair was not done in a timely manner since plumbers are available on a 24 hour per day, seven day per week basis. The Landlords evidence was the property management for the condominium is contacted first to determine if the issue is their responsibility. They also confirm whether repairs done by the Landlords would affect the property of the condominium corporation, particularly when dealing with plumbing.

7. An issue cannot be resolved immediately upon being reported to the Landlords. There is an inherent time requirement needed to resolve maintenance requests from a Tenant. Once maintenance has been requested by the Tenant, the consideration turns to the response and actions from the Landlords.

8. The Landlords taking a day to respond, a day to arrange a contractor and a day or two to have the issues fixed, is in my view, a reasonable time period. I find the resolution of the leak within four days of it first being reported to the Landlords is therefore reasonable in the circumstances. As such, this claim is denied.

9. The Tenant testified a second issue with the faucet began in October of 2021. She was unsure when the problem started and stated she likely told the Landlords about the issue sometime between October 3, 2021 and October 5, 2021. The Tenant testified the problem continued for the duration of the tenancy. The Tenant submitted no evidence showing a continuous leak from the faucet for this time period. The Landlords stated there was no new issue with the kitchen faucet and they received no complaints from the Tenant over the remainder of the tenancy about a leak.

10. Based on the evidence, I am not convinced the Tenant has proven on a balance of probabilities there was an ongoing leak with the kitchen faucet that lasted for the final four months of the tenancy. This claim is also denied.

Plumbing Issues in the Bathroom

11. The Tenant's evidence was that on May 31, 2021, she emailed the Landlords to report her toilet tank was not filling with water. She also asked the Landlords to replace the diverter tap spout in the tub. This email was submitted into evidence and not disputed by the Landlords.

12. The Tenant testified she believed the toilet was repaired on June 2, 2021 and the diverter in the bathtub was repaired two to three days later. During cross examination, the Landlords asked the Tenant to confirm when these repairs were completed. The Tenant responded by saying "whatever I said, maybe three days".

13. In this case, the toilet was fixed within two days and the bathtub diverter was repaired within four days. I find the Landlords reacted and rectified the issues in a timely manner and without unreasonable delay. These claims by the Tenant are therefore dismissed.

14. The Tenant testified issues with the hot water and water pressure began in October 2021. She stated her water pressure went from heavy to light and the water temperature was only lukewarm. The Tenant's evidence was the Landlords were "probably" notified because that's what she usually did. The Tenant testified she did not realize she needed dates for her claims.

15. After some time, she stated the issue was discovered on October 5, 2021. Emails submitted by the Tenant show conversation between the Landlords and the Tenant on October 6, 7, and 8 of 2021. The emails show the Landlords giving instructions to the Tenant on October 6, 2021 to open the water fixtures for 20 minutes to ensure any air in the pipes is released.

16. On October 7, 2021 the Landlords email the Tenant confirming the problems were resolved and asks the Tenant to confirm there are no more issues with the hot water, water pressure or leaking.

17. On October 8, 2021, the Tenant replied to the Landlords "Everything was completed with the exception of the shower handle…To confirm, the hot water and water pressure are back to normal".

18. Both the water pressure and temperature were back to normal within three days of a problem being reported. I find it reasonable in the circumstances. Therefore, this claim is also denied.

19. The Tenant testified an issue with the hot water and water pressure again occurred on December 1, 2021. She testified she told the Landlords about the issue on December 2, 2021. I pointed out to the Tenant her application states she told the Landlords of the problem on January 3, 2022 to which she replied we "would go with the application" and again stated she did speak with the Landlords about the issue.

20. The Tenant provided no evidence the Landlords were ever notified of a fresh problem with the water temperature or pressure in the rental unit. I asked the Tenant why she waited over one month's time to alert the Landlords to the problem. The Tenant responded by saying she did not want to deal with the Landlords as their relationship had soured. She acknowledged her relationship with the property manager remained amicable however the problem was not reported to this person either. The Landlords denied any new complaint about the water pressure or water temperature was received following the resolution to the problem in October 2021.

21. Based on the evidence, I am not convinced on a balance of probabilities a second issue with the water pressure or temperature occurred in the rental unit. The Tenant's testimony of when the issue occurred and when she told the Landlords was concerning. She changed her testimony regarding a notification date of December 2, 2021 to January 3, 2022 in order to conform to what was stated on her application.

22. To explain the delay she was now adopting, the Tenant then testified it was easier to "not deal" with the Landlords due to the state of their relationship. I note this apparent reality was absent moments earlier when the Tenant testified she had informed the Landlords the day after discovering the problem. Her original evidence contained no hesitation because her relationship with the Landlords had become untenable.

23. It seemed to me the Tenant had little recollection of this event. As a result, I found the Tenant's evidence unreliable and unconvincing. This portion of her claim is therefore denied.

Air Conditioning

24. The Tenant testified she notified the Landlord on August 24, 2021 the air conditioning was intermittently turning off and tripping a breaker. The Tenant submitted a text message showing she told the Landlords about the problem on August 24, 2021. The Tenant testified

the air conditioning stopped working altogether a few days later and she notified the Landlords of this. She submitted a text message showing she told the Landlords this on September 3, 2021.

25. The Landlords submitted a receipt from CAT Mechanical Inc. dated for September 28, 2021. The invoice is for the service call and to diagnose and troubleshoot the equipment.

26. The Tenant submitted a text message from the Landlords sent to her on October 8, 2021 in which they state a technician from CAT Mechanical Inc. checked the air conditioning and found it to be working. The Landlords further state in the text message that the cost of having the technician attend was $120.00. The Landlords ask that the Tenant check the unit first before future calls are made to a technician. The Landlords advise the Tenant she would be held responsible for an unnecessary bill in the future.

27. The Tenant responded to this message in an email the same day confirming a technician had attended the unit on October 8, 2021 and that the air conditioning was working. The email also mentions an issue with the air conditioning was reported to the Landlords on October 4, 2021.

28. I infer from the exchanges between the parties, the initial problem with the air conditioning was resolved on September 28, 2021, the day the Landlords invoice is dated for. The

    Tenant appears to have reported a new issue to the Landlords on October 4, 2021 and the technician returned on October 8, 2021 and found the unit in working order.

29. The Landlords gave no explanation as to why it took from August 24, 2021 until September 28, 2021 to have a technician attend the unit and repair the air conditioning. The Tenant's evidence was the temperatures remained warm during this time period and she needed use of the air conditioning. Based on the evidence presented, I am satisfied the Landlord did not respond to this issue within a reasonable period of time and this portion of the application will be granted.

30. The Tenant sought a rent abatement of 10% for the lack of air conditioning. An abatement of rent is a contractual remedy based on the principle that rent is charged in exchange for a bundle of goods and services and if a tenant is not receiving those goods and services then the rent should be abated in a sum proportional to the difference between what is being charged and what is being received.

31. I find a rent abatement of 10% for the period August 24, 2021 until September 28, 2021 is reasonable. The Tenant herself stated she did not require the air conditioning beyond September 30, 2021 and no new issues were reported to the Landlords until October 4, 2021. Any issue that did exist was resolved quickly and by October 8, 2021.

32. The monthly rent was $1,400.00. The daily amount was $46.08 based on $1,400 multiplied by 12 months and divided by 365 days.10 % of this amount is $4.61. Therefore, the rent abatement granted for the 36 days between August 24, 2021 and September 28, 2021 is $165.96.

Hole in the Wall

33. The Tenant testified the plumbers left a large hole in the wall when they did repairs to the unit on October 4, 2021. The Tenant submitted a photograph showing two large rectangular holes cut into drywall to access piping. The Landlords were notified of the hole as email dated on October 7, 2021 shows the Landlords asking for a picture of it from the Tenant.

34. I heard no evidence this hole was ever repaired by the Landlords. Clearly, the holes should have been repaired and given their unsightliness and open access to piping. The Tenant sought a 10% rent abatement for three months and 11 days. I find this amount to be fair and reasonable. A 10% abatement for three months amounts to $420.00. 11 days at the daily amount is $50.71. The total abatement for the hole in the wall will be $470.71.

T2 Application

35. The T2 application alleges the Landlords have substantially interfered with the Tenant's reasonable enjoyment of the rental unit and engaged in conduct amounting to harassment of the Tenant.

Substantial Interference

Noise

36. The Tenant testified there have been issues with noise coming from the unit above hers for years. She submitted a number of emails detailing the history of noise complaints she has made to the Landlords dating back to 2015.

37. The Tenant's application was filed on February 12, 2022. I explained to the Tenant that pursuant to section 29(2) of the Act, she could only claim issues that occurred between February 13, 2021 and Feb 1, 2022, the date she vacated the rental unit.

38. The Tenant's evidence was the problems with noise from the unit above hers began in 2015. She testified it stopped and then began again once new tenants moved in above her. The T2 application states that despite the Tenant's complaints the noise was continuous over the course of the tenancy and lasted for six years.

39. The Tenant described the noise as "living under a bowling alley" and that it persisted for until she vacated the rental unit on February 1, 2022. She stated the noise was probably every weekend, beginning in the morning and then again each evening. The Tenant

testified the Landlords took no steps to resolve the problem with the resident living above the Tenant and simply told her noise was part of condo living and that they did not want to get sued by the person living above her.

40. The Tenant provided no specific dates for when the alleged noise occurred between February 13, 2021 and February 1, 2022. The Tenant did not submit a single audio recording of any noise that allegedly occurred during this time period. The Tenant stated her iPhone could not record any of the noise events she claimed to have occurred each weekend even though she described it as living under a bowling alley.

41. This is the Tenant's application and the burden is therefore on her to prove the claims she is making on a balance of probabilities. She submitted no corroborating evidence showing noise or when it occurred. She submitted no evidence of ongoing complaints she made to the Landlords in the months leading up to her moving out of the unit. Without more, I am not convinced there was an ongoing noise issue being experienced by the Tenant from February 13, 2021 until she vacated the unit on February 1, 2021. As such, this claim is denied.

Email to End Tenancy

42. The Tenant testified on February 26, 2021, the Landlords served her a type written notice of termination stating the rental unit was needed for a relative as of May 1, 2021. The Landlords state they are terminating the tenancy as of April 26, 2021. A copy of the letter was submitted into evidence by the Tenant.

43. The Tenant responded to the Landlords on March 8, 2021 by advising them she had sought legal advice. She stated the notice provided was not legal and that she intends to exercise her rights in the event a proper notice is provided.

44. The Tenant testified she believed the type written notice was given in bad faith as a result of the complaints she had made regarding noise and repairs.

45. The parties engaged in discussions surrounding the signing of an N11 notice. The Tenant did not sign the notice and submitted an email showing she advised the Landlords on March 16, 2021 that she believed they were acting in bad faith. The Tenant goes on to say she would consider a "cash for keys" offer but in the absence of one, she was prepared for a hearing.

46. On March 24, 2021, the Landlords emailed the Tenant advising her there was no longer a need for the N11 notice because their family member had found elsewhere to live and would not need the rental unit.

47. I am not satisfied on a balance of probabilities the Tenant has proven the Landlord substantially interfered with her. The Tenant's speculation that the notice was given in bad

faith is not evidence. Further, the parties engaged in a conversation about termination together and the Tenant herself invited further discussion by suggesting a “cash for keys” offer. As it turned out, the Landlords relative found elsewhere to live. None of this amounts to substantial interference in my view.

Illegal Rent Increase

48. In the March 24, 2021, the Landlords notified the Tenant of a rent increase that was to take effect on June 1, 2021. The Tenant responds the next day on March 25, 2021 stating there is a rent freeze for 2021 and that she would continue to pay the monthly rent of $1,400.00. No other evidence was submitted this discussion persisted beyond this two-email exchange. No evidence was submitted showing the Landlord continued to try and increase the rent during 2021. Based on this exchange, I am not convinced the Tenant has proved this interaction amounts to substantial interference on the part of the Landlords. The Tenant explained the 2021 rent freeze to the Landlords and that was the end of it.

NSF Charge

49. The Tenant testified the Landlords asked her three or four times to reimburse them the $7.00 in NSF charges they incurred as a result of the Tenant’s rent cheque for April 2021 being returned by the bank. The Landlords did not dispute they sought reimbursement of the $7.00 NSF charge. The Tenant stated she told the Landlords not to cash the cheque and paid the rent for that month by etransfer instead. Even if the Tenant did tell the Landlords not to cash the cheque, I do not find three to four inquiries from them seeking reimbursement of $7.00 amounts to substantial interference.

Service Call Message

50. The Tenant’s position was the message from the Landlords on October 8, 2021 advising her that she would be responsible for the cost of further service calls from technicians amounts to substantial interference. It was clear the message was in relation to future service calls that were unnecessary.

51. The Landlords are permitted to remind a Tenant to confirm a problem exists before having them incur a cost. The Landlords do not say they will not investigate future issues. They are simply putting the Tenant on notice that future costs incurred unnecessarily will be her responsibility. Such costs could be the subject of an N5 notice and a monetary claim on an L2 application. I do not find the Landlords notifying the Tenant they will enforce their legal rights amounts to substantial interference.

N12 Notice of Termination

52. On October 10, 2021, the Landlords served the Tenant an N12 notice of termination. The reason in the notice is that the Landlords wanted the rental unit for their daughter to

occupy for the purposes of residential occupation. The termination date in the notice is December 31, 2021.

53. The Tenant stated she believed the notice was served in bad faith because of the issues surrounding the repair of the air conditioning. No evidence was submitted showing the N12 notice was served because of this repair.

54. The Tenant's T2 application states the Tenant decided to exercise her rights under the Act and remain in the unit while awaiting a hearing before the Board. The Tenant testified she signed a lease for a new place to live on January 19, 2022.

55. The Tenant's evidence was she asked the Landlords to sign an N11 agreement to termination the tenancy effective February 1, 2022. It was not disputed the Landlords engaged in discussions with the Tenant and would not sign the N11 unless the Tenant waived the interest owing on the rent deposit. The Tenant did not agree and no N11 was signed by the parties. The Tenant vacated the rental unit on February 1, 2022 and the Landlords did not dispute the tenancy ended on this date.

56. At the hearing, the Tenant claimed the interest owing on the rent deposit. Since I heard no evidence that the Landlords failure to pay the interest owing amounted to substantial interference, I advised the Tenant this amount should have been the subject of a T1 application. As such, this claim was not considered.

57. The Landlords testified their daughter moved into the rental unit by the end of February 2022 and lived there for approximately eight months until she got married. The Landlords testified their son then moved into the unit and continues to live there now.

58. The Tenant's position was this amounts to bad faith because the Landlords daughter did not live in the unit for a period of one year. I advised the Tenant the application before me was a T2 application and not a T5 alleging the Landlords served a notice in bad faith.

59. For the purposes of my analysis under section 22 of the Act, I am not convinced the N12 notice amounts to substantial interference with the Tenant. A landlord is permitted to serve notices of termination and a Tenant is permitted to remain in the unit until the Board orders otherwise. The Tenant is also protected by section 57 of the Act in the event they believe the Landlords have not acted in good faith. In this case, there was no evidence presented that the Landlords continuously served the Tenant notices of termination. I do not find the email from the Landlords in February 2021 ending the tenancy so a family member could move into the unit is connected in any way to the N12 notice the Landlords served the Tenant in October of 2021. The Landlords retracted that notice in March of 2021 and the Landlords child did move into the unit within one month of the Tenant vacating it. Additionally, the Tenant provided no evidence the N12 notice was connected to the air conditioning repairs that took place.

60. For these reasons, I am not convinced the Tenant has proven the Landlords substantially interfered with her reasonable enjoyment of the rental unit by serving her the N12 notice on October 8, 2021.

61. At the hearing, the Tenant attempted to introduce a new claim, stating the Landlords had substantially interfered with the Tenant by having contractors contact her directly to arrange suitable times for repairs to be completed. The Tenant argued the Landlord should have arranged contractors and simply served a 24-hour notice of entry. For their part, the Landlords testified this approach was taken to ensure a quick resolution to the Tenant's concerns since it removed them as the "middleman" once they had found a contractor. In any case, this claim was not included in the T2 application as filed and it was therefore not considered.

62. Based on all of these reasons, I am not convinced on a balance of probabilities the Tenant has proven the Landlords substantially interfered with her reasonable enjoyment of the rental unit and this portion of the application is dismissed.

Harassment

63. There is no definition of "harassment" under the Act but generally speaking harassment is usually considered to be a course of conduct that a reasonable person knows or ought to know would be most unwelcome.

64. I have considered each issue raised by the Tenant individually and found the Landlords have not substantially interfered with the Tenant. When I consider the claims together as a whole, I also find the Tenant has failed to prove the Landlords have harassed her.

65. Over the course of approximately 11 months, the Landlords and the Tenant interacted over five issues. These issues all involve the tenancy. Both parties took part in discussions on each issue. It was clear from the evidence the Tenant was not happy with the outcome of some of these discussions. It was also clear the relationship between the Landlords and the Tenant had deteriorated over the course of the tenancy.

66. Disagreement between parties is not, in my view, evidence that supports a finding the Landlords have harassed the Tenant. Neither is irritation on the part of the Tenant when she believes her perspective is the correct one. The very nature of a landlord and tenant relationship requires interaction and communication between the parties and I am not convinced the evidence presented at the hearing rises to the level of harassment. For these reasons, this portion of the Tenant's T2 application is also dismissed.

It is ordered that:

1. The Tenant's T2 application is dismissed.

2. Pursuant to the Tenant's T6 application, the total amount the Landlords shall pay the Tenant is $684.67. This amount represents:

    - $165.96 for a rent abatement for the air conditioning.
    - $470.71.00 for a rent abatement for the hole in the wall.
    - $48.00 for the cost of filing the application.

3. The Landlords shall pay the Tenant the full amount owing by December 12, 2023.

4. If the Landlords do not pay the Tenant the full amount owing by December 12, 2023, the Landlords will owe interest. This will be simple interest calculated from December 13, 2023 at 7.00% annually on the balance outstanding.

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

December 1, 2023 _____ **Date Issued**

John Cashmore
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.

Order Page