



Order under Sections 30 & 135 Residential Tenancies Act, 2006

Citation: Podermanska v Matthews, 2023 ONLTB 76586

Date: 2023-11-28

File Number: LTB-T-076454-22

In the matter of: 1274 Minnewaska Trail
Mississauga Ontario L5G3S5

Between: Elzbieta Podermanska Tenants
Petr Podermanska

And

Megan McKay Landlords
Andy McKay

Elzbieta Podermanska and Petr Podermanska (the 'Tenants') applied for an order determining that Megan McKay and Andy McKay (the 'Landlords') failed to meet the Landlords' maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards.

The Tenants also applied for an order determining that the Landlords collected or retained money illegally.

This application was heard by telephone and videoconference on December 15, 2020, May 13, 2021, February 1, 2022, April 1, 2022, and July 21, 2023.

The Landlords and the Tenant, E. Podermanska attended all the hearings. The Tenants' legal representative, G. Deokaran, attended the hearing on May 13 2021. The Tenants' translator, H. Chabaras, assisted with translation on December 15, 2020, and on May 13, 2021. There was one other witness for the Tenants, besides the Tenant E. Podermanska, the Tenants' friend N. Zych.

The Tenants named the Landlord, M. McKay's parents, M. Matthews and T. Matthews, as Landlords in their application. M. McKay's parents acted as liaisons between the Landlords and the Tenants, and helped managed the property, while the Landlords were out of the country. I determined that M. Matthews and T. Matthews were not properly named as Landlords, and the application was amended to exclude them as named Landlords.

Determinations:

1. The rental unit is a house with a basement. The house has three bedrooms, kitchen, living and dining rooms on the main floor. The basement has an extra bedroom, office/rec room, and a laundry/utility room. The monthly rent was \$3,100.00. The tenancy began in May,

2019. The Tenants vacated the rental unit, and they returned the keys to the Landlords on March 11, 2020. The first-year term of the tenancy ended on April 30, 2020.

2. The hearings for this application were many, and they took place over a long period of time.
3. On May 13, 2021, I determined that the amendments the Tenants were seeking to add to their application were not valid amendments. I found that the Tenants' alleged amendments were, in effect, a wholly new T2 application to add to the T1 and T6 application already filed. I found that this was not an amendment, but rather an additional application. I also determined that the allegations in the new T2 application, filed over a year after the original application, were duplications of those filed in the T6 application, and they were therefore, already covered by the T6 application. Consequently, I did not hear the allegations in the Tenants' additional T2 application.

T6 Application:

4. The T6 application alleged a number of maintenance issues, including: leaking water in the basement, an ongoing mould problem due to the basement not being waterproof, leaking ceiling in the main bathroom, and electrical problems.

Leaking Water in the Basement and Basement Mould:

5. The Tenants' application is primarily concerned with mould and standing water in the basement of the rental unit. It alleges that, even though the Landlords hired professionals to carry out mould remediation, it was not effective, and it never resolved the problem. The Tenants do not believe that the Landlords sufficiently investigated their ongoing complaints about mould, and they did not act to resolve them. The Tenants also believe that the Landlords delayed in attending to serious leaks and electrical problems in the house. The Tenants allege that, as a result of the Landlords' failure to effectively maintain the rental unit, and because of the ongoing problems, the Tenants were justified in ending their tenancy early with insufficient notice, and they claim they should not be responsible for any rent after the date they returned the keys to the Landlords, March 11, 2020.
6. The Tenant, E. Podermanska (EP) gave evidence on behalf of the Tenants.
7. The Landlord, M. McKay (MM) gave evidence on behalf of the Landlords.
8. The Tenants chose not to move into the rental unit at the beginning of May, 2019, although they were given access to the rental unit. The Tenants were still living in their previous home for most of the month of May 2019, although they had signed a lease to commence the tenancy at the beginning of May, 2019. The Tenants paid first and last month's rent upon moving in. The Tenants allege that they did not move in immediately because of the state of the basement when they first sought to move in on May 5, 2019. They said that as soon as they entered the rental unit in May 2019, they noticed the standing water and mould in the basement, and they informed the Landlords.

9. There are a number of undisputed facts. The Landlords live abroad, and it was their parents who came to inspect most of the issues, and it was they who oversaw any work done at the property. The Landlords were abroad throughout the Tenants' tenancy, except for a short period in the summer of 2019, and all correspondence between the parties was carried out via email. The Landlords sent their parents to inspect almost immediately after learning from the Tenants by email, in May 2019, about the state of the basement. The Landlords did not delay in hiring a company to carry out basement waterproofing, and mould remediation, and all the work commenced in May 2019. The work was carried out in two parts. The first part was remediating the mould in the basement, for which the Landlords were provided a certificate of completion by the end of May 2019. The second part was waterproofing the outside of the house. All the waterproofing and mould work, inside and outside the rental unit, took almost three months to complete. The construction work finished July 25, 2019, and the Tenants allege that the construction workers were constantly around creating mess and noise until that date.
10. The Tenants' evidence, supported by the documentary evidence, is that they were not satisfied with the basement work, and they noticed that there was still mould in the basement even after the work was completed in July 2019, and they repeatedly asked the Landlords to carry out a mould test, which the Landlords refused to do. The Tenants' documentary evidence demonstrates that, as of the beginning of June 2019, the Tenants informed the Landlords that the inside basement work was not complete as alleged, and that the workers had neglected areas of the basement. The Tenants had already asked the Landlords to carry out a mould test in the basement by that date. The Landlords did not agree to a mould test, and they informed the Tenants that any white fluffy stuff they saw on the walls was "efflorescence" and not mould.
11. The Tenants' email correspondence demonstrates that the Tenants asked for a rent abatement because of the issues as early as May 2019, but the Landlords repeatedly refused. There is an email from the Landlords, dated June 4, 2019, in which the Landlords tell the Tenants that it is "not standard" to carry out a mould test, and "it is a highly expensive procedure." There is documentary evidence that the Landlords responded to the Tenants' concerns, saying that once the work was complete at the end of May 2019, the Tenants were able to use the basement, so they were not entitled to a rent abatement.
12. The Tenants' documentary evidence shows that they asked the Landlords to test for mould on a few occasions, and they also asked for a rent abatement on a few occasions, and the Landlords refused both requests.
13. EP said that the Tenants became fed up with the situation, there were a number of other issues with the rental unit, and the Tenants sought to break the lease as of September 29, 2019. The Landlords replied by email that if the Tenants broke the lease, it was the Tenants' responsibility to find new tenants to whom they could assign the lease. The Landlords also said that if the Tenants did not find new tenants to move in and they, the Landlords, became responsible for re-marketing the property, there would have to be an agreement between the parties about costs. As a result of this email exchange, and worried about the cost of moving out, the Tenants chose to stay in the rental unit.

14. The Tenants submitted into evidence further photographs of basement walls taken in January 2020, and in February 2020, where there is a substance that appears to be black mould, and fluffy white blooms in various areas of the walls. There is also water visible on the floors. The Tenants allege that there was water constantly in the basement until they left in March 2020.
15. EP said that despite her emails to the Landlords informing them of leaking in the basement, and leaking in other areas of the house, as well as mould, there was no one who came to inspect from July 2019 until January 2020. She said that in January 2020, someone came to patch up the roof, but they never came inside the house.
16. EP said that when the Tenants finally informed the Landlords on February 25, 2020, that they could take it no longer, and they were going to move out, the Landlords wrote to them in reply that they were responsible for the rent until the end of the one-year term, i.e. until April 30, 2020. The Landlords also replied that they would return the last month's rent deposit only if they were successful in finding a new tenant by April 1, 2020. In the Landlords' email of February 26, 2020, the Landlords wrote "One thing I will ask your help on Ella, is that can you please let me know when/where/who informed you that the basement was a fully waterproof/dry space?"
17. The Tenants seek a rent abatement of 35% for the months they were living in the rental unit because they were unable to use over a third of the space in the house due to the leaking and water in the basement. They also seek a further \$361.00 per month abatement for the failure to provide a safe, waterproof basement.
18. The Landlords' evidence was that they acted immediately to remediate the mould in the basement, and they received a certificate of completion of the work on May 30, 2019. They said that despite the certificate of completion, they asked the mould company to return to do further work on June 10, 2019, after the Tenants informed them the workers missed areas of the basement. MM said that her father came to oversee the extra work.
19. MM submitted into evidence her invoice for the mould remediation work, which consisted of the inside work in the basement, in the amount of \$2,000.00 plus tax.
20. MM said that she asked the Tenants whether they had lingering concerns about mould after June 10, 2019, and she received a reply from the Tenants that they still saw mould in the cold room. MM said that since she had assurances from an expert that the mould problem was resolved, she informed the Tenants to keep the door to the cold room closed because that room was not insulated from the outside. MM also said that she was assured that any fuzzy white substance the Tenants saw was efflorescence, and not mould. She said that all the drywalling and removal of dust was complete by the end of June 2019. However, MM said that the Landlords visited the rental unit on July 17, 2019, and they agreed the basement was still dusty and dirty, so they undertook to clean it up for them. She said that the cleaner for that work came on July 26, 2019, at a cost of \$120.00 to the Landlords.

21. It is undisputed that there was outside waterproofing work that continued until July 25, 2019. MM submitted into evidence her invoice for the outside waterproofing work, in the amount of \$5,250.00 plus tax.

Reasons and Analysis:

22. In accordance with section 20 of the *Residential Tenancies Act 2006* (the Act), 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.
23. As set out in the Landlord and Tenant Board's Interpretation Guideline 5, it is established law that it is not sufficient to establish that there was a maintenance issue. The Board must also consider whether the Landlord's response, once informed of the issue, was timely, appropriate and effective to remedy the problem. When these three tests are met, the Landlord cannot be said to have been in breach of their section 20 obligation to maintain.
24. With respect to the basement mould issue, the Landlords, or their agents, acted quickly to inspect, and then quickly to hire contractors to remediate the mould issue in the basement. The contractors they hired were purported experts in mould remediation or waterproofing. Therefore, the response was timely, and, on the surface, appropriate.
25. However, I find that the essential issue before me is whether the contractors hired by the Landlords were effective.
26. The Tenants complained about problems with the work done in the basement a few days after the Landlords had been informed that the work was complete at the end of May 2019. They told the Landlords that areas had been left out. It is undisputed that the Landlords sent the contractors back in on June 10, 2019, to fix up the errors and do a more thorough job.
27. The Tenants complained again, in particular, about the cold room. The Tenants said there was still mould, even after the workers came in June 2019, and there was white fluffy stuff, moisture, and a bad smell. It is undisputed that the Landlords responded by telling the Tenants that the Landlords had been assured by the mould expert that none of the white fluffy substance the Tenants were seeing in the basement was mould, merely efflorescence, and if they were worried about the cold room, they should just shut the door.
28. However, the photos that the Tenants submitted from January and February 2020, show a rather alarming recurrence of black mould on the walls in the basement, and the white fluffy stuff does not look like mere "efflorescence", but fungus. Therefore, I find, on a balance of probabilities, that the work carried out in May and June 2019, was not effective. Therefore, I must determine whether the Landlords are responsible for a breach of their maintenance obligations because the work was not effective.
29. It is undisputed, and I find that it was clear to all parties that the work was not complete at the end of May 2019, despite the certificate of completion. The Landlords were aware of it,

because of the Tenants' complaints, and because they ensured that the same contractor return to the basement on June 10, 2019, to do a more thorough job and fix up areas that had been missed. I find that the photos submitted by the Tenants also corroborate that the work done in the basement was not very thorough. The photos show that only a small area at the bottom of the drywall was replaced, rather than all the potentially affected drywall.

30. Although I am wary of obligating the Landlords to become mould experts, they had enough clues about the haphazard job done by the mould contractor as a result of the Tenants' complaints a few days after alleged completion, the photos, the Tenants' further complaints about the cold room, and even the cheap price for the basement work. The Landlords were not living in the same country, and they had to do everything at a distance, but that does not excuse them from their maintenance obligations. At the very least, they could have agreed to the Tenants' repeated requests to have mould samples taken, or they could have sent in a different mould expert to assess the likelihood of quickly recurring mould. In any case, I find that it was not sufficient to do nothing in response to the Tenants' dissatisfaction. Instead, the Landlords refused to investigate, they took the word of the questionable contractor, and then told the Tenants to just close the door to the cold room. It does not require a mould expert to know that you cannot just close the door on mould, especially in the constantly wet environment that existed in that basement. I find that the Landlords' comment in their email of February 2020, "can you please let me know when/where/who informed you that the basement was a fully waterproof/dry space?" proves, on a balance of probabilities, that they were well aware of the constantly wet environment in the basement, and therefore aware of the need to do a very thorough and effective, and yes, more expensive, mould remediation to stop further problems. The outside work seems to have been very cheap as well for a job that took two months to complete.
31. As a result of my determinations above, I find that the Tenants are entitled to an abatement for the 12 months of the lease (see determinations below with respect to the T1 application). They lived with mould throughout the time of their tenancy. The Tenants believed that they were living in an environment hazardous to their health. I find that it was certainly detrimental to the Tenants' health to use the basement space, and there would otherwise have been a number of usable rooms in the basement. The Tenants believed that they were paying a substantial rent in order to have the use of those rooms. However, such a problem not only affects the basement. The constant dampness would have affected the atmosphere in the whole house, with air and heat being circulated through vents. The Tenants had a son with asthma. Mould is particularly detrimental to respiratory issues. EP said that they were not comfortable in the house, and they have documentary evidence that they wanted to leave as of September 2019, in particular because of the mould and damp. The only reason that they did not leave at that time, was because the Landlords threatened them that they would be responsible for the full 12 months of rent.
32. The Tenants requested a 35% abatement for the mould, in addition to over \$300.00 abatement for an unsafe basement that is not waterproof. The Tenant's request, is, in essence, a double remedy for the same issue. However, the problem of mould was serious, and consequently, I find that it is reasonable to grant the Tenants' a 30% rent abatement for the Landlords' breach of maintenance with respect to mould and dampness

for the 12 month lease. My findings with respect to the last two months of the tenancy are contained in the determinations on the T1 application below.

Leaking on main level:

33. EP said that she informed the Landlords about a leaking ceiling in the main bathroom on July 13, 2019, and she sent photos, which she submitted into evidence. The photos show buckling and cracking in the ceiling near the light fixture. She said that the Landlords replied on July 30, 2019, informing the Tenants that there is some leaking during extreme rain storms, and they should continue to observe. EP submitted into evidence an email to the Landlords, dated September 29, 2019, when the Tenants repeat their concerns about the leaking ceiling, and they write “Dripping water from the ceiling after the raining – in the bathroom upstairs, to this day not repaired (Megan told us only, to keep in watch (sic) on it).....” EP said that they received a similar response from the Landlords about this type of problem being common in Canadian homes. EP said that she sent another email at the end of October 2019, and the Tenants received a similar response from the Landlords. EP said that the only action taken about this complaint was when the roofer came to patch up the roof in January 2020 (see above), and the roofer did not enter the house, and no one came to investigate the ceiling. She said that the Landlords never inspected the main bathroom, and nothing was done by the Landlords about the ceiling until the Tenants left in March 2020.
34. The Tenants request an abatement of \$300.00 per month for the seven months they lived with the ceiling problem after having informed the Landlords.
35. MM said that the photo sent by the Tenants demonstrated only cracking in the ceiling, and no dripping or leaking. She said that the photo looked like bubbling paint, and she asked the Tenants to poke a hole in the ceiling to observe whether water poured out, but the Tenants never responded to that direction.
36. MM said that the Landlords did not repair the cracking paint, because they were waiting to hear from the Tenants about recurring leaking. She said that the photos from October 2019, showed the same cracking, but no leaking. MM admits that the Tenants complained about the leaking in January 2020, so that is why they sent in the roofer to do some patching before the Landlords undertook to rip up the bathroom ceiling.
37. MM said that when she received a complaint from the Tenants about further leaking in February 2020, there were no photos attached, so the Landlords did not believe it was an emergency. It is undisputed that in the email of February 2020, the Tenants said that their children reported further leaking to them. They did not report leaking that they themselves observed, nor did they attach photos. It is undisputed that the Landlords hired the roofer to do further repairs on March 9, 2020, after the Tenants had vacated the rental unit.

Reasons and Analysis:

38. It is undisputed that the Tenants complained about a leaking ceiling in the main bathroom. However, it is also undisputed that the only documentary evidence of the leak was a photo that showed cracking paint in the ceiling. There is no evidence of wetness or leaking water in the main bathroom in the photos submitted by the Tenants.
39. It is unfortunate that the Landlords' only response to the multiple complaints of the Tenants about the leaking ceiling in the main bathroom was to tell them to poke a hole in the ceiling, which would cause damage that the Landlords could then blame on the Tenants. It is undisputed that the Landlords did not investigate this complaint further.
40. However, although the Landlords response to the Tenants' complaints was inadequate, I find that the Tenants have failed to prove, on a balance of probabilities, that there was an existing maintenance issue with respect to a ceiling leak in the main bathroom. There was no evidence of damage caused by such a leak, or evidence of anything affected by the leak, and the photo does not demonstrate any damp or wet in the ceiling.

Electrical Issues:

41. EP said that she told the Landlords about an electrical problem in person when the Landlords were briefly in the rental unit on July 17, 2019. She said that she told them about the microwave, and an electrical outlet that stopped working in June 2019.
42. EP said that the Landlords replaced the microwave right away. However, she said that the "blinking lights" never stopped blinking until the Tenants vacated the rental unit. EP said that she did not really pursue these problems with the Landlords because there were so many other issues.
43. I find that the Tenants have failed to prove, on a balance of probabilities, that there were electrical issues in the rental unit to which the Landlords failed to respond, except for the microwave which was replaced immediately by the Landlords. The Tenants themselves admit that they did not pursue the Landlords about a problem related to blinking lights. Consequently, there is no evidence that the Landlords breached any maintenance obligation with respect to electrical issues in the house.

Plumbing Issues:

44. EP said that she informed the Landlords that one of the two toilets did not work on September 18, 2019. EP said that the Landlords sent a plumber immediately, but the Tenants were told that it was a municipal issue.
45. EP said that the Landlords arranged for the city to attend to the problem, and the work was completed within 8 or 9 days.
46. I find that the Tenants have failed to prove, on a balance of probabilities, that the Landlords breached their maintenance obligation with respect to plumbing issues. The Tenants' evidence is that the plumbing issues were related to the municipality, and the Landlords ensured that the municipality fixed the problem within 8 days of the problem

being reported. Therefore, I find that the Landlords' response to the plumbing issue was timely, appropriate and effective.

Ducts:

47. EP said that the air ducts in the rental unit were dirty, and she asked the Landlords when they last cleaned the ducts. EP said that the Landlords told her they did not know when they were last cleaned.
48. EP said that she arranged to have the ducts cleaned at her own expense.
49. The Tenants did not provide sufficient evidence about what maintenance issue there was with respect to duct maintenance. I find that the Tenants have failed to prove, on a balance of probabilities, that there was a maintenance issue with respect to the ducts in the rental unit.

T1 Application:

50. It is undisputed that the Landlords have already reimbursed the Tenants for an unlawful security deposit collected at the beginning of the tenancy.
51. It is undisputed that the Tenants paid rent in full to April 30, 2020, the date the first-year term of the tenancy ended, with their last month's rent deposit applied to April 2020.
52. The Tenants allege that they could no longer live in the rental unit, and they were justified to leave abruptly, after only a few days' notice, on March 11, 2020. Therefore, they request all their rent money back for the period from March 11, 2020 to April 30, 2020, as well as the interest on the last month's rent deposit.
53. It is undisputed that the Tenants sent an email to the Landlords on February 25, 2020, to inform them that they were going to vacate by the end of February 2020. The Landlords replied that the Tenants were responsible for the rent until the end of April 2020, when the lease ended. It is undisputed that the Tenants did not return the keys until March 11, 2020.
54. Section 88 of the *Residential Tenancies Act, 2006* (the 'Act'), provides that if a tenant does not provide lawful notice, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in the notice, had the notice been given in accordance with section 47. In this case, that would mean the Tenants were required to provide notice 60 days before April 30, 2020, for termination on April 30, 2020, which was the earliest date they could lawfully end this tenancy.
55. Consequently, the Tenants were responsible for rent to the end of April 2020, unless they are able to prove, on a balance of probabilities, that the rental unit was in such a state of disrepair, and the Landlords were in such serious breach of their maintenance obligations, that the rental unit was not habitable, and the Tenants had no real choice but to move out.

56. I find that the Tenants failed to prove that the rental unit was uninhabitable. The Tenants did not produce mould tests, nor did they submit into evidence medical documentation to demonstrate the severe effect of any mould present in the basement on their health. The Tenants did not produce any documentary evidence to support their reasons for having to move out at that particular moment in March 2020 without providing sufficient notice. In fact, they had suggested moving out in September 2019, six months earlier, but chose to stay. While I acknowledge that I have determined above that the Landlords breached their maintenance obligation with respect to their remediation of mould in the rental unit, it was largely my logical inference that the mould is detrimental to health, and that the basement would not be usable, that justified my remedy for the mould problem. The Tenants did not have any documentary evidence to prove exactly how bad the mould problem was, nor how it affected their health and the health of their children on the upper floor of the rental unit. Therefore, I do not find that the Tenants proved, on a balance of probabilities, that they were justified in ending the tenancy early with insufficient notice.
57. Section 88 of the Act is limited by section 16 of the Act, that obligates the Landlords to take “reasonable steps to minimise the person’s losses.”
58. MM testified that the Landlords immediately listed the rental unit with Larose real estate as soon as the Tenants handed back the keys on March 11, 2020. She said that they were unable to secure new tenants until June 1, 2020.
59. Consequently, I find that the Landlords have satisfied the requirement of section 16 of the Act to mitigate their loss.
60. The Tenants are eligible to receive the interest on their last month’s rent deposit pursuant to subsection 106(6) of the Act, which was 2.2% in 2020, or $(2.2\% \text{ of } \$3,100.00) = \68.20 .

Remedies:

61. I have found above that the Tenants are eligible to receive a 30% rent abatement for the 12 months of their tenancy, or 30% of $\$3,100.00 = \930.00 per month. The Landlords will be ordered to reimburse the Tenants $\$11,160.00$ plus the $\$68.20$ interest owed on the last month’s rent deposit.

It is ordered that:

1. The Landlords shall pay the Tenants is $\$11,278.20$. This amount represents:
 - $\$11,160.00$ for a rent abatement for the period May 1, 2019, to April 30, 2020.
 - $\$68.20$ interest owed on the last month’s rent deposit.
 - $\$50.00$ for the cost of filing the application.
5. The Landlords shall pay the Tenants the full amount owing by December 9, 2023.

6. If the Landlords do not pay the Tenants the full amount owing by December 9, 2023, the Landlords will owe interest. This will be simple interest calculated from December 10, 2023 at 7.00% annually on the balance outstanding.

November 28, 2023

Date Issued

Nancy Morris

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.