Order under Section 31
Residential Tenancies Act, 2006

Citation: Kish v Watts, 2023 ONLTB 66624
Date: 2023-11-06
File Number: LTB-T-074476-22
LTB-T-074462-22

In the matter of: LOWER, 17 MUNRO STREET WEST
CANNINGTON ON L0E1E0

Tenants

Between: Jacob Kish
Trisha Montgomery

And

Landlord

Marsha Watts

Jacob Kish and Trisha Montgomery (the 'Tenants') applied for an order determining that Marsha Watts (the 'Landlord') entered the rental unit illegally, substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household, harassed, obstructed, coerced, threatened or interfered with the Tenants and withheld or interfered with their vital services or care services and meals in a care home. (T2- LTB-T-074476-22)

The Tenants also applied for an order determining that 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. (T6- LTB-T-074462-22)

These applications were heard by videoconference on May 17, 2022, June 9, 2023, and July 14, 2023.

The Landlord’s Legal Representative, Carrie Aylwin, the Landlord, the Tenants and the Tenants’ witness, Tawnya Montgomery, attended the hearings.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenants $5,184.75.

Background

2. The tenancy was for a 2-bedroom rental unit. The rental unit had access to a patio in the backyard. The tenancy included a parking space. Rent was $950.00/month + hydro.

3. The tenancy began February 1, 2020, and terminated November 1, 2021, pursuant to an order on consent from the Board (TEL-17642-21).

4. The Tenants filed both applications with the Board on April 10, 2021.

Illegal Entries

5. The Tenants allege that the Landlord illegally entered the rental unit on a number of occasions, mainly for the purpose of serving notices.

6. The entrance of the rental unit has two doors: one door that leads from the outside into what could be described either as a mudroom or sunporch, and then a second door that leads from this landing into the rental unit.

7. According to the Tenants, this room was not part of the original structure. The room surrounds some windows which may have originally been outside-facing windows. One of these windows looks out of the main bedroom.

8. The Tenant, Trisha Montgomery, (TM) testified that the Landlord entered the rental unit to serve a notice to enter on May 31, 2020. The Landlord allegedly entered the mudroom and put the notice next to the door leading to the rental unit.

9. TM also testified that the Landlord also entered the rental unit on July 21, 2020, to serve a notice to enter.

10. The Landlord admitted to having entered the mudroom, however the Landlord felt that the room was an extension of the entrance to the rental unit and not the part of the rental unit itself, in the same way one might view the front porch of a house.

11. Both TM and Jacob Kish (JK) had submitted photographic evidence showing the two doors in question. The door leading into the rental unit from the mudroom/porch had a knob lock. The door leading from the “mudroom/porch” to the outside had a simple hook/eyelet closing system. The photos also showed that the Tenants were using the room for storage and for placing boots and coats.

Analysis

12. I find that based on the evidence before me, the rental unit begins at the door leading to the outside from the mudroom. The Tenants had been using the space since the beginning of their tenancy. There was no evidence provided by the Landlord stating that this “mudroom/porch” area was not part of the rental unit, despite this claim being part of the Tenants’ applications.

13. Furthermore, the Landlord was aware that the Tenants were using the area for storage of their own property, and with that comes a reasonable expectation of privacy and security. Furthermore, the exterior door has a hook lock on it, which suggests that the door is not meant to be used in the same manner as a front porch entrance.

14. Therefore, I find that section 27 applies to the entry into the mudroom.

15. Pursuant to section 27 of the Act, a Landlord shall give written notice of entry at least 24 hours before the intended entry. Ironically, by entering the rental unit to post these two notices of entry on May 31 and July 21, the Landlord breached the section of the Act that she was attempting to act in accordance with.

16. I am satisfied, based on the evidence before me, that the Landlord breached section 27 of the Act on May 31, and July 21, 2021.

17. I find that although the Landlord did breach the Act in this case, I am not satisfied that the entries caused any harm, and that the breaches are based on technicalities at best.

18. Therefore, I find that the Landlord shall pay $100.00 for each illegal entry, or $200.00 total.

Snow Removal

Evidence

19. The Tenants allege that on November 23, 2020, the Landlord informed the Tenants that snow removal was the Tenants' responsibility.

20. Both Tenants gave testimony that it cost the Tenants $750.00 out-of-pocket to hire a snow removal company remove the snow from the property throughout the winter from November 2020 to March 2021.

21. The JK presented a paid invoice from the snow removal company for services rendered for a total of $750.00.

22. Under cross-examination, JK was asked if the Tenants withheld the $750.00 from their rent. The response was that they had withheld $750.00 from their rent to pay for the snow removal. When asked if the Tenants ever did pay any of the rent they withheld from the Landlord, JK responded that they had not.

23. The Landlord testified that when the tenancy terminated, there was a substantial amount of rent in arrears, however, the Landlord chose not to proceed with her own action against the Tenants, in part, because the Landlord recognized that there were some expenses that the Tenants bore and should be compensated for. This included the $750.00 claim the Tenants initially made to the Landlord that they successfully withheld. Under cross-examination, the Landlord admitted to not having informed the Tenants that she was accepting the $750.00 charge for snow removal.

Analysis

24. Pursuant to section 20(1) of the Act, the landlord is responsible for the maintenance of the rental unit and the rental complex. This includes seasonal upkeep such as snow removal.

25. I am satisfied that the Tenants paid $750.00 to a snow removal company to clear the snow for their side of the rental complex.

26. Pursuant to *Marineland of Canada Inc. v. Olsen*, 2011 ONSC 6522 (CanLII), a rent abatement owing to the Tenant can be offset against any rent arrears owing to the Landlord.

27. At the hearing, the Tenants admitted to withholding rent. This is acknowledgement of rent being owed. If the Tenants had not withheld that rent, the Landlord would definitely have been liable for the payment of snow removal.

28. However, based on the evidence before me, I am satisfied that the Tenants were already compensated for their out-of-pocket expenses when they told the Landlord that they were withholding $750.00 from their rent for the out-of-pocket expense.

29. Therefore, I find that there is no award for reimbursement of the $750.00 out-of-pocket expenses for snow removal, because the Tenants were compensated when the Landlord offset the cost against rent owed. Therefore, the claim for snow removal is dismissed.

Thermostat

Evidence

30. The Tenants testified that the thermostat in the rental unit was not working properly. The Tenants notified the Landlord of this issue on May 15, 2020.

31. JK testified that because the thermostat was not working, there were times where the temperatures in the rental unit were around 15-16C, which is 5-6 degrees lower than room temperature.

32. On October 15, 2020, an electrician came to the rental unit and replaced the thermostat. However, in the process, the electrician did not fill in the hole cut out of the drywall. This allowed the wiring leading to the thermostat to be exposed. The Tenants submitted a picture, taken themselves, which showed a substantial sized hole with wires visible within the hole. It should be noted that the wire connections were capped and not exposing the “live” ends of the wiring leading to the thermostat.

33. As of November 30, 2020, the Tenants took it upon themselves to repair the hole in the drywall.

34. The Landlord testified that due to COVID, it was difficult to find an electrician to come in and install the thermostat.

35. The Landlord testified that the electrician who installed the thermostat was a licensed electrician and would not have left live wires exposed. The Landlord did admit to not having entered the rental unit to confirm if the new thermostat had been replaced properly and relied on the Tenants updates regarding this issue. In the end, the Landlord did not enter the unit to investigate the Tenants’ complaints.

Analysis

36. 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. In this case, did the Landlord act reasonably in replacing the thermostat in a timely manner, and then fixing the hole left behind after the thermostat was replaced?

37. The Landlord did not contest the fact that she was made aware of the thermostat on May 15, 2020. However, it took 5 months for the thermostat to be replaced. The Landlord had testified that she had difficulty finding an electrician to come make this repair. However, no evidence was presented that showed that the Landlord had reached out to an electrician in a timely manner.

38. Based on that, I find that the five months it took for the thermostat to be replaced to be excessive. Based on this conclusion, I find that the Landlord did not act in a reasonable amount of time to repair or replace the thermostat.

39. Furthermore, I find that the job of replacing the thermostat was not completed until the Tenants themselves finished the job by securing the wires behind drywall and refinishing the wall.

40. Pursuant to section 22 of the Act, a landlord shall not substantially interfere with the reasonable enjoyment of the rental unit or complex.

41. I find that a lack of proper control over the thermostat from May 15, 2020, to October 15, 2020, caused periods of time where the temperature would drop below 20C, which is the minimum temperature that a rental unit shall be maintained at, as according to the municipal bylaws. I find that these temperature fluctuations would substantially interfere with the Tenants' reasonable enjoyment of the rental unit. Therefore, I find that the Tenant is entitled to a rent abatement for substantial interference as well as for the Landlord's failure to maintain the rental unit.

42. Therefore, I find a rent abatement of $500.00 to be reasonable under the circumstances.

Deck

Evidence

43. The Tenants stated that the exterior deck connected to their rental unit was left in disrepair and that due to the Landlord's failure to address the problem, the Tenants had no other option than to make the repairs themselves.

44. JK testified that the wood for the steps and the boards making up the deck were deteriorating due to age and improper upkeep. Some of the boards were rotting and becoming a hazard.

45. JK also testified that the railing had been improperly installed. The railings were attached to the frame of the deck at 26 feet from each connection point. JK testified that according to the building code, railings should be connected to the frame of the deck every 8 feet.

46. The Tenants presented photos to corroborate their claims, including the rotting boards, the damaged steps to the deck, and the railing.

47. The Tenants informed the Landlord of these issues on May 15, 2020, however, the Tenants also claimed that the Landlord was likely aware of this issue since she purchased the property in April 2020.

48. JK testified that on December 2, 2020, he had repaired the steps leading to the deck himself. JK submitted photos to corroborate the replacement of the steps.

49. The Tenant sent an invoice to the Landlord for $750.00 for installing the stairs and making repairs to the four posts of the deck.

50. The Landlord testified that she had difficulty finding a contractor to make the repairs. In 2020 there was a lumber shortage, in part, due to the COVID crisis. The contractor that had been hired stated that he was unable to secure any lumber to make the repairs. By the time the lumber became available, the contractor was no longer able to provide service to the Landlord due to new employment demands elsewhere. The Landlord submitted email correspondence between this contractor and the Landlord to corroborate this testimony.

51. The Landlord testified that she approached other contractors, but they all declined the work due to the small scale of the project and lack of time.

Analysis

52. Pursuant to 20(1) of the Act, the Landlord is responsible for the maintenance and repair of the rental unit and the complex.

53. I find that the Landlord did breach section 20(1) of the Act. Although the Landlord presented evidence of having had one contractor prepared to come in to make repairs to the deck, only for that contractor to cancel the arrangement, there was no evidence presented showing that the Landlord attempted to contact other contractors. Furthermore, the correspondence from the contractor stated that he could not proceed because of a lumber shortage from his supplier. There was no evidence that the contractor went to another supplier or that the Landlord started to look for another contractor who either had a different supplier, or one that was not bound to any supply agreement.

54. Furthermore, the Tenant was able to find lumber, and repair the steps.

55. The Tenants have claimed $750.00 for the removal of the old steps and new steps being built. Evidence of this amount was submitted as an invoice JK sent to the Landlord regarding this repair.

56. I find that the Tenants' claim for $750.00 in materials and labour is reasonable under the circumstances.

57. Furthermore, I find that the Tenants are entitled to a rent abatement of $400.00 for the Landlord's failure to properly maintain the deck.

58. Therefore, the Landlord shall pay the Tenants a total of $1,150.00 based on the claims regarding the deck.

Basement

Evidence

59. The basement in the rental unit is an unfinished basement where the washer/dryer and storage are available to the Tenants. The basement area is included in the Tenants' lease.

60. JK testified that the Landlord had begun renovations to the rental complex. Part of the renovations that occurred was the replacement of the eavestroughs. The Landlord had testified that the original eavestroughs were PVC piping cut in half and were not adequate for the Landlord's needs.

61. JK testified that on May 15, 2020, a flood was discovered in the basement.

62. Both Tenants had testified that when the flood was reported to the Landlord, the Landlord and her son-in-law entered the basement to inspect the flood damage. The Landlord, in her testimony, stated that the only things stored in the basement were stored in garbage bags or plastic containers.

63. The Landlord testified that she did not see any standing water in the basement.

64. Another leak occurred June 24, 2020, this time from a malfunctioning washing machine.

65. The washing machine was replaced July 4, 2020.

66. JK testified that on August 28, 2020, a heavy rain event caused another flood in the basement. JK testified that there was over 2 inches of water in the basement after the event. JK testified that the flooding caused some damage to some of the property stored in the basement.

67. A carpet was in the basement that covered an area of 10 feet by 12 feet.

68. Both parties agreed that the carpet was likely over 25 years old.

69. In early September 2020, the flood water had taken its toll on the carpet and the carpet began to smell of mold and sewage. The Tenants informed the Landlord of the issue, however, due to the Landlord's lack of response, ended up removing the carpet themselves.

70. JK testified that some minor flooding would continue to occur up until the termination of the tenancy.

71. JK hypothesized that the flood may have occurred from water pooling at the foundation due to the lack of eavestroughs on the roof, however no evidence was presented to support that hypothesis.

72. The Landlord testified that she had some contractors enter the basement in July 2021, however none of the contractors were qualified to make the kind of basement repairs required to fix the leaking in the basement.

73. Under cross-examination, the Landlord admitted to not having investigated getting a sump pump installed in the basement to help control potential future floods. Also, the Landlord stated under cross-examination that she was told by the contractors that excavation of the foundation was not recommended due to the fragility of the foundation.

74. At the hearing, the Landlord stated that she had moved into the rental unit after the Tenants vacated. The Landlord testified that she has not had any issues of flooding in the basement. The Landlord also stated that the use of a dehumidifier has prevented any further smells of dampness in the basement.

75. The Tenants claimed that a substantial amount of property was damaged by the initial flooding in May 2020 as well as June 2020. The Tenants also stated that the smell of mold in the basement affected the Tenants' health.

Analysis

76. Pursuant to *McQuestion v. Schneider* 1975 CanLII 764 (ON CA), [1975] O.J. No. 2279 ("*McQuestion*"), the Court of Appeal addressed a landlord's legal responsibility for damaging events which were not reasonably foreseeable. At para. 5 thereof, in interpreting predecessor legislation to the Act, it opined:

> "In my view s.96(1) [of the predecessor legislation] does not impose absolute liability upon a landlord for any injuries or damages that may be caused by a latent defect, of which the landlord had no knowledge nor could reasonably have expected to have had such knowledge. To alter the law so drastically as to impose strict liability on a landlord, regardless of his knowledge or constructive knowledge would require much more precise language.

77. Neither party submitted any evidence that the previous landlord had experienced any flooding in the basement, or if the Landlord had been informed by the former owner that the basement was prone to flooding. Therefore, I have no reason to believe that the Landlord could have reasonably foreseen the flooding issue that occurred in May 2020.

78. Based on the evidence before me, I am not satisfied that the flooding occurred due to the Landlord's removal of the eavestroughs from the complex. I find that, outside of this hypothesis, no evidence, such as an engineering report from a third party, was presented to support this claim.

79. I also find it unlikely that the Landlord could have predicted the flood caused by the malfunctioning washing machine. There was no evidence presented at the hearing that showed that the Landlord was made aware of any issues with the washing machine prior to the flooding.

80. I am not satisfied that the Landlord acted in accordance with section 20(1) of the Act. The Landlord had a duty to act when the floods occurred. This includes having people attend the unit to clear flood waters and any other sanitary follow-up that may be required. Instead, the Landlord left any clean-up, including removal of the water-damaged carpet in the basement, up to the Tenants.

81. I find that the Landlord failed to take any meaningful steps to correct the flooding issues that came from the foundation, and as such, breached section 20(1) of the Act.

82. I find that the issue at hand is not just the lack of action in dealing with the clean-up from the flooding, but the fact that the Landlord failed to take steps to prevent another flooding issue. I find that this would also substantially interfere with the Tenants' reasonable enjoyment of their rental unit.

83. Therefore, I find that because the Landlord failed to address the flooding issues, either the clean-up after the floods, or the fact that no steps were taken to prevent any new floods from occurring, a 10% rent abatement10% rent abatement from May 2020 until October 2021, or $1,710.00, is reasonable under the circumstances.

84. However, I find that the Tenants did not present sufficient evidence to show that their property had suffered any substantial damage due to any subsequent flooding. Therefore, no order for damaged property will be made regarding the flooding.

Plastic On Windows

Evidence

85. On August 14, 2020, a company attended the rental complex to begin preparing the complex for exterior painting. The company fastened plastic drop sheets on all of the windows, thus sealing them.

86. After attending the jobsite for a couple of days, the painting company did not return to the jobsite to complete the painting.

87. As a result of the workers not returning to complete the job, the plastic stayed on the windows until November 2020, with some pieces of plastic on the upper part of the building stayed up until March 2021. The plastic was not removed, but the weather elements caused the plastic to deteriorate and fall off the building.

88. The Tenants testified that the plastic on the building made the place look like "a haunted house" from the outside and was an eyesore. The plastic also restricted air circulation throughout the rental unit. The noise of the plastic flapping in the wind would also be disruptive to the Tenants.

89. The Tenants presented photos of the plastic on the building. The photos showed a large amount of plastic placed over top of windows and other areas of the exterior of the rental complex. The plastic appears to be held to the building with painter's tape what appears to be gaffer's tape. The sheets of plastic were not tightly fastened and on the Tenants' rental unit, appears not to be fastened very well to the bottom.

90. The Tenants are seeking a rent abatement for the Landlord's failure to maintain the rental unit/complex and for substantial interference to the reasonable enjoyment of the rental unit due to the Landlord's failure to have the plastic removed from the complex.

91. The Landlord testified that the Tenants may have called the labour board or a jobsite inspection agency to inspect the workplace, and the body decided that the place was unsafe to work. The Landlord also testified that the Tenants may have harassed the workers who were to come and paint the exterior, so they did not come back.

92. The Tenants denied either having called a labour board or employment standards inspectors to the rental complex and denied having harassed any of the workers.

Analysis

93. Based on the evidence before me, I am satisfied that the Landlord failed to maintain the rental unit by failing to remove the plastic from the exterior of the complex when it became obvious that the painters were not going to complete the job.

94. I am also satisfied that the noise created by the plastic blowing in the wind, the restriction of airflow, and the aesthetics of the plastic being draped over the complex, and watching it deteriorate due to wind, rain and snow would substantially interfere with the reasonable enjoyment of the rental unit.

95. Since this a substantial interference with the reasonable enjoyment of a rental unit based on the Landlord's maintenance of the rental unit or complex, the Board must consider section 8 of *O. Reg. 516/06* (the "*Regulations*").

96. Pursuant to section 8(3)(b) of the Regulations, the Board shall not determine that interference was substantial unless the interference was unreasonable in the circumstances.

97. Section 8(4) of the Regulations states the conditions in which, if the Landlord has met all of them, then the Board cannot find that the Landlord substantially interfered with the Tenants. Condition #9 of section 8(4) states "The duration of the work was reasonable in the circumstances."

98. Outside of putting plastic on the windows and other area of the exterior of the complex, the painting was never completed. Therefore, the duration of the work was unreasonable under the circumstances.

99. Section 8(5) of the Regulations states that the Board, in awarding any rent abatement, must consider if the Tenants had any responsibility for any undue delay in carrying out their work.

100. I am not satisfied by the Landlord's evidence that the Tenants caused the painters to abandon the jobsite. I find that the allegations of harassment are based on speculation, and if there was evidence of this, then one of the painters should have been brought before the Board to give testimony of the alleged harassment.

101. Furthermore, based on the evidence before me, I am not satisfied that the Tenants called any form of employment standards inspectors to the jobsite. However, even if they did notify an inspector, the site would have been shut down because the inspectors determine whether a company complies with the laws and safety standards that govern their industry, which, to clarify, is the responsibility of the company owner, and not the complainant.

102. Based on the evidence before me, I find that a 15% rent abatement from August 14, 2020, until November 30, 2020, or $498.75 is reasonable under the circumstances.

103. Therefore, the Landlord shall pay the Tenants $498.74 for failing to remove the plastic from the windows in a timely manner.

Exterior Door

Evidence

104. The Tenants testified that there were two issues with the exterior entrance door: the door would not properly latch, and there was a gap at the bottom of the door that was large enough to allow in significant drafts into the rental unit.

105. JK testified that the door would not latch or stay closed. The failure of the door to close properly was a security concern. JK testified that the hinges holding the door into the frame were held with drywall screws which do not have the strength to properly support an exterior door.

106. The Tenants testified that the Landlord was notified of this issue on May 15, 2020.

107. JK testified that he removed the old weatherstripping form the door on December 1, 2020, and replaced it with new weatherstripping. The Tenant claims that the purchase of the new weatherstripping, the labour to remove the old weatherstripping and to replace it with new weatherstripping was $220.00.

108. The Tenants stated that the Landlord fixed the entrance door on December 3, 2020.

109. The Landlord did not give any evidence that contradicted the Tenants' testimony.

Analysis

110. Based on the evidence before me, I am satisfied that the Landlord was notified of the door issues on May 15, 2020. I also find that the door was repaired December 3, 2020.

111. I am not satisfied that the repairs were made in a reasonable amount of time. I find the fact that it took seven months to make such relatively minor repairs to be excessive.

112. Section 16 of the Act states:

> 16 When a landlord or a tenant becomes liable to pay any amount as a result of a breach of a tenancy agreement, the person entitled to claim the amount has a duty to take reasonable steps to minimize the person's losses.

113. I find that although the Landlord should have made the repairs to the door, it is also clear that the Tenant, being in the construction industry himself, had the ability to mitigate the cold drafts coming in from the gap and the ability to fix the door himself, and thus, minimize any losses.

114. Based on this evidence, I find that a lump-sum rent abatement of $100.00 is reasonable under the circumstances. I also find that the Tenants are owed the $220.00 the Tenants claimed as labour and out of pocket expenses for replacing the weatherstripping on the door.

Landscaping

Evidence

115. The Tenants testified that the Landlord failed to maintain the landscape, such as keeping the lawn trimmed, up until June 24, 2021, when the municipality ordered the Landlord to mow the lawn.

116. The Tenant, Trisha Montgomery (TM) testified that the Landlord did not mow the lawn or engage in any form of lawn maintenance from the time she purchased the building in April 2020 until ordered to do so by the municipality on June 24, 2021. After that date, the Landlord hired a groundskeeping company to keep the lawn trimmed.

117. TM testified that the Landlord used a pesticide on the lawn without giving any notice that pesticides were to be used. TM's only evidence of a pesticide being used on the property were "wet spray marks".

118. TM testified that the excess pollen and insects from the untrimmed lawn caused some discomfort to the Tenants. Furthermore, the lack of maintenance to the lawn was an eyesore to the whole complex.

119. The Landlord testified that she had tried to maintain the property in the past but felt intimidated by the Tenants. The Landlord testified that the Tenants would approach the Landlord about maintenance issues in an angry, and intimidating manner. Also, if the Tenants were not approaching her, she felt that they were glaring at her.

120. The Tenants denied having intimidated the Landlord, however, did admit to becoming frustrated with the Landlord's inaction on multiple maintenance issues.

121. The Landlord did not admit to receiving an order from the municipality to bring the property into accordance with property standards, however she did admit to having the lawn mowed on June 24, 2021, and every other week henceforth.

Analysis

122. I find that allowing a lawn to grow unchecked for a period of over one year is a breach of section 20(1) of the Act.

123. Although the Landlord stated that she felt intimidated by the Tenants, this still did not absolve of her responsibility to maintain the rental complex. The Landlord had many options to deal with any intimidation: intimidation is a form of substantial interference to a landlord's legal rights and privileges, therefore an N5 could have been served to the Tenants based on this allegation. The Landlord could have also done what she eventually did on June 24, 2021, and hire a lawn maintenance company.

124. Based on the evidence before me, I am not satisfied that the Tenants intimidated the Landlord out of maintaining the landscaping at the rental unit.

125. Based on the evidence before me, I am not satisfied that the Tenants' claim that the use of a pesticide could be considered a substantial interference of their reasonable enjoyment of the rental unit. Furthermore, I find TM's evidence of pesticide use to be speculative. There are a lot of reasons why wet marks could be seen on a lawn.

126. I am satisfied that the unkempt lawn from May 2020 until June 2021 was esthetically unpleasing and could be considered a substantial interference with the reasonable enjoyment of the rental unit or complex. Having said that, I am not satisfied that the Tenants suffered any allergic reactions or any ill-health due to the unkempt lawn.

127. I find that a total rent abatement of $200.00 for the breaches of sections 20(1) and 22 of the Act to be reasonable under the circumstances.

128. Therefore, the Landlord shall pay a rent abatement of $200.00 to the Tenants for failing to maintain the landscaping from May 2020 until June 2021.

Interior Doors

Evidence

129. The Tenants testified that a closet door and a pantry door required repair or replacement. The Tenants testified that they informed the Landlord of the issue in April 2020, and again in June 2020, of the issues. The Tenants testified that the issue was not dealt with as of the termination of the tenancy.

130. The Tenants also testified that the second bedroom was missing a door. The issue had been reported to the Landlord on May 15, 2020. The Landlord did not replace the door. The Tenants installed a door on December 1, 2020. The Tenants incurred a $150.00 out-of-pocket expense to purchase the bedroom door to install, and $110.00 for labour.

131. JK testified that the pantry door was a bi-fold door. The pantry door had not been properly installed and was not attached properly into the door frame. The door was also missing a guidewheel to allow the door to open and close properly.

132. JK testified that the closet located in the master bedroom did not have doors on it. The doors were to also be a sliding door. The closet had also been missing a hanger rod, or shelves, however, the Tenants installed these themselves. The Tenants have not made a claim for the replacement of the shelves or the hangar rod in this application.

133. JK testified that on May 15, 2020, the Tenants brought the disrepair of the door leading to the second bedroom to the attention of the Landlord. The Tenants stated that the remnants of an old door were still there: mainly a piece of wood and the hinges were intact. However, without a proper door there could be no expectation of privacy. A photo was submitted of the second bedroom, which appeared to be being used as a storage room. There was no door shown in the photo.

134. The Landlord testified that it was not necessary to put a door on the second bedroom, because, as a landlord she was not required to. The Landlord's rationale was based on the idea that the room was not technically a bedroom. The Landlord stated that the room could not be considered a bedroom because it did not have a closet. Since there was no bedroom, there was no reason for privacy in the room.

135. The Landlord did not make any submissions regarding the closet door or the pantry door.

136. The Tenants are seeking a rent abatement for the disrepair or the missing three doors, and out-of-pocket expenses and compensation for labour for installing the second bedroom door themselves.

Analysis

137. Based on the evidence before me, I am satisfied that the Landlord failed to comply with the Act by not repairing or replacing the doors for the pantry and the master bedroom closet.

138. I find that a 1% rent abatement is reasonable for the lack of repair to both the pantry door and the closet door from May 2020 until October 2021, or $171.00.

139. I am not satisfied on the Landlord's evidence that the second bedroom was not a bedroom, based on her definition. Pursuant to paragraph 3.58 of the *Township of Brock Property Standards By-Law,* the only qualifications for a room to be considered used for sleeping is that it has a minimum width of two meters and seven square meters of floor area. The bylaws do not state that a closet is a prerequisite for a room to be considered a

bedroom. Judging from the photo submitted as evidence, this room easily meets the criteria of being considered a bedroom.

140. Based on the evidence before me, I am satisfied that the Landlord breached section 20(1) of the Act by failing to replace the door for the second bedroom. I am satisfied that the Tenants incurred an out-of-pocket expense in purchasing the door and put in their own labour to replace the door themselves.

141. I find that a lump sum rent abatement of $150.00 for the Tenants' lack of a bedroom door from May to November 2020 is reasonable. Furthermore, I find that the Landlord shall also pay the Tenants $260.00 for the purchase and installation of the second bedroom door.

142. Therefore, the Landlord shall pay the Tenants a total of $410.00 regarding the issues regarding the three interior doors.

Driveway Maintenance

Evidence

143. JK testified that the driveway that was to be used by the Tenants was not properly maintained.

144. JK testified that the driveway had potholes and had buckled and created a large hump.

145. JK testified that the lack of the maintenance of the driveway could have caused damage to their vehicles. No evidence of any damage to the vehicles was presented at the hearing.

146. JK testified that the driveway was in the same condition when the tenancy ended, and no repairs had been executed.

147. The Landlord did not make any submissions regarding issues with the driveway.

Analysis

148. Based on the evidence before me, I find that the driveway was not properly maintained. This lack of maintenance is a breach of section 20(1) of the Act.

149. I am not satisfied that the upkeep of the driveway formed any major concerns though. No evidence of damage to any vehicles was presented, nor any evidence suggesting that the driveway was unusable.

150. Therefore, I find a lump sum rent abatement of $100.00 to be reasonable under the circumstances.

Harassment

Evidence

151. TM testified that on April 18, 2020, the Landlord came to the Tenants' door to tell them that she planned on moving into the Tenants' rental unit.

152. TM testified that the Landlord served an N12- Notice to Terminate the Tenancy for Landlord's Own Use on May 30, 2020.

153. TM testified that the Landlord began harassing the Tenants by asking them on June 12 and 13, 2020, if they were planning on moving out soon.

154. TM testified that the Landlord wanted to meet with the Tenants on June 18, 2020, to talk about moving out. TM stated that the Tenants declined the meeting invitation.

155. TM testified that the Landlord stood outside the Tenants' window on June 21, 2020, at 5pm.

156. TM testified that the Landlord gave the Tenants a notice to enter their rental unit on June 23, 2020. TM stated that she felt that there was no reason for the entry and that the Landlord was just badgering the Tenants.

157. TM testified that a cash offer was made to the Tenant for them to leave on July 7, 2020. The Tenants turned down the offer on July 10, 2020.

158. TM testified that the Landlord served a new N12 on the Tenants on August 11, 2020, with a date of termination of January 31, 2021.

159. The Landlord testified that her intention was to purchase the rental complex to give herself and her a family a more central place to live. When purchasing the property, it had always been her intention to eventually move into the unit.

160. The Landlord testified that when she purchased the property, she was carrying two mortgages and could not afford to carry both properties. The Landlord wanted to move into the rental complex to be closer to her family. Some of her family moved into the rental complex shortly after she purchased the building, however the Landlord wanted to take possession of the rental unit for her own residence.

161. After the tenancy terminated on November 1, 2021, the Landlord moved into the rental unit. As of the hearing date, the Landlord is still residing in the rental unit.

162. The Landlord denies having harassed the Tenants. The Landlord maintains that she was acting within her legal rights. She stated that she had served two N12s prior to the one that she served August 11, 2020, because the two previous N12s contained flaws which would have rendered the notices invalid had enforcement of these notices had been attempted at a hearing.

Analysis

163. Section 23 of the Act states, "A landlord shall not harass, obstruct, coerce, threaten, or interfere with a tenant."

164. Although the term “harassment” is not defined in the Act, Board Interpretation Guideline 6, *Tenant Rights*, summarizes the Board’s jurisprudence and notes that the Board often applies the following definition: “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.”

165. Based on the evidence before me, there has been no course of conduct that could be construed as a form of behaviour that ought reasonably be known to be unwelcome.

166. I am not satisfied that having served three N12s to the Tenants constitutes harassment, as it has been defined. Rather, I find that the Landlord was acting within her legal rights as a landlord to serve these notices, and although she served three notices, took the initiative to serve a corrected N12 when she became aware of the defects on the previous two notices.

167. When the Tenants gave evidence about the Landlord asking if they were planning on moving out of the rental on June 12th and 13th, the Tenants did not state what their response was to the Landlord.

168. If the Tenants had given evidence that they said that they had informed the Landlord that they were going to exercise their right to have the matter brought before the Board, then there would have been a clear response that required no more questions. However, no evidence was given that the Tenants did respond. Therefore, I find it reasonable that the Landlord would ask the Tenants regularly.

169. The only evidence given that the Tenants had given a definitive response to the Landlord’s question was July 10, 2020, three days after they had a cash offer made for them to vacate the rental unit. It was at this point that the Landlord was informed that the Tenants intend on enforcing their right to have the matter brought before the Board.

170. The Tenants did not give any evidence that the Landlord harassed the Tenants after July 10, 2020.

171. Based on the evidence before me, I am not satisfied that the Landlord harassed the Tenants. Therefore, the claim for harassment is dismissed.

Substantial Interference Caused by Construction/Maintenance

Evidence

172. In early June 2020, the Landlord hired contractors to replace the windows in an adjacent building from the Tenants’ rental unit.

173. TM testified that the construction work that occurred next door caused a significant amount of dust to accumulate on the Tenants’ cars. The construction company, in the act of working next door, caused damage to the back deck. The workers also damaged the Tenants’ plants which were located next to the building. TM submitted photos to support her testimony.

174. TM testified that the Tenants were told not to use their parking spot from 8am to 8pm from Tuesday September 1, 2020, until Friday, September 4, 2020, to allow the painters to use lifts to prepare the rental complex for painting. The notice was given August 30, 2020, or 2 days prior to when the painters were to attend. The Tenants found alternate parking without any cost to them.

175. Both parties, at the hearing, confirmed that parking was part of the tenancy agreement.

176. TM testified that the painters had cancelled work at the jobsite (the rental complex) on September 3 and 4, 2020 with the Landlord, thus making it unnecessary for the Tenants to park off of the property. However, the Tenants were not informed by the Landlord that they did not need to park off the property.

177. The Landlord made no submissions regarding these issues listed in this section.

Analysis

178. I found that the photos of the Tenants' vehicles showed that there was dust on their vehicles. However, the Tenants did not give any evidence of any damages caused by the dust, such as scratches on the paint, or mechanical issues. Furthermore, I found that the amount of dust shown on the pictures was not a substantial amount.

179. I find that the dust may have been an inconvenience, however I am not satisfied, based on the evidence before me, that it caused a substantial interference to the reasonable enjoyment of the rental unit or complex.

180. The Tenants submitted that there was no need for the Tenants to park off of the property for two days because the Landlord failed to inform them that the painters were not coming for two of those days.

181. According to the lease agreement, the Tenants pay a monthly rent, in part, to be able to park their vehicles on the property. However, the Tenants were not able to use the parking for 12 hours a day for four days. Furthermore, the Tenants submitted that there was no need for the Tenants to park off of the property for two of those days because the Landlord failed to inform them that the painters were not coming to the complex to continue painting.

182. Pursuant to section 8 of the Regulations, even when there is some substantial interference, because the interference is created by the maintenance/repair issue, the Board must consider if the Landlord gave sufficient notice to the Tenants to move their vehicles.

183. I find that one day of notice is not the amount of notice required under section 8(4) of the Regulations. According to Section 8(4) of the Regulations, 60 days notice is required.

184. Furthermore, section 8(4) of the Regulations states that if there is a significant change in the information provided in the notice, that the Tenants be notified of the change. I find that the Tenants were not informed that the painters were no longer attending the rental complex.

185. Therefore, I find that a rent abatement for substantial interference is warranted.

186. However, the Tenants did not provide any evidence of any undue hardship to their cars for not being able to park on the rental complex property for those 4 days, therefore, I find that a $100.00 rent abatement to be appropriate under the circumstances.

General Damages

187. The Tenants are asking for $10,000.00 in general damages.

188. General damages are awarded when a party can prove that some pain and suffering had occurred as a result of the other side's actions.

189. I find that the abatement of rent and awards for labour and out-of-pocket expenses are adequate remedies to compensate the Tenants, therefore the Tenants' claim for general repairs is denied.

Administrative Fines

190. The Tenants is seeking that an administrative fine be ordered against the Landlord.

191. The Board's *Interpretation Guideline 16* entitled Administrative Fines addresses when the Board generally imposes fines:

> An administrative fine is a remedy to be used by the Board to encourage compliance with the Residential Tenancies Act, 2006 (the "RTA"), and to deter landlords from engaging in similar activity in the future. This remedy is not normally imposed unless a landlord has shown a blatant disregard for the RTA and other remedies will not provide adequate deterrence and compliance.

192. I do not find that this is an appropriate case for an administrative fine as the remedies awarded below should provide sufficient deterrence to the Landlord. The Tenants' request for an administrative fine is denied.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is $5,184.75. This amount represents:

   - $3,358.75 for a rent abatement.
   - $ 1,730.00 for the combined out-of-pocket expenses and costs of labour that the Tenants have incurred, and
   - $96.00 for the cost of filing both applications.

2. The Landlord shall pay the Tenant the full amount owing by November 21, 2023.

3. If the Landlord does not pay the Tenant the full amount owing by November 21, 2023, the Landlord will owe interest. This will be simple interest calculated from November 22, 2023, at 7.00% annually on the balance outstanding.

4. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

November 6, 2023
Date Issued

Robert Brown
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.