



Order under Subsection 30 Residential Tenancies Act, 2006

Citation: Ursache v Yohanna, 2023 ONLTB 70924

Date: 2023-11-03

File Number: LTB-T-018059-22

In the matter of: 476 LOLITA GDNS
MISSISSAUGA ON L5A2B2

Between: Doina Ursache Tenant

And

Henry Yohanna Landlord

Doina Ursache (the 'Tenant') applied for an order determining that Henry Yohanna (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.

This application was heard by videoconference on October 4, 2023.

The Landlord, the Tenant, and the Tenant's representative Michelle Mont attended the hearing.

Determinations:

1. As explained below, the Tenant proved on a balance of probabilities that the Landlord breached his maintenance obligations under the Act. Therefore, the Landlord must pay the Tenant \$6,501.98 for a rent abatement and costs.
2. The Tenant moved into the rental unit on October 1, 2017 and vacated April 30, 2022. The rental unit is a single-family home.

Limitation Period

3. Much of the Tenant's application concerns maintenance issues that existed throughout her 5-year tenancy but were never resolved. However, section 29(2) of the Act establishes that

no application regarding a landlord's breach of their maintenance obligations can be made more than one year after the conduct giving rise to the application occurred. I note that there is no similar limitation on conduct going forward from the date an application is filed.

4. This application was filed March 29, 2022. As such I can consider whether a breach occurred and whether a remedy is appropriate for the period between March 29, 2021 and the day the Tenant vacated April 30, 2022. I will however review the entire history of the maintenance issues for context.

Holes in the Roof – The Evidence

5. The Tenant testified that since 2020 there were three holes in the roof of the rental unit. One of the holes was over the kitchen, one was over a bedroom, and one was over the garage. Photographs taken on September 2, 2021 show multiple extremely large holes in the roof.
6. The Landlord testified that there were holes in the rental unit roof during the tenancy. The Landlord testified that the holes were caused because the Tenant was never home, and that someone needed to be on the property to chase animals away who were causing the holes. In an undated email the Landlord tells the Tenant that maintaining the premises falls on the Tenant.
7. On September 10, 2021 the City of Mississauga issued a property standards order which required the Landlord to repair all holes and any other deficiencies on the roof in a workman like manner by October 25, 2021. Despite the work order, notes from a city inspector state that one hole remained during a follow up inspection in January 2022. The City Inspector contacted the Landlord about the remaining hole and the Landlord responded that the hole was new as he fixed the previous ones. The Tenant testified that is not true and the hole that remained was an old hole that the Landlord never fixed.
8. The Landlord testified that after the Tenant vacated he installed a steel roof over the existing roof to address the problem.

Racoons and Squirrels in the Attic – The Evidence

9. The Tenant testified that there were racoons and squirrels living in the attic throughout her tenancy. The Tenant testified that at nighttime she would hear the animals screeching and it scared her children because they feared the animals would come through the roof. On January 1, 2020 the Tenant sent the Landlord an email notifying him about the problem:

“This is an emergency!!! The last few nights we are having really bad noises coming from the attic. My kids are scared... They are banging and scratching inside the attic. It's terrible. At first, I thought it was the wind or something but now is clear sound of scratching.

10. The Landlord did not address the problem and as such the Tenant hired a company who remove two racoons from the attic. This happened on January 21, 2020. Unfortunately, the Tenant testified that this did not resolve the issue and new racoons moved into the attic.

11. On August 12, 2020 the Landlord sent the Tenant the following email about the racoon issue:

“... I am sorry you are in the same trouble as before. In my last email re this, I warned you the animals will come again and again if you believe the GUY who got them out the first time, saying to you they came through the chimney which is a flat LIE cause chimneys don't have access to the attic. It has been the tenant's decision to want to live in detached house and not in apartment and I think he or she should know a few things about homes and how things work. If you don't heed my advice as how to deal with trades people re this there is no budget for this. Your rent is already at least \$500 per month below average. If I had to deal with the same problem, I would make it conditional on not only on chasing animals out but also fixing entry point most likely the fascia before “paying your bill”...”

12. In an email dated September 3, 2020 the Landlord tells the Tenant to have her children yell at the squirrels with their arms in the air and that if they do this the squirrels might understand that they are not welcome.

13. As stated previously the City of Mississauga issued a work order on September 10, 2021 requiring the Landlord to close up the holes in the rental unit roof. The Landlord did close some of the existing holes, however this created a new problem. On February 17, 2022 the Tenant informed the Landlord by email that animals were trapped inside the attic and that those animals were screaming and running around trying to find a way out. The Landlord did not address this problem.

14. On February 27, 2022 the Tenant again wrote to the Landlord about the animal problem in the attic. The Landlord responded and said “try to find a room in the house to sleep where room does not have attic above it. Like downstairs and recreation room under the bedrooms”.

15. On March 11, 2022 the Tenant informed the Landlord by email that the squirrels broke through the vent above the stove and got loose in the rental unit. This resulted in the Tenant's children being terrified. The email also mentions that this means the Tenant will not be able to cook and that she prays the situation will end. Photographs entered into evidence show a large hole in the kitchen vent.

16. On March 12, 2022 the Landlord sent the Tenant an email and said:

“We will need access to the home. Weather allowing. We can work only if the conditions are safe... in the meantime chase the squirrels out of the house.”

17. On March 31, 2022 the Landlord sent another email to the Tenant and said:

“... I will only come when it safe to do so... I have suggested to you to sleep downstairs... As far as the kitchen is concerned, you tell me that you cannot cook. You exaggerate. What does it take to plug the hole temporarily with a rag to avoid dust coming through the hole? And if you find it too dangerous to step on a chair, put your rag on a stick and shove it there instead of me traveling 230 km or hire someone to do that for you. You are not only inflicting damage on the roof, but you are inflicting damage on me financially. The house is not a charity center... The damage inflicted on the roof with 8 holes already and counting is because there is nobody at home for at least 12 hours a day, including weekends, and squirrels love peace and quite to do their thing... Have you heard the fable about the boy who repeatedly cried ‘wolf’?”

18. The Tenant testified that the Landlord never addressed the issue of the animals in the attic and that the problem persisted throughout her tenancy.

Leaks in Bathroom – The Evidence

19. The Tenant testified that every time she used the bathtub in the rental unit’s main bathroom it would leak water into the basement. The Tenant notified the Landlord about the problem shortly after moving in and again by text message on either May 1, 2020 or May 1, 2021. The Tenant testified that this problem persisted throughout the tenancy and was not resolved. The Landlord testified at the hearing that the Tenant could have taken showers instead of baths.

20. Photographs that were entered into evidence show significant water damage on the ceiling of the bathroom. The City of Mississauga issued a work order on September 10, 2021 that required the Landlord to repair the ceiling in a workman like manner. Photographs entered into evidence show the Landlord installed a grate over the damaged ceiling. It is not clear how this would fix the problem in any way.

Leak in Kitchen Window – The Evidence

21. The Tenant testified that every time it rained water would pour through the kitchen window. The Tenant testified that it would take approximately an hour to clean up after a rainfall because of how much water would get in. Photographs introduced into evidence show water damage around the kitchen window. The Tenant mentioned the problem in an email to the Landlord on May 1, 2021. The Landlord told the Tenant to do the following to remedy the problem:

“stuff some carton in your kitchen window to stop the warm kitchen air from touching the cold outside glass. This is where the water coming from. A piece of plastic larger

than open side of the window and sticky tape it to the frame inside. We will respond to this as soon as we can/allowed, we don't want things to get worse.

22. The Tenant testified that the Landlord never resolved the problem.

Leaking Water Metre – The Evidence

23. The Tenant testified that she notified the Landlord that the water metre was leaking sometime in 2021, but the Landlord never resolved the problem. Photographs show a bucket the Tenant had to place under the metre to collect leaking water.

Analysis

24. Section 20 of the *Residential Tenancies Act, 2006* ('the Act') establishes that a Landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.
25. For the following reasons, I find that the Landlord failed to meet the Landlord's obligations under subsection 20(1) to repair and maintain the rental unit and failed to keep the unit fit for habitation.
26. The rental unit had holes in the roof between 2020 to September 2021. In response to a work order from the City of Mississauga the Landlord patched up some of the holes, but one hole remained as of January 2022. That hole was not fixed prior to the tenancy ending on April 30, 2022.
27. The rental unit attic had squirrels and racoons from 2020 to the end of the tenancy. The Landlord did not address the problem at any point during the tenancy. The problem was exacerbated in March 2022 when the animals became trapped in the attic and chewed through the vent in the rental unit kitchen. The animals got loose in the rental unit and terrified the Tenant and her children.
28. The shower in the rental unit bathroom and the kitchen window leaked since at least May 2021. The Landlord never resolved these leaks. The Landlord was notified that the rental unit water metre was leaking sometime in 2021, but the Landlord never resolved the problem.
29. I find that the Landlord's failure to address the animals in the rental unit attic and the various leaks in the rental unit are a breach of his maintenance obligations. I also find the Landlord's failure to address holes in the rental unit roof until September 2022, and then the Landlord's failure to sufficiently address the problem is also a breach of the Landlord's maintenance obligations.

30. It is clear from the correspondence between the parties and the Landlord's testimony at the hearing that he believes it is the Tenant's responsibility to maintain the rental unit. That is incorrect. Section 20 of the Act establishes that a Landlord is responsible for providing and maintaining a residential complex.
31. 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.
32. I do not find that the Landlord acted reasonably in the circumstances. He ignored the Tenant's concerns about holes in the rental unit roof until the City of Mississauga issued a work order and even then the Landlord did not sufficiently address the problem. The Landlord did not address the animals in the attic and made unhelpful suggestions to the Tenant, such as she sleep in a different room and to be home more to chase away the animals. The Landlord also did not fix the various leaks in the rental unit.
33. For all of those reasons I find that the Landlord breached their maintenance obligations under section 20 of the Act.

Remedies

34. The Tenant seeks a 25% rent abatement for a total of 13 months. This is the 12 months prior to the application being filed and one month after it was filed before the Tenant vacated.
35. Abatement of rent is a contractual remedy based on the principle that if you are paying 100% of the rent then you should be getting 100% of what you are paying for and if you are not getting that, then a tenant should be entitled to abatement equal to the difference in value.
36. A rent abatement in the amount of 25% is typically awarded when there is some disruption to the Tenant's normal ability to reside in the rental unit. The Tenant lived with holes in her roof, animals screeching in the attic, and multiple leaks throughout the rental unit, I find a rent abatement of 25% to be reasonable in those circumstances for the aggregate of all the problems experienced by the Tenant.
37. Twenty five percent of the monthly rent of \$1,985.85 is \$496.46. As such I will award a total rent abatement of \$6,453.98 for the relevant 13-month period.

38. The Tenant also seeks to be reimbursed \$450.00 for the racoon removal she paid for herself. However, this service was acquired outside of the limitation period of the application and as such I cannot award it.

It is ordered that:

1. The Landlord shall pay the Tenant is \$6,501.98. This amount represents:
 - \$6,453.98 for a rent abatement
 - \$48.00 for the cost of filing the application.
5. The Landlord shall pay the Tenant the full amount owing by December 31, 2023.
6. If the Landlord does not pay the Tenant the full amount owing by December 31, 2023, the Landlord will owe interest. This will be simple interest calculated from January 1, 2024 at 7.00% annually on the balance outstanding.
8. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

November 3, 2023

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Amanda Kovats

Member, Landlord and Tenant Board

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.