



Order under Section 130 Residential Tenancies Act, 2006

Citation: TANG v WONG, 2023 ONLTB 69194

Date: 2023-11-02

File Number: LTB-T-073598-22 (TST-10737-19)

In the matter of: 2ND FLR, RM S
423 OSSINGTON AVENUE
TORONTO ON M6J3A6

Between: CHIEH TANG Tenants
PIN HSIAO

And

PIT LING WONG Landlord

CHIEH TANG and PIN HSIAO (the 'Tenants') applied for a reduction of the rent charged for the rental unit due to a reduction or discontinuance in services or facilities provided in respect of the rental unit or the residential complex.

This application was first heard by videoconference on October 6, 2022; however, there was insufficient time in the hearing block to completely hear the matter. Therefore the matter was adjourned. The adjourned hearing for this application was heard on October 11, 2023. The Tenants and the Tenants' representative, Dan McIntyre, were present at the hearing. The Landlord, the Landlord's representative, Jeremy Lui, and the Landlord's translator, Ethan Wu, were also present at the hearing.

Determinations:

1. As explained below, the Tenants proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenants \$3,595.17 for a rent rebate and the cost of filing the application. The lawful monthly rent is reduced by \$61.86 effective February 1, 2019.

Discontinuance in services

2. On October 23, 2019 the Tenants filed a T3 application with the Board alleging that the Landlord reduced common area cleaning services by 95% from February 1, 2019 to December 31, 2020, and discontinued common area cleaning services entirely from January 1, 2021 to the day of the hearing. The Tenants also alleged that the Landlord discontinued common area garbage collection services from February 1, 2019 to the day of the hearing.

Tenants' Evidence

3. The Tenants testified that their rental unit is a single bedroom in a seven-unit residential complex with a mix of long-term rentals and short-term Air B&B rentals, all managed by their Landlord. The Tenants stated that all the units in the residential complex share common area washrooms (2), a kitchen, a living room, and hallways that were cleaned, to include garbage collection, by the Landlord at the start of their tenancy on December 1, 2017.
4. The Tenants testified that they paid \$950.00 in monthly rent from October 1, 2018 to December 31, 2019, and from January 1, 2020 have paid \$960.73 in monthly rent.
5. The Tenants asserted that cleaning services for the common areas of the residential complex were not listed as a Landlord responsibility in the tenancy agreement, but the Landlord provided cleaning services in the common areas before February 1, 2019, and it was implied that the Landlord would provide these services through their communication with the Landlord at the start of the tenancy.
6. The Tenants stated that garbage collection services in the common areas of the residential complex were listed as a Landlord responsibility in the tenancy agreement, and the Landlord collected garbage from the common areas before February 1, 2019. The Tenants submitted a copy of the tenancy agreement.
7. The Tenants testified that from December 1, 2017 to February 1, 2019 the Landlord provided cleaning and garbage collection services in the common areas of the residential complex. The Tenants testified further that the Landlord ceased her short-term Air B&B rentals on February 1, 2019, and on that date the Landlord also ceased her cleaning and garbage collection services in the common areas of the residential complex.
8. The Tenants testified further that in February 2019 and on May 30, 2019 they asked the Landlord about the discontinuance of the common area cleaning and garbage collection services, and the Landlord advised them that they, with the other tenants, were now responsible for common area cleaning and garbage collection.
9. The Tenants submitted numerous photos of the common areas of the residential complex illustrating very clean common areas before February 1, 2019, and unkept and dirty common areas from February 2019 to October 2023. The Tenants contended that they

tried to clean the common areas, but were unable to keep pace with the cleaning tasks and therefore tried to reduce their use of the common areas. They noted that they placed their kitchen and washroom garbage in their room, and then transferred it to an exterior garbage bin.

10. Jules Varshavka, a tenant in the residential complex from June 1, 2017 to August 1, 2018 testified that the Landlord cleaned and provided garbage collection services in the common areas during her tenancy.

Landlord's Evidence

11. The Landlord testified that she did not agree, either in writing or verbally, to provide common area cleaning services and garbage collection at the start of the tenancy, nor did the Tenants request these services. The Landlord stated that she agreed to provide garbage removal, as listed in the tenancy agreement, but this service included moving the exterior garbage bin to the curb on garbage collection days, not the collection of garbage from common areas of the residential complex.
12. The Landlord testified further that before February 2019 she provided common area cleaning and garbage collection services in the residential complex for the short-term Air B&B guests. She asserted that these cleaning services benefitted her long-term tenants; however, she was not required to provide these services to the long-term tenants, just to the short-term Air B&B guests.
13. The Landlord stated that she stopped having short-term Air B&B guests as of February 2019, and therefore stopped providing common area cleaning and garbage collection services for the long-term tenants. The Landlord asserted that she advised the long-term tenants in February 2019 of their requirement to clean and collect the garbage from the common areas, and with the exception of the Tenants, the other tenants had no issue with these tasks. The Landlord explained that she held a meeting with all the long-term tenants and they all agreed, except the Tenants, to clean and collect garbage from the common areas rather than have the Landlord impose an additional cleaning fee.
14. Ellsa Hsu, a tenant in the residential complex from March 2018 to July 2020, testified that the Landlord cleaned the common areas after Air B&B guests departed, but some other long-term tenants also assisted in cleaning and collecting the garbage from the common areas. She stated that the Landlord paid her \$20.00 per week to collect garbage from the common areas when the Landlord was not available. She noted that the Landlord did not guarantee common area cleaning and garbage collection services for the long-term tenants.
15. Javad Jangjou, a tenant in the residential complex from August 2018 to October 2020, testified that the long-term tenants were responsible to clean the common areas of the residential complex, as well as to collect the garbage from the common areas and place the

garbage in the outside bin. He stated that the Landlord completed some cleaning of the common areas, but the long-term tenants generally cleaned up after themselves in the common areas, to include the collection of garbage.

Analysis

16. I am satisfied that cleaning and garbage collection are services under s. 2(1) of the *Residential Tenancies Act, 2006* (the "Act").
17. On the basis of the evidence provided, I am satisfied that the rental unit is a single room, Room S on the second floor of the residential complex, pursuant to s. 2(1) of the Act. The Tenants have exclusive possession of their single room – the rental unit. However, the living room, kitchen, two washrooms, and hallways are common areas of the residential complex shared by the residents of the residential complex, as defined in s. 2(1) of the Act. The Tenants do not have exclusive use of these common areas of the residential complex.
18. The Tenants are responsible for the ordinary cleanliness of their rental unit, Room S, not the residential complex, pursuant to s. 33 of the Act. The Landlord is responsible for maintenance, to include cleaning common areas of the residential complex, pursuant to s. 20(1) of the Act. I accept that this responsibility is not explicitly listed in the tenancy agreement; however, the Landlord must still abide by s. 20(1) of the Act.
19. On the basis of the evidence provided, I am satisfied that the Landlord provided cleaning and garbage collection services in the common areas of the residential complex, to include the living room, kitchen, two washrooms, and hallways before February 1, 2019; however, the Landlord discontinued these services as of February 1, 2019, and no longer provides these services as of the day of this hearing. I am satisfied that the start of the discontinued services is less than 12 months before the application was filed on October 23, 2019.
20. Pursuant to s. 3(1) of the Act, I find that the Landlord can not contract "out of the Act", through seeking to have the Tenants assume these common area cleaning and garbage collection responsibilities. I am satisfied that the Tenants never agreed, verbally or through the written tenancy agreement, to provide common area cleaning and garbage collection services.
21. I find that the Landlord's discontinuance of common area cleaning and garbage collection services on February 1, 2019 was not reasonable. A discontinuance of these services on the basis that the Landlord believed she was not required to provide these services to long-term tenants, or that the Landlord could hold the Tenants accountable for these services, is a breach of s. 20(1) and s. 3(1) of the Act, and therefore not appropriate.

Remedy

22. The Tenants requested a \$160.00 per month reduction in rent as a result of the discontinuance of services. The Tenants calculated this reduction as follows:

- (a) 2 hours of cleaning, 5 days per week, 4.33 weeks per month, at \$20.00 per hour = \$866 per month for the entire residential complex, divided by 7 units in the complex = **\$123.71** per month reduction for Room S. This is an increase from the **\$75.00** monthly reduction requested in the Tenants' original T3 application.
- (b) Provision of toilet paper, hand soap, and dish soap for two Tenants at \$5.00 per Tenant per week = **\$43.30** per month reduction for Room S. This is a new remedy, and not part of the Tenants' original T3 application.
- (c) Garbage collection services of \$20.00 per week as paid by the Landlord to tenant Ellsa Hsu = \$86.60 per month for the entire residential complex, divided by 7 units in the complex = **\$12.37**. This is a decrease from the **\$50.00** monthly reduction requested in the Tenants' original T3 application.
- (d) TOTAL of (a), (b) and (c) above = **\$179.38**; however, the Tenants requested a **\$160.00** per month reduction. This is an increase from the **\$125.00** monthly reduction requested in the Tenants' original T3 application.

23. In TST-10737-19-IN dated October 19, 2022 (the previous file number for this application), the parties consented that there would be no further amendments to the Tenants' T3 application. This includes amendments to the remedies requested. I therefore will not grant remedies in excess of those listed in the original T3 application.

24. I find that a rent reduction of \$123.71 or \$75.00 per month for the discontinuance of common area cleaning services is excessive. The Tenants never established with sufficient evidence that the Landlord cleaned the common areas five days per week for a period of two hours each day, or cleaned the common areas almost every day. I find that **four days** of cleaning per week rather than five days, at **1.0 hour per day** rather than 2.0 hours per day, and \$20.00 per hour, is more appropriate. Therefore, I grant the Tenants a **\$49.49** reduction in monthly rent as a result of discontinued cleaning services, pursuant to s. 39 of *Ontario Regulation 516/06*.

25. The Landlord's alleged lack of providing toilet paper, hand soap, and dish soap during the cleaning process was not an allegation raised in the original T3 application or during the hearing; therefore, the Tenants' request for a rent reduction as a result of an alleged lack of these items is denied.

26. I find that a rent reduction of \$50.00 per month for the discontinuance of common area garbage collection is excessive. The Tenants never established how they derived this reduction amount. I find that the Tenants' amended request for a rent reduction of **\$12.37** per month for the discontinuance of common area garbage collection is more reasonable and appropriate. Therefore, I grant the Tenants a **\$12.37** reduction in monthly rent as a result of discontinued garbage collection services, pursuant to s. 39 of *Ontario Regulation 516/06*.

27. Accordingly, the monthly rent is reduced by **\$61.86** starting February 1, 2019, the day that the discontinuance first occurred.
28. Pursuant to s. 130(4) of the Act, the Tenants are entitled to a rebate of the rent unlawfully collected by the Landlord for the period of time starting on February 1, 2019, when the common area cleaning services and garbage collection services were discontinued.
29. In addition, pursuant to s. 130(3) of the Act, the monthly rent reduced by \$61.86 will remain the lawful rent on a go forward basis unless the common area cleaning and garbage collection services are restored.

It is ordered that:

1. The lawful monthly rent effective February 1, 2019 is reduced by \$61.86.
2. The total amount the Landlord shall pay the Tenants is \$3,595.17. This amount represents:
 - \$3,526.02 for a rent rebate for the period of time from February 1, 2019 to October 31, 2023. This is calculated as a monthly rent rebate of \$61.86 for a period of 57 months; and
 - \$69.15 for the cost of filing the application.
3. The Landlord shall pay the Tenants the full amount owing by November 13, 2023.
4. If the Landlord does not pay the Tenants the full amount owing by November 13, 2023, the Landlord will owe interest. This will be simple interest calculated from November 14, 2023 at 7.00% annually on the balance outstanding.
5. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

November 2, 2023 Date
Issued

Frank Ebner
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.