



Order under Subsection 30 Residential Tenancies Act, 2006

Citation: Samsounder v Metcap Living, 2023 ONLTB 70950

Date: 2023-10-31

File Number: LTB-T-069413-22

In the matter of: 1106, 750 Morningside Avenue
Scarborough ON M1C3A1

Between: Jacob Samsounder Tenant

And

Metcap Living Landlord

Jacob Samsounder (the 'Tenant') applied for an order determining that Metcap Living (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 19, 2023.

The Landlord's Legal Representative, Michelle Forrester, the Landlord's Agent, Charu Raheja, the Landlord's witness, Wayne Fleming, and the Tenant attended the hearing.

Determinations:

1. The Tenant moved into the rental unit on October 1, 2018, and vacated on November 30, 2019.

T6 Application

2. The Tenant alleges that there was a bedbug infestation in his rental unit that started in late April 2019 and lasted until he moved out of the property. At the hearing, the Tenant testified that he notified the building manager of the problem on April 26, 2019, and that no initial treatment was given until May 27, 2019.
3. The Tenant explained that Terminix Canada did an inspection on May 7, 2019, but no treatment was given at that time. The Tenant added that there were treatments on May 27, 2019, and June 10, 2019, but neither treatment did anything to stop the bedbugs from coming into his unit. The Tenant did present photographic evidence of bites on his feet and

lower legs; however, the dates and places of the photos could not be verified as such were not accepted by the Board. The Tenant further explained though that the situation was bad enough that he had unofficially moved out on June 30, 2019. He did not move his belongings and furniture out until the end of November due to fears of spreading the bedbugs.

4. The Tenant asked the Board for a rent abatement of 7 months of rent, from May 2019 until November 2019. The monthly rent in May 2019 was \$1,599.00 with the rent increasing to \$1,664.00 as of June 1, 2019. Therefore, the Tenant's total claim equals 2 months at \$1,599.00 (May and the last month's rent deposit) and 5 months at \$1,664.00 = \$11,518.00.
5. The Landlord's Legal Representative responded that the Landlord had acted responsibly in this matter and did everything to help the Tenant with the reported bedbug issue. The Landlord's Legal Representative explained that the Landlord has a contract with Terminix Canada to treat the residential complex for any type of bug infestations and takes any report of bedbugs quite seriously.
6. The Landlord's Legal Representative presented into evidence a list of the following Terminix Canada treatments regarding the Tenant's rental unit. The Landlord's witness, Wayne Fleming, Terminix's operations manager, also attended the hearing to verify the treatments reported.
 - a. May 7, 2019 - inspection, found low bedbug evidence, applied dust treatment.
 - b. May 27, 2019 - dust and residual spray treatment, no visible activity at time of treatment.
 - c. June 10, 2019 - dust and residual spray treatment, no visible activity at time of treatment.
 - d. August 7, 2019 - dust and residual spray treatment, no visible activity at time of treatment + all blocks in building surrounding Tenant's unit were sprayed as well.
 - e. August 19, 2019 - dust and residual spray treatment, no visible activity at time of treatment.
 - f. September 4, 2019 – inspection with canine unit, no bedbug alerts.
7. However, the Tenant had an issue with the treatment that was stated to have occurred on May 7, 2019. The Tenant testified that he was there during the inspection and once the bedbugs were discovered, the technician reported that a treatment was needed but none was actually given. The Tenant was adamant that the rental unit was first treated May 27, 2019, a full month after the Tenant had actually reported the bedbug problem. At the hearing, the Landlord's witness could not confirm nor deny the Tenant's assertion regarding the May 7, 2019, Terminix inspection as only the Tenant and the Terminix technician were actually present.

T6 Analysis

8. Section 20(1) of *the Residential Tenancies Act, 2006* (the “Act”) states:

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.

9. 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.
10. With respect to the bedbug issue, I find the Landlord did not fail to meet the Landlord's obligations under subsection 20(1) of the Act for maintenance standards after May 27, 2023. The Tenant's claim for rent abatement after this date is not accepted by the Board.
11. I do find though that the length of time (31 days) that the Tenant had to wait from the time the bedbug issue was reported until the first ‘confirmed’ treatment took place was far too long. As a result of this delay, I am awarding 50% of the daily rent for this time period to the Tenant.
12. The Tenant paid \$53.00 to the LTB for the cost of filing the application and is entitled to collect this from the Landlord.

Remedies

13. Based on the Monthly rent of \$1,599.00 during the months of April 2019 and May 2019, the daily rent/compensation is \$52.57. This amount is calculated as follows: $\$1,599.00 \times 12$, divided by 365 days. To determine the 50% abatement for the 31 days that the Tenant waited for treatment is as follows: $\$52.57 \times .50 \times 31 = \underline{\$814.84}$.

It is ordered that:

1. The Landlord shall pay the Tenant **\$867.84**. This amount represents:
 - \$814.84 for the rent abatement for the period of April 26, 2019 to May 27, 2019.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by November 11, 2023.

3. If the Landlord does not pay the Tenant the full amount owing by November 11, 2023, the Landlord will owe interest. This will be simple interest calculated from November 12, 2023, at 7.00% annually on the balance outstanding.
4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

October 31, 2023

Date Issued

Michael Di Salle

Member, Landlord and Tenant Board

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