



**Order under Subsection 30
Residential Tenancies Act, 2006**

Citation: Squires v Cerpreit, 2023 ONLTB 65831

Date: 2023-10-26

File Number: LTB-T-032208-22

In the matter of: 602, 501 Wilkins London
Ontario N6C5G2

Between: Wesley Squires Tenants
Aaron Squires

And

Capreit Limited Partnership Landlord

Wesley Squires and Aaron Squires (the 'Tenants') applied for an order determining that Capreit Limited Partnership (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 March 7, 2023.

The Tenant, Wesley Squires, the Tenants' representatives, Avi Rosen and Naseem Hosein and the Landlord's representative, Ayden Pearson attended the hearing.

Determinations:

1. As explained below, based on the evidence before me, the Tenants have proven on a balance of probabilities the following allegations contained in the application.
2. Therefore, the Landlord must pay a rent abatement and costs totalling 2,806.20.

Background Facts

3. The tenancy began in January 2018.
4. The monthly rent was \$1,400.00 and increased to \$1,443.95 on January 1, 2023.
5. On November 23, 2021, the Tenants filed a T6 application with respect to maintenance issues with the Board.
6. The Tenants allege the Landlord breached section 20(1) of the Act with respect to three issues:
 - i. Main Parking Garage Door
 - ii. External Access Doors
 - iii. Smoking
7. Pursuant to s. 20(1) 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 maintenance standards.
8. The Tenant testified that the ongoing issues related to smoking, broken access doors to the building caused significant health and safety issues, as well as damages to the Tenant's vehicle.
9. In relation to the T6 application the Tenants are seeking a rent abatement, costs relating to damaged property and the application filing fee, as well as an order from the Board that the rent not be increased.

Maintenance Issues

10. I find that the Landlord failed to meet the Landlord's obligations under subsection 20(1) of the Act to maintain the residential complex, in a good state of repair. The Landlord did not completed repairs to the garage door and exterior doors in a timely manner.

Main Parking Garage Door and Exterior Doors

11. The Tenant testified that he first notified the Landlord that the main garage entry door would not close on July 16, 2021 and that it was fixed that same day. He notified the Landlord when it occurred again on August 16, 2021 with photos and a police report, with no response from the Landlord. On September 6, 2021, the Tenant notified the Landlord again, to which he was informed it would be resolved the next day. The next day the

Tenant followed up with no response. On September 9, 2021, the Landlord responded to another email sent by the Tenant, stating that a contractor had been contacted, but no information on when it would be fixed. On September 14, 2021. The Tenant emailed again, with no response.

12. On October 2, 2021, the Tenant notified the Landlord that the main door from outside the P2 parking garage no longer locks, the Landlord did not respond. On November 1, 2021, the Tenant sent an e-mail to the operations manager regarding the northern P2 main door, the P1 main door from the elevator and another P2 main door being accessible without a key. In addition the sensor to the garage door is blocked with items preventing it from closing. On November 8th, the response from the property manager that the doors a request for repairs had been submitted. The Landlord responded by saying the issue of people propping doors open is ongoing and presents an ongoing challenge, but the mobile security team will attempt to address the issue as best possible.
13. The Tenant testified that the issue of doors not closing, doors opening without keys and doors being propped open with objects presented a significant safety issue in the building. The Tenant provided evidence of vagrants living in the stairwells, and occupying public spaces in the building, such as the parking lot, parking garage. The Tenant told the Board that on several occasions the police were involved due to drug use and criminal activity.
14. The Tenant provided photo evidence of people sleeping and intoxicated in the stairwell, graffiti, garbage, cigarette butts, open alcohol bottles, and used needles.
15. On August 17, 2021, the Tenant testified and provided evidence that his car was broken into causing damage to his car. And again on September 8, 2021 there were numerous attempts to access his vehicle.
16. The Landlord's agent acknowledged the problems and submitted that while the Landlord attempted to resolve the inadequate surety issues because of the disrepair of the various access doors, admitted the issues were ongoing. He stated that there was poor communication on the part of the Landlord and stated that the Landlord "dropped the ball" with respect to the security issues raised.

Smoking

17. It was undisputed that the building is not designated as non-smoking. However, the Tenant testified that because of the lack of security measure and the Landlord's failure to address vagrants having access to the building the smoking inside public spaces was unreasonable.

18. In addition the Tenant told the Board that on October 19, 2021 and November 12, 2021 he notified the Landlord that the smell of smoke in the hallways on 1st and 6th floor were ongoing and appeared to be coming from the stairwell. The Tenant told the Board that this was never addressed by the Landlord.
19. The Landlord's agent responded to the Tenant complaints regarding smoke by saying that the building is not designated as a non-smoking building and therefore, the Landlord can not be expected to stop people from smoking.

ANALYSIS & REMEDIES

20. The starting point in the analysis of this situation is subsection 20 (1) of the Residential Tenancies Act, 2006 (the 'Act') which says:

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 maintenance standards.

21. The Tenants' application seeks abatement of the rent, costs to repair or replace property that was damaged or destroyed because the Landlord did not repair or maintain the rental unit or residential complex, an order from the Board that the Landlord not increase the rent until the issues are addressed and the cost of filing the T6 application.
22. Abatement is the contractual remedy intended to address the idea that if a tenant is paying rent for a bundle of goods and services and not receiving everything being paid for then the tenant is entitled to abatement of the rent proportional to the difference between what is being paid for and what is being received.
23. In terms of quantum, the Tenants' application seeks abatement of \$6,300.00. This amount represents a combined remedy for the maintenance issues relating to the exterior doors and the health and safety issues stemming from these issues, as well as the smoke throughout the public spaces in the residential complex. At the hearing, the Tenant requested that the abatements of rent be extended as the issues were ongoing.
24. While the Tenants did not amend their application in advance of the hearing to correct the quantum of abatements they intended to seek, pursuant to Rule 16 of the Landlord and Tenant Board rules of procedure, I am granting the Tenants' request.

25. Rule 16.4 of the Rules states that the Board may exercise its discretion to grant a request to amend made at the hearing if satisfied that the amendment is appropriate, it would not prejudice any party and is consistent with a fair and expeditious proceeding.
26. With respect to the remedies sought, The Landlord's agent did not outright dispute the request to amend given the issues had not been addressed adequately by the Landlord, however he did dispute that the amount of \$18,000 (100% extending to the date of the hearing) was not reasonable.
27. While I believe the Tenants are entitled to abatement of rent, 100% is excessive. Given my knowledge of similar cases before the Board and the unique situation in the present case relating to safety, I believe a reasonable abatement of the rent is between 5-10% of the rent charged from July 16, 2021 to March 7, 2023.
28. I accept the Tenant's testimony that the Landlord's failure to complete the required repairs to the garage door and the exterior doors to the residential complex in a timely manner had a direct impact on the Tenant's concerns relating health and safety given that these issues allowed vagrants to occupy public spaces, causing safety concerns, damages to personal property, police involvement, and personal threats. In addition, while the residential complex may be designated as a non-smoking building, I agree with the Landlord that there is little that can be done with other tenants smoking inside their units. However I do think it is within their ability to address the issue of smoke coming from public spaces within the building, such as the stairwells when the issue is caused by non-residents as a result of their failure to secure the building and address the obvious security breach. Having considered all of the circumstances and the impact on the Tenants, I find \$2,761.20 is a reasonable rent abatement, which represents approximately 10% of the rent payable during that period.
29. The Tenant is also seeking costs \$378.55 relating to damages to his vehicle which occurred in the parking garage. The Landlord's agent disputes that the Landlord is responsible for damage to vehicles and relied on a "parking addendum to tenancy agreement" which states in paragraph F ... "It is understood and agreed that the Landlord, his servants and agents shall not be responsible for any damage which may occur to the Tenant's automobile(s) or its contents by any means whatsoever including damage or loss by fire, theft, negligence, malicious damage or damage caused by malfunction of any garage door."
30. The Tenant claimed that he was unaware of this document and that he did not sign it. Despite the evidence and testimony by both parties, I find that this is an expense that

ought to be covered by the Tenant's auto insurance and therefore this remedy will not be granted.

31. The Tenants also requested that the Board order under other remedies that the rent not be increased for three years and that the increase charged from January 2022 to March 2022 be returned to the Tenants. Given that the Landlord's agent acknowledged the problems, and these remedies are usually reserved for cases where there is a serious breach, it would not be appropriate in the circumstances to grant such a remedy. Therefore, this remedy will not be granted.

32. The Tenant is entitled to \$45.00 for the cost of filing the application.

33. This order contains all of the reasons for my decision within it. No further reasons shall be issued.

It is ordered that:

1. The Landlord shall pay to the Tenants \$2,806.20 for abatements of the rent and costs.
2. The Landlord shall pay to the Tenants the full amount owing by November 6, 2023
3. If the Landlord does not pay the Tenants the full amount owing by November 6, 2023 the Landlord will owe interest. This will be simple interest calculated from November 7, 2023 at 7.00% annually on the outstanding balance.

October 26, 2023

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Natalie James

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.

