



Order under Subsection 30 Residential Tenancies Act, 2006

Citation: Sarvos V Hazelview Properties, 2023 ONLTB 65843

Date: 2023-10-24

File Number: LTB-T-022084-22

In the matter of: 609, 175 Hunter Street
Hamilton Ontario L8P1R4

Between: Steven Sarvos Tenants
Justin Sarvos

And

Hazelview Properties Service Inc. Landlord

Steven Sarvos and Justin Sarvos (the 'Tenants') applied for an order determining that Hazelview Properties Service Inc. (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 20, 2023.

The Landlord's agent, Tara Caughey (TC), the Landlord's representative, Sean Beard the Landlord's witness, Bruce Keating (BK) and the Tenants Steven Sarvos (SS) and Justin Sarvis (JJ) attended the hearing.

Preliminary Issue:

At the hearing the Landlord's representative requested that the application be amended to remove Bruce Keating as the Landlord and include the correct Landlord, Hazelview Properties Service Inc. The Tenant consented to the amendment.

The Tenants at the hearing requested to amend their application to increase the abatement amount that they were seeing on their application. The Tenants suggested that they had indicated in their application that the amount they were seeking was a "running total" from November 22,

2021, for as long as the issues persisted. When asked why they failed to amend their application in advance of the hearing in accordance with Board Rules, they stated that they were unaware it was required.

The Landlord objected to the Tenants' request, stating that they ample time to amend their application and failed to do so in accordance with the Rules.

Pursuant to Rule 16 of the Landlord and Tenant Board rules of procedure, I am granting the Tenants' request.

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.

While it wasn't perfectly pled in the Tenants' application, it clearly states their intention to seek an abatement of rent for as long as the issue persisted. I do not find that granting the request prejudices the Landlord, as the Tenant is not seeking an additional remedy, just consideration towards the quantum of the remedy already requested.

Pursuant to subsection 200 (1) of the *Residential Tenancies Act, 2006*, S.O. 2006, c17, (Act) I consented to the amendments of the application.

Determinations:

1. As explained below, the Tenants have proved on a balance of probabilities some of the allegations contained in the application.

Background Facts

2. The tenancy began on August 1, 2020.
3. The Tenants moved out of the rental unit on April 30, 2022.
4. The monthly rent was \$1,615.00.
5. On November 30, 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 two issues:
 - a. Fridge (beeping)
 - b. Cockroaches

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 Tenants testified that the ongoing issues were disruptive to their lives and were concerned about the potential health concerns related to the presence of cockroaches.
9. In relation to the T6 application the Tenants are seeking a rent abatement, and out of pocket expenses.

Issues & Analysis

Beeping Fridge

10. On August the 15th 2021 the Tenants made the Landlord aware of an issue relating to their refrigerator making a continuous beeping noise. the Landlord responded two days later with suggestions for troubleshooting the issue, one being raising the temperature.
11. When the issue did not resolve because of the troubleshooting the Tenants notified the Landlord. The Landlord responded by sending the buildings maintenance person on August 23, 2021.
12. The following day the Tenants emailed the Landlord's agent BK saying that the maintenance person indicated the temperature was too high and could not identify the issue.
13. On August the 25th the Tenants reached out again to follow up and reiterated that the issue persisted and due to the constant beeping, they were unable to sleep. On August 30, 2021 BK sent a technician to inspect the refrigerator at which time the Tenants were told by the technician that the motherboard was "fried".
14. On September 1, 2021, the Tenants received a new refrigerator, and although they stated that there were issues with a crisper drawer not opening, the issue of the beeping was resolved.
15. BK testified that he was made aware of the issue with respect to the beeping refrigerator in August 2021 and confirmed that a maintenance person, employed by the building was sent to the unit to inspect the issue. He further told the Board that when the Tenants indicated the troubleshooting was unsuccessful, he sent a refrigerator technician to investigate

further. Although he could not recall exactly what the problem was, he did confirm that the refrigerator was replaced with a new one. He also told the Board that he himself went to the unit to observe the issue and did not hear the beeping at that time. He told the Board that he was in constant communication with the Tenants and aside from minor delays due to the pandemic, the issue was resolved quickly.

16. Given that the parties do not dispute that's the issue related to the beeping refrigerator began on August 15, 2021 and was resolved on September 1, 2021 when the refrigerator was replaced. During that time the Landlord's agent BK sent the building maintenance person as well as a technician to the Tenants' unit in response to the issue.
17. I do not find that the Landlord is in breach of section 20(1). The Landlord's actions were both timely and reasonable in the circumstances and therefore no remedy shall be granted.

Cockroaches

Tenants' Evidence

18. The Tenant SS testified that the rental unit had been treated on one occasion prior to the first complaint listed in the Tenants' T6 application.

Treatment #2

19. On September 20, 2021, the Tenants notified the Landlord that they saw cockroach activity after the previously noted treatment. The Landlord's agent BK responded the same day indicating that a follow up treatment would be scheduled, and he would get back to them with the date once it was finalized.
20. On September 22, 2021 The Tenants followed up with the BK asking that the treatment be scheduled for that Friday (September 24, 2021) as they needed to make the necessary arrangement to prepare the unit and relocate their cat.
21. On September 23, 2021, BK responded notifying the Tenants that pest control would be attending on the requested date between 9-1pm. When the Tenants arrived home, they found a notice from the pest control company which said that an inspection had taken place but told the Board that there was no indication that a treatment had occurred.
22. The Tenants emailed the BK to express their dissatisfaction for having taken the steps for the treatment to be completed for only an inspection to have occurred. On September 26, 2021, the BK responded saying that a spray had taken place despite the documentation and explained that it would take upwards to two weeks to notice the effects of the treatment.

23. The Tenants waited two weeks as recommended, and on October 11, 2021 informed the BK that the cockroaches were everywhere from the bedrooms to the kitchen and requested another treatment. Later that day the BK responded by saying that a treatment was scheduled for October 19, 2021 from 2-5pm.

Treatment #3

24. On October 24, 2021, five days after the third treatment the Tenants notified the BK that they were seeing increased activity and informed him that they had discovered a large nest with upwards of 40 cockroaches near the kitchen, which they indicated was sprayed. The Tenants told the Board that they had been informed that they could expect light activity after treatment, this in their opinion was not considered light activity.

25. The Tenant provided photo evidence (annex 4) of cockroaches in what they described as being fecal matter on the walls. In the correspondence with the BK the Tenants express concern with respect to the nest and inquired as to what treatment had taken place. BK responded by saying he could not confirm what treatment had taken place but that he would follow up with pest control to confirm. The Tenants told the Board that they were becoming genuinely concerned about the health hazard and other potential areas that they might not be aware of and requested alternative treatment and or company.

26. On November 5, 2021, the Tenants e-mailed the BK with the video of the cockroach activity observed at night. In the back-and-forth communication the Tenants made it clear that they requested a full apartment spray. The Tenants told the Board that they believed up to that point only the kitchen and bathroom had been sprayed as the instructions for preparation of the unit only indicated kitchen and bathrooms. Despite receiving preparation instructions from pest control day prepare the entire unit each time.

27. On November 8, 2021, the Tenants received communication from a new Landlord's agent TC saying she would follow up and see what she could do. The Tenants followed up again on November the 9th and 10th. On November 11th TC responded that treatment was scheduled for November 15, 2021 from 9:00 to 1:00 PM

Treatment #4

28. The Tenants told the Board that on November 15th 2021 they set up a laptop camera in their unit to see for themselves the treatment taking place. They made the pest control aware that the camera was recording and requested on camera that the entire apartment be sprayed. The Tenants said that from what they could see the unit only received minimal

spray and pest control was in and out in 20 minutes. The Tenants were concerned that it was not adequate.

29. After the 4th treatment the Tenants expressed their concern to the TC that they were very frustrated and did not want anyone re-entering the unit and further uprooting their lives until the problem was dealt with appropriately. They asked that the entire unit be sprayed, alternative methods be used and or a new company be employed. The Landlords agent responded that a new company would be utilized.
30. The Tenants told the Board they did not prevent the Landlord from conducting further treatments and in fact they allowed one to take place when no advance notice was given. However, at this point they stopped documenting as they had filed their application with the LTB and began looking for alternative accommodations. They did indicate that the problem persisted until they moved out.

Landlord's Evidence

31. The Landlord called TC, the Landlord's instructing client who is the property manager.
32. TC testified for the Landlord that she took over as the property manager after BK took on another position. She told the Board that in the span of time while this issue was on-going there were three pest control companies employed by the Landlord; Apex, Abel, and Home Pro.
33. TC told the Board that at no time during the time the Tenants were complaining of cockroaches did she inspect the unit herself. She relied on evidence submitted by the Landlord which contained the reports provided by the various pest control companies.
34. During cross examination TC testified that according to two reports from Home Pro on September 24, 2021 and October 1, 2021, they reported no activity found. And stated that in a 20-story building it is unrealistic to ever be free of cockroach activity. Although, she stated that she was not an expert in, she did not believe 1-10 cockroaches was an infestation.
35. TC confirmed with the Board that there had been a total of nine treatments in the Tenants unit. The parties were unsure when the first treatment occurred, however it was undisputed that the second treatment occurred on September 24, 2021, the third treatment occurred on October 19, 2021 and the fourth treatment occurred on November 15, 2021.
36. While TC was unsure of the exact dates, however she did confirm with the Board that five additional treatments took place between November 15, 2021 to April 30, 2022 bringing the total to nine.

37. BK testified as a witness for the Landlord, BK was the previous property manager prior to TC taking over the role.

38. BK testified that he was in communication with the Tenants with respect to the cockroach issue, both in person and by email. He recalls that the issue was ongoing and multiple treatments being recommended. Given the passage of time, he was unsure of the dates of each of the treatment and what specific treatments took place.

ANALYSIS

39. 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.

40. Paragraph 26(1) of the Hamilton's Property Standards By-Law says:

a. A dwelling or dwelling unit shall be kept free of infestation by pests.

41. Paragraph 26(2) of the Hamilton's Property Standards By-Law says:

a. The owner of a property located within the urban boundary of the City as defined in the Official Plan or Official Plan for the City shall keep the property free of infestation by pests.

42. Paragraph 26(3) states in part ... For the purposes of subsection 26(1) and 26(2), in the case of bed bugs, fleas, wasps, hornets, ants or cockroaches an "infestation" means the presence of more than one such insect ...

43. As this is a housing standard within the meaning of s. 20(1), it means the Landlord is responsible for ensuring the rental unit is pest free and when it is not, the Landlord is in breach of the Act. As a result, I am satisfied that the Landlord was in breach between September 20, 2021 and April 30, 2022.

44. I am satisfied that the issue was ongoing, and while I appreciate that it would be difficult to recall the exact events that took place, the testimony by both parties together with the

evidence of emails and pest control reports confirm that the issue was not resolved between September 20, 2021 and April 30, 2022.

45. Furthermore, there was no evidence provided by the Landlord's agents with respect to how they were addressing the issue as a whole, such as treatment of surrounding units and or the utilization of alternative (more effective) treatment methods.
46. There is no dispute between the parties that multiple treatments took place and the Landlord responded to their complaints, unfortunately for everyone the treatments were unsuccessful. While two of the pest control reports indicate no activity, the Landlord's agent testified that she did not inspect the unit. Based on supplementary emails from the Tenants to the Landlord stating that they are seeing increased activity and the Landlord conducting further treatments, I accept the Tenants' evidence that issue was ongoing and at times got worse.
47. The testimony and pest control reports all suggest that the Tenants were diligent in making the Landlord aware of the issue and went over and above to ensure the unit was properly prepared for each treatment.
48. Given all of the evidence before me I am satisfied the problem was not rectified in a timely manner. The seriousness of the infestation and the failure of the initial series of treatments indicate the Landlord ought to have considered alternative and/or more effective types of treatment. Therefore I am satisfied that the Tenants are entitled to an abatement of the rent as a remedy.
49. The Tenants' application seeks abatement of the rent and out-of-pocket expenses.
50. 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.
51. In the case before me the Tenants were paying for a pest free rental unit in clearly not receiving it.
52. In terms of quantum, the Tenants application seeks abatement of \$4167.74. This amount represents a combined remedy for the fridge beeping for 17 days and the unresolved issue of cockroaches for 63 days. They suggest that for a combined 80 days the unit was unusable. The Tenants calculated a daily amount of \$52.10 and multiplied it by 80 days up to November 22, 2021. In their application the Tenants state "please note however, that this number is a running total, as we are still living in the conditions causing this grievance, and the problem grow exponentially worse every day. This number is an estimate as of up to the date November 22, 2021".

53. While I believe the Tenants are entitled to abatement of rent, 100% is excessive. Given my knowledge of similar cases before the Board, I believe a reasonable abatement of the rent is about 20% of the rent charged from September 20, 2021 to April 30, 2022 or \$2,180.93. The cockroach infestation interfered with the Tenants use of the unit, it was disruptive to their lives, and they were concerned with the health implications.

Remedy period: September 20, 2021 to April 30, 2022 – 222 days
Daily rent calculated: $1615 \times 365 \div 12 = \49.12
Abatement calculation: $\$49.12 \times 222 = \$10,904.64$
 $10,904.64/20\% = \$2,180.93$

54. The Tenant is also seeking out-of-pocket expenses in the amount of \$921.00. At the hearing the Tenants withdrew the request of \$300.00 for the cost doing their own treatment as they did not incur this expense. The remaining amount represents \$60.00 in cleaning supplies, \$36.00 for spoiled cat food and \$400.00 for food that was on the counter and had to be disposed of due to cockroaches.

55. The Tenant did not provide any documentary evidence, such as pictures or receipts to support these expenses claimed. Therefore, this request is denied.

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

57. 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 \$2,225.93 for abatements of the rent and costs.
2. The Landlord shall pay the Tenants the full amount owing by November 4, 2023.
3. If the Landlord does not pay the Tenants the full amount owing by November 4, 2023 the Landlord will owe interest. This will be simple interest calculated from November 5, 2023 at 7.00% annually on the outstanding balance.

October 24, 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.