



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

Citation: Gabsis v Ly, 2023 ONLTB 67322

Date: 2023-10-12

File Number: LTB-T-006037-23

In the matter of: 804, 2019 Bank Street. Ottawa
ON K1V0N1

Between: Sohaib Gabsis Tenant

And

Thanh le Ly Landlord

Sohaib Gabsis (the 'Tenant') applied for an order determining that Thanh le Ly(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 May 29, 2023.

The Landlord and the Landlord’s Legal Representative, D. Lyman and the Tenant and the Tenant’s Legal Representative, H. Qu attended the hearing.

D. Murch attended as witness for the Landlord.

Determinations:

1. The Tenant moved into the rental unit in August 2013. The monthly rent is \$804.00. The Tenant filed this application on January 1, 2023.
2. The issues alleged in the T6 application are as follows:
 - Broken air conditioning unit (fixed May 2023)
 - Kitchen sink leak (fixed June 28, 2022)
 - Leaking shower head (fixed May 2023)
 - Bathtub Faucet (fixed May 2023)
 - Balcony door gap/broken handle (handle fixed May 2023)
 - Ceiling fan in bedroom (fixed May 2023)
 - Folding door in kitchen (fixed May 2023)

- Dirty air vent-kitchen/bathroom

Air conditioning

3. The Tenant testified that when he moved into the unit in 2013, the air conditioning unit was in the unit. He testified that he notified the Landlord in August 2021 that the AC cord sparked and produced smoke. The Tenant submitted a text message dated August 26, 2021 into evidence. The tenant informs the Landlord about the issues and the Landlord responded with “if you think this is a bad rental, feel free to move out.”
4. The Tenant testified that he had no use of the AC from August 2021 until May 2023.
5. The Landlord testified that he was not aware that he was responsible for the air conditioning unit as he was of the belief that it was left behind by a previous Tenant and he did not provide it. He testified that in the text exchange with the Tenant, the Tenant advised him that he would fix the AC unit and take it with him when he left.

Kitchen sink leak

6. The Tenant testified that he notified the Landlord on May 10, 2022 that the kitchen faucet pipes were leaking. He testified that this was fixed on June 28, 2022. He testified that he was unable to use the sink and wash dishes and it also emitted an unpleasant smell, which was embarrassing.
7. The Landlord’s witness, D. Murch testified on behalf of the Landlord. He is the property manager for the condo complex and assisted the Landlord. He testified that he attended the unit on May 11, 2022 but the Tenant asked him to hold off as he was having property standards come to the unit to do an inspection. He attended the unit on June 28, 2022 and fixed the issue with the sink. He testified that the sink basket was rotted out. He testified that he noticed a rotten egg smell.

Leaking shower head/bathtub faucet leak

8. The Tenant testified that he notified the Landlord by text message on December 15, 2021 that the shower head and bathroom faucet were leaking. In response, the Landlord said that it would be best to cancel the rental agreement. The Landlord told the tenant the leak was a result of the Tenant overturning the knob and that he had to fix his own damage. The tenant submitted the text messages from December 15, 2021 into evidence. The Tenant testified that these issues were fixed on May 15, 2023.
9. The Landlord testified that the Tenant notified him of the Leaking shower faucet and bathtub faucet in December 2021. The Landlord testified that there were previous issues with these items in the past and the Landlord fixed them. He testified that he told the Tenant not to rotate the knobs too hard. These issues were fixed on May 15, 2023.

Balcony door

10. The Tenant testified that he notified the Landlord about issues he was having with the balcony door in May 2022. He testified that the handle was broken and there was a gap that caused issues with temperature. The Tenant submitted pictures of the balcony door that show a gap at the top of the door and a handle that is missing the middle cylinder

piece that attaches to the top and bottom of the handle. He testified that the handle was fixed on May 15, 2023, but the gap remains.

11. D. Mulch testified that he fixed the door handle in May 2023. He testified that the balcony door was still operational, and the handle was still usable although a bit more difficult to use. He testified that there is no visible gap anymore in regard to the balcony door as he replaced the wheels on the sliding door and the door is now tight in the track. He testified that the temperature in the unit would not be affected by a gap in the door as the complex is run on a negative pressure system. He testified, if anything, the gap may make the temperature a little bit higher.

12. Ceiling fan

13. The Tenant testified that he notified the Landlord on May 27, 2022 that the ceiling fan in his bedroom was loose. He testified that it was loud and wobbly, and it felt unsafe to him. He was concerned that it could fall off at any time. This issue was fixed on May 15, 2023.

14. D. Mulch testified that there was no issue with the installation of the ceiling fan. The way the Tenant's was installed was to allow the fan to have natural movement. He testified that there were no mechanical issues with the fan. He testified that he reinstalled the fan so that it was flush mounted and didn't allow for any extra movement. He testified that both methods of installation are safe, and it is a matter of preference.

Folding door in kitchen

15. The Tenant testified that he notified the Landlord about the folding door on May 27, 2022. He testified that it came out of its track and had been that way for several years. This issue was fixed on May 15, 2022.

16. D. Mulch testified that he fixed the folding door on May 15, 2022.

Air filters- kitchen and bathroom

17. The Tenant testified that he notified the Landlord that the air filters in the bathroom and the kitchen needed to be replaced in May 2022. He testified that they were clogged. It caused the bathroom to get very steamy and it would cause smells to linger in the kitchen. The Tenant submitted pictures of the vents in the bathroom and the kitchen that show both vents to be quite full.

18. D. Murch testified that the bathroom vent was clogged with dust and the kitchen vent was clogged with grease and dust. He testified that typically, a tenant will clean the vents themselves by vacuuming them out. He testified that if they are particularly bad, they can soak in the sink overnight. He testified that there is no danger to removing the vent covers.

Analysis

19. This application is brought pursuant to section 20 of the Residential Tenancies Act, 2006 which states 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.
20. 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.
21. Based on the evidence before me, I find on a balance of probabilities that the Landlord is in breach of their maintenance obligations with respect to the air conditioning unit, the kitchen sink leak, the shower head and bathroom faucet leak, and the folding door in the kitchen.
22. Upon the Tenant notifying the Landlord about some of the issues in December 2021, the Landlord's response was that the Tenant should move out if he wasn't happy.
23. I do not accept the Landlord's submissions about the air conditioner not being his responsibility to fix. It was in the unit when the Tenant moved in in 2013, if the Landlord did not remove it before hand, it is his responsibility to maintain. I also do not accept that because the Tenant told the Landlord he would fix it and take it with him when he moves means that the Landlord is absolved of any responsibility. It more likely that the Tenant sent that messages in frustration to the Landlord's unwillingness to fix the issue.
24. When the Tenant provided the Landlord with a list of issues that needed to be addressed in May 2022, nothing was addressed until almost a year later. The Landlord provided no reasonable explanation for the delay in addressing the issues. As a result, I find that the Landlord was in breach of their obligations under section 20 of the Act.
25. In regard to the filter issue, I do not find that this is the responsibility of the Landlord. The Tenant is responsible for ordinary cleanliness of the unit, and vacuuming the filters is part of that responsibility. This portion of the Tenant's application is dismissed.
26. With regard to the ceiling fan, I do not find this issue falls within a section 20 breach of the Act. I say this because there was nothing wrong with the fan. It did not require repair. It was installed correctly and posed no safety issues. The fan was reinstalled in another way as to cut down on the noise and make it more stable. This application was brought pursuant to section 20 of the Act, this allegation may well have been better pursued under section 22 of the Act.

Remedies

27. The Tenant is requesting a 40% rent abatement from August 2021 to present for the issue with the air conditioner.

28. This application was filed on January 23, 2023. This means that I can consider an abatement going back from January 23, 2022 onwards. The Tenant testified that he did not have use of the air conditioner from August 2021 until the cord was fixed on May 15, 2023. I do not find that a 40% abatement over the entire time is reasonable, considering that the air conditioner is not used for the winter months. I find that the Tenant is entitled to a 30% abatement for the months of May 2022 until September 2022. These months represent the months that the Tenant was deprived of the actual use of the air conditioner. This amounts to \$1,206.00.
29. The Tenant is requesting a 50% abatement for the issues with the sink from December 15, 2021 until it was fixed.
30. I accept that it was an inconvenience for the Tenant to have no use of the sink, however I do not find that a 50% abatement is reasonable in the circumstances. As discussed above, I can only award an abatement starting from a year before the Tenant filed this application, therefore, the Tenant is entitled to an abatement of 10% of the rent from January 23, 2022 until June 28, 2022, \$414.48.
31. The Tenant is requesting a 10% abatement for the issues with the patio door.
32. I find that although the door handle needed to be fixed, this is a fairly minor issues that did not affect the ability to open and close the door. I do not accept that the gap in the door affected the temperature in the unit to the degree the Tenant claims. He submitted 3 pictures of temperature readings from 2023, this is not enough for me to determine that gap significantly affected the temperature. The Landlord's witness testified that the gap would not affect the temperature at all because the complex is on a negative pressure system. The Tenant also submitted a video taken on a day that Ontario was experiencing an extreme weather event. The video showed water coming in through the gap. No other videos were submitted into evidence. I do not find that that video is representative of the issues the Tenant may experience because of the gap in the normal course. I find that the Tenant is entitled to a 5% abatement for the issues relating to the patio door from May 27, 2022 until May 15, 2023. Therefore, the Tenant is entitled to \$482.40.
33. The Tenant is requesting a 5% abatement for the leaking faucets from May 27, 2022 until May 15, 2023. I find that this is reasonable request. The Tenant testified that the constant dripping was annoying when trying to sleep or work from home. The Tenant is entitled to \$482.40.
34. The Tenant is requesting a 5% abatement for the folding kitchen door from May 27, 2022 until May 15, 2023. The Tenant testified that his cat's litter was usually behind the door and having it function assists in keeping any smell associated with that separate. I find that this is a reasonable request. The Tenant is entitled to \$482.40.

It is ordered that:

1. The Landlord shall pay the Tenant \$3,067.68. This amount represents a rent abatement.

- 2. The Landlord shall pay the Tenant the full amount owing by October 23, 2023.

- 3. If the Landlord does not pay the Tenant the full amount owing by October 23, 2023, the Landlord will owe interest. This will be simple interest calculated from October 24, 2023 at 7.00% annually on the balance outstanding.

October 12, 2023

Date Issued

Emily Robb

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.

2023 ONLTB 67322 (CanLII)