



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

Citation: Goodbaum v Sharaynewych, 2023 ONLTB 66027

Date: 2023-10-05

File Number: LTB-T-001661-22

In the matter of: 2nd Floor, 1445 DAVENPORT RD TORONTO
ON M6H2H6

Between: Michael Goodbaum Tenants
Aleksandra Goodbaum

And

Chris Sharaynewych Landlord

Michael Goodbaum, Aleksandra Goodbaum (the 'Tenants') applied for an order determining that Chris Sharaynewych (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 August 22, 2023. Only the Tenants and their legal representative, S. Baldeo attended the hearing.

As of 1:15pm, the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenants' evidence.

Determinations:

1. As explained below, the Tenant proved on a balance of probabilities the following allegations contained in the application:
 - The Landlord failed to repair a crack in the ceiling within a reasonable amount of time.
 - The Landlord failed to repair the balcony door within a reasonable amount of time.

- The Landlord failed to address a mold issue in the residential complex within a reasonable amount of time.
2. Therefore, the Landlord must pay to the Tenants \$5,206.58 as a result of the Landlord's breach of the Act.
 3. I find that the Landlord failed to meet the Landlord's obligations under subsection 20(1) of the Act to repair and maintain the rental unit.

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4. 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.
5. In this case the Tenants had a number of maintenance issues that they previously notified the Landlord of and were on going as of the date of the hearing. The Tenants testified that the Landlord never came to investigate the issues. As such, I find that based on the uncontested evidence, the Landlord did not act reasonably in the circumstances and failed to respond to the maintenance issues raised by the Tenants.

Remedies

9. The Tenants filed their application on January 10, 2022 and moved out of the rental unit March 3, 2021. In keeping with the limitations set out in section 29 of the Act, the period of time that is relevant to this application is January 10, 2021 to March 3, 2021.
10. The Tenants seek in their application a 50% rent abatement from February 1, 2020 to March 3, 2021 (13 months). However, as already mentioned- due to the timing of filing of this application I am limited to relevant time period referenced above (January 10, 2021 to March 3, 2021). For the following reasons, I also do not find that the Tenants are entitled to a 50% abatement, rather find that a 35% rent abatement is more reasonable in the circumstances.
11. Abatement is a contractual remedy that stands for the premise that if a tenant is paying 100% of the rent for a bundle of goods and services but is not receiving everything being paid for then the tenant is entitled to abatement proportional to the difference between what is being paid for and what is being received.

12. Based on the maintenance issues and the evidence adduced at the hearing, I do not find that the Tenants loss use of 50% of the rental unit. However, I recognize the fact that the maintenance issues were on-going for quite sometime, the Landlord's perceived lack of diligence in responding to the Tenants and that the presence of mold negatively impacted their daily living in the rental unit. Therefore, I find 35% abatement to be reasonable for the time period January 10, 2021 to March 3, 2021.
13. The Tenants monthly rent was \$1,900.00 per month. To calculate the daily rent, I took the monthly rent, multiply it by 12, and divide by 365 days which equals \$62.47 per day. 35% of 62.47 is \$21.86. The Tenants shall receive a daily abatement of \$21.86 per day from January 10, 2021 to March 3, 2021 (53 days).
14. The Tenants testified that as mold spores got into their furniture, they were seeking to be compensated for the replacement. The Tenants testified that the furniture could not be cleaned as the spores would remain in the fabric. The Tenants are seeking \$1,000.00, which represents the value of their couch and mattress.

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15. The Tenants did not provide receipts for the items purchased- however I find that this estimated cost for the two items is reasonable. Therefore, the Landlord must pay the Tenant \$1,000.00 for the costs to repair or replace property that was damaged because the Landlord did not repair or maintain the rental unit or the residential complex.
16. The Tenant incurred the following costs and out-of-pocket expenses because of the Landlord's breach: The Tenants testified that as a result of the Landlord failing to address their maintenance concerns, they needed to vacate the property. Therefore, the Landlord must pay the Tenant \$3,000.00 for these out-of-pocket expenses.

It is ordered that:

1. The Landlord shall pay the Tenants a total of \$5,206.58. This amount represents:
 - \$1,158.58 for a rent abatement for the period January 10, 2021 to March 3, 2021.
 - \$1,000.00 for the reasonable costs that the Tenants have incurred to replace property that was destroyed as a result of the Landlord's actions.
 - \$3,000.00 for the reasonable out-of-pocket expenses that the Tenants have incurred.

- \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenants the full amount owing by October 16, 2023.
 3. If the Landlord does not pay the Tenants the full amount owing by October 16, 2023, the Landlord will owe interest. This will be simple interest calculated from October 17, 2023 at 6.00% annually on the balance outstanding.
 4. The tenancy between the Landlord and the Tenants is terminated as of March 3, 2021, the date the Tenants moved out of the rental unit.

October 5, 2023

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Curtis Begg

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.