



Order under Subsection 30 Residential Tenancies Act, 2006

Citation: SMITH v DOHERTY, 2023 ONLTB 64664

Date: 2023-09-27

File Number:
LTB-T-046895-22

In the matter of: 20 MCGARRY AVENUE
RENFREW ON K7V2M2

Between: ROBERTA (BOBBI-JO) SMITH Tenant

And

CHEYANNE DOHERTY Landlord
MITCH DOHERTY

Roberta (Bobbi-Jo) Smith (the 'Tenant') applied for an order determining that Cheyanne Doherty and Mitch Doherty (the 'Landlords') failed to meet the Landlords' 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.

Both Landlords, their Representative Kayla Quintal, and the Tenant attended the hearing.

Determinations:

1. As explained below, the Tenant proved on a balance of probabilities that the Landlords breached their maintenance obligations under the Act.
2. Therefore, the Landlord must pay the Tenant \$1,101.26. This amount represents a \$1,048.26 rent abatement and \$53.00 for the cost of filing the application.

3. The rental unit is an entire house. The Tenant's application concerns flooding, persistent moisture, and mould, in the rental unit basement. The basement has one bedroom, a main recreation area, and a utility room.
4. The Tenant moved into the rental unit on October 1, 2020 and vacated November 22, 2021.

The Facts

5. The Tenant testified that on March 11, 2021 the basement utility room flooded. The Tenant testified that there was water coming up through the sump pump. The water spread to the basement bedroom and recreation room.
6. The Landlord ('M.D') has experience in construction, specifically concrete foundation, and water proofing. As such he was the Landlord who primarily responded to the Tenant's maintenance concerns.
7. The Tenant testified that M.D came to address the flood sometime within a week of it being reported. M.D testified that he came to address the problem the next day. M.D testified that there was water on the floor, but he would not describe it as a flood. M.D testified that the sump pump had become unplugged, he plugged it back in, and the problem resolved. The Tenant testified that the reason the sump pump was unplugged is because it was spraying water everywhere and the Landlord told her to unplug it.
8. The Tenant testified that after the initial flood, moisture and water continued to come up through the floors and walls and the basement was never fully dry. The Tenant testified that this resulted in mould on the walls.
9. After the flood, M.D gave the Tenant what he described as a heavy-duty industrial dehumidifier to address moisture that remained.
10. M.D testified that the Tenant would contact the Landlords about once a month indicating that something in the rental unit was wet or moist.
11. The Tenant testified that on June 30, 2021 M.D came to the rental unit to examine the sump pump. M.D testified that rainwater was not being pushed out by the sump pump. He cleared it out and the sump pump started working again.
12. M.D testified that July 31, 2021 the exterior hose on the sump pump was replaced. M.D testified that the hose on the sump pump was not pushing out enough water, so he replaced it with a longer hose that worked better.
13. The Tenant testified that at some point M.D tore out the floor in the basement bedroom to address the moisture problem. M.D thought that might have happened in July 2021. M.D

testified that he removed the flooring because he was being told by the Tenant that the moisture problem was worsening. M.D testified that he waited a month or two to replace the floor because he wanted to make sure that there was no remaining moisture.

14. The Tenant testified that sometime in October 2021 M.D cut out a section of the drywall in the main recreation room to try and address the moisture and mould problem. M.D testified that he had received complaints from the Tenant that she was concerned about mould in a specific spot in the basement. M.D testified that to make the Tenant feel better he cut out an approximately 6-foot portion of the drywall. He saw no mould but washed the wall to make the Tenant more comfortable.
15. M.D testified that there were multiple occasions he attended the rental unit to find the sump pump was unplugged. The Tenant testified that other than the initial flooding incident she never unplugged the sump pump.
16. The Tenant testified that after she vacated the rental unit, the Landlord who moved into the rental unit, Cheyanne Doherty (C.D), mentioned having to pay to deal with water damage.

C.D testified that she was just referring to fixing the drywall that was cut-out, and not other damage.
17. The Tenant testified that the moisture and dampness problem was never rectified throughout her tenancy. The Tenant's stepson initially used the basement bedroom, but the family had to abandon the bedroom in March 2021 because of the moisture. Additionally, the Tenant testified that the family had to move all their basement furniture into the center of the recreational room away from the walls.
18. M.D testified that he waterproofed the rental unit basement in 2016 and this included installing a new sump pump. M.D testified that basements are always a bit damp, but this situation was nothing out of the ordinary. M.D testified that prior to the Tenant's occupancy he lived in the rental unit for 5 years and never had a problem with mould or moisture in the basement.
19. The Landlord C.D testified that the rental unit basement has a little bit of normal moisture and is a bit damp. C.D moved into the rental unit after the Tenant vacated and said she has had no out of the ordinary issues with moisture. However, she testified that she uses a dehumidifier as a caution.
20. The Landlord introduced into evidence a declaration from Michael Coulas (M.C) who is a real estate agent who tried to help the Landlords sell the rental property. M.C writes that he attended the rental property September 21, 2021 and did not see any mould or moisture. He also did not hear any concerns about moisture from any agents who viewed the property while it was on the market.

21. M.C also took two photos of the basement recreation room. In those photos the Tenant has lots of belongings in the room and the majority do not appear to be stacked in the center of the room, although there are some items stacked towards the center.

Scope of the Application

22. The Tenant filed her application March 16, 2022. Pursuant to section 29(2) of the Act no maintenance application can be made more than one year after the day the alleged conduct giving rise to the application occurred. The initial flood in the basement utility room occurred on March 11, 2021 and as such is outside the limitation period of the application. I will only consider it for context and will not find a breach or award a remedy based on the initial flood or the Landlord's actions prior to March 16, 2021. However, the persistent dampness and mould that the Tenant describes throughout the rest of the tenancy is within the limitation period and will be considered.

Analysis

23. Section 20 of 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.

24. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, ('*Onyskiw*') 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.

25. As explained below, I find that the Landlord breached their maintenance obligations under the Act.

26. I find on a balance of probabilities that there was a persistent moisture and dampness problem in the rental unit basement. This is for the following reasons. First, the Tenant complained monthly to the Landlord about moisture or things being wet. I do not think the Tenant was lying about the problem or perceiving a problem that was not there.

27. Second, on two occasions when the Landlord attended the rental unit there was an issue with the sump pump, on June 30, 2021 it needed to be cleared out, and on July 31, 2021 the hose needed to be replaced.

28. Third, in July 2021 the Landlord removed the flooring in the basement bedroom, and then left it to dry out for one to two months before replacing it. Additionally, in October 2021 the Landlord cut out 6 feet of drywall to address the Tenant's complaints. The Landlord M.D

testified that he took these actions to address the Tenant's complaints and to make her more comfortable. I find it improbable that the Landlord would rip out a floor and a large portion of drywall if he did not believe there was any issue and was only doing it to make the Tenant more comfortable. It is much more likely that those actions were taken because there was a problem, and the Landlord was trying to address it.

29. Fourth, I am not persuaded by the written evidence of the Landlord's real estate agent that there was no moisture in the rental unit basement. His evidence was in the form of unchallenged hearsay evidence and as such I give it diminished weight. Additionally, the real estate agent only visited the property on limited occasions and does not have comparable firsthand experience with the problem that the Tenant does. As such I prefer the evidence of the Tenant.
30. Fifth, while both Landlords testified that there was not a moisture or dampness problem in the basement, they also both stated that the basement was a bit damp. The Landlords stressed that the dampness was nothing out of the ordinary, but I find it improbable that the Landlord would rip out the floor of one of the bedrooms if there was no problem.
31. I am also not persuaded that the Tenant contributed to the moisture problem by repeatedly unplugging the sump pump. The Tenant's explanation for why she unplugged it during the initial flood is reasonable as it was leaking water. The Landlord did not provide the dates or any corroborating evidence to show that the Tenant unplugged it multiple other times. The Tenant also denied unplugging it on additional occasions and I found this testimony to be credible.
32. In considering *Onyskiw* I do not find the Landlords actions reasonable in this case. The Landlord M.B described himself as responsive to the Tenant's complaints and stated that if a problem was urgent, he would respond the next day. While I agree with the Landlord that when he received a complaint from the Tenant, he would attend the rental unit and try to work on a solution, however, the Landlord was not fixing new and different maintenance issues each time he visited. The work being done by the Landlord was always to address the same problem, namely the persistent moisture and wetness in the basement. As such while the Landlord did address immediate maintenance concerns, such as the sump pump temporarily not working, he did not address the underlying cause of the persistent moisture that the Tenant lived with for months. As such I do not find the Landlord's actions reasonable.
33. However, despite finding that there was a moisture problem I am not satisfied that it is as severe as described by the Tenant. The Tenant stated that the basement was unusable, but photographs show that she had many belongings still in the basement and her stepson continued to sleep in the basement's recreation room.
34. I am also not satisfied that there was a persistent mould problem in the basement rental unit. While mould likely follows moisture, I find that the Tenant led insufficient evidence to

establish that there was a mould problem. This is because the Tenant had no supporting documentation regarding the mould, such as photographs, and none of the maintenance actions taken by the Landlord M.D resulting in him finding mould.

Remedy

35. The Tenant requests a rent abatement in the amount of \$5,400.00. The monthly rent was \$1,350.00. The Tenant requests 50% of her rent between March 2021 and November 2021.
36. As stated previously I can only award a remedy from March 16, 2021 to the day the Tenant vacated November 22, 2021, which is 8 months and 6 days.
37. Also as stated previously I do not find that the moisture and dampness problem was as severe as described by the Tenant. I also do not accept that the entire basement was unusable. While the Tenant's family abandoned the basement bedroom in March 2021, the Tenant's stepson continued to sleep in the basement recreation room. The Tenant's stepson also paid rent to the Tenant for his use of the area which demonstrates that the Tenant felt the area still had value. The Tenant and her family also continued to store a large number of items in the basement which also demonstrates that it was not completely unusable.
38. For those reasons I find that a \$1,049.26 rent abatement is appropriate in the circumstances. \$1,048.26 is 18.5% of 8 months and 6 days of rent. An abatement in that range is typically given when there is some disruption to a tenant's ability to normally reside the unit.
39. In her application the Tenant also sought costs to replace damaged property. The Tenant abandoned this claim at the hearing.
40. The Tenant paid \$53.00 to file her application. She is entitled to be reimbursed for that cost.

It is ordered that:

1. The Landlords shall pay the Tenant \$1,101.26. This amount represents:
 - \$1,048.26 for a rent abatement for the period from March 16, 2021 to November 22, 2021;
 - \$53.00 for the cost of filing the application.
5. The Landlords shall pay the Tenant the full amount owing by November 30, 2023.

6. If the Landlords do not pay the Tenant the full amount owing by November 30, 2023, the Landlords will owe interest. This will be simple interest calculated from December 1, 2023 at 6.00% annually on the balance outstanding.

September 27, 2023

Date Issued

Amanda Kovats

Member, Landlord and Tenant Board

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