



Order under Subsection 30 & 135 Residential Tenancies Act, 2006

Citation: Chamberlain v High, 2023 ONLTB 64554

Date: 2023-09-25

File Number: LTB-T-054251-22

In the matter of: A-10 Crombie Street
Cambridge ON N1S 1Y4

Between: Dorothy Chamberlain Tenant

And

Larry High Landlord

Dorothy Chamberlain (the 'Tenant') applied for an order determining that Larry High (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.

Further, the Tenant applied for an order determining that the Landlord collected or retained money illegally.

This application was heard by videoconference on August 9, 2023.

The Landlord's widow Sherry High ('SH') and the Tenant attended the hearing.

Determinations:

Preliminary Issue

1. SH testified that she is the former wife of the Landlord, who passed away on July 4, 2022.

T1 Application

2. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must compensate the Tenant one month's rent in the amount of \$1,200.00 as required under s. 48.1 of the *Residential Tenancies Act, 2006* (the 'Act'). The Tenant's remaining claims are dismissed.
3. The Tenant testified that her and her deceased husband had paid a last month's deposit to the Landlord in October of 2014. The Tenant did not have any record of the transaction and testified that she gave her husband money and watched him hand it over to the Landlord over a fence. The Tenant is also seeking the interest on the last month's rent deposit.

2023 ONLTB 64554 (CanLII)

4. The Tenant testified further that the Landlord had served upon the Tenant an N12 notice of termination with a termination date of August 31, 2021. The Tenant testified that the Landlord never paid her compensation in the amount of one month's rent as required under s. 48.1 of the Act.
5. The Tenant alleges further that when she and her husband vacated the unit, the Tenant was unable to afford storage or to run a yard sale, so the Tenant had agreed with the Landlord to sell her items and the proceeds to be put in a trust. The Tenant testified that she believed the Landlord gave her items away.
6. Having reviewed the evidence of both parties, I am not satisfied that the Tenant had paid a last month's rent deposit to the Landlord. The Tenant had no records to reflect this payment and her evidence that she saw her husband hand the Landlord cash over a fence is insufficient to prove that the money provided was for a last month's rent deposit. As such, this portion of the Tenant's application is dismissed. Further, while I have found that the Tenant did not pay a last month's rent deposit to the Landlord, interest on the deposit will also not be ordered.
7. With respect to the Tenant's items that were sold, under s. 41 of the Act a Landlord is permitted to sell or retain property from a unit that was vacated by notice of termination, agreement, or order. The Landlord is required to wait 72 hours after the enforcement of the eviction order before selling or retaining any items.
8. The Tenant failed to provide a detailed list of precisely what items were left and sold, and the Landlord testified that the items were disposed of as what was left was essentially garbage. As such, this part of the Tenant's claim is also dismissed.
9. That said, the Landlord agree that an N12 notice of termination was provided to the Tenant in accordance with s. 48.1 of the Act and the Landlord never did pay the required one month's rent in compensation as required by the termination date as indicated on the notice, which was August 13, 2021. As such, the Landlord will be ordered to pay to the Tenant \$1,200.00 for the one month's compensation.

T6 Application

10. The Tenant's application for maintenance was filed on June 16, 2022. The Tenant in her own evidence agreed that she had vacated the unit on July 17, 2021.
11. Section 29(1)(1) of the Act allows for a tenant to apply to the Board for an order determining that the Landlord was in violation of their maintenance responsibilities as required under s. 20 of the Act. Section 29(2) states that no application may be made more than one year after the day the alleged conduct giving rise to the application occurred.
12. As such, considering s. 29(2), the filing of the Tenant's application and the date in which she vacated the unit, the Tenant was only permitted to seek a remedy from June 17, 2021, until July 17, 2021.

13. The Tenant alleges in her application various and ongoing issues with the furnace in the unit. That said, by June 17, 2021, the issues with the unit's furnace had been resolved.
14. Further, the Tenant's application alleges that the Landlord failed to maintain the unit's roof. The Tenant in her evidence admitted that no requests with respect to the roof occurred at any point after 2019.
15. The Tenant further raised issues regarding individuals viewing the unit while it was for sale wearing perfume, which she is allergic to.

Analysis & Findings

16. I am not satisfied that the Landlord failed to meet their obligations under subsection 20(1) of the Act to repair or maintain the residential complex and did not fail to comply with maintenance standards.
17. 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.
18. In this case, no evidence was led with respect to any maintenance issues that were not resolved by June 17, 2021, until July 17, 2021. The Tenant admitted that the furnace had been working at this point. That said, by June 15, 2021, the Landlord was not required to provide heat to the unit again until September. As such, this part of the Tenant's application is dismissed.
19. Further, the Tenant admitted in her evidence that no maintenance requests were made to the Landlord since 2019. Section 30(2) of the Act outlines that in determining a remedy that Board shall consider whether a tenant or former tenant advised the landlord of the alleged breaches before applying to the Board. In considering the limitation period as outlined above, I am not satisfied that the Landlord was in violation of their maintenance obligations regarding the unit.
20. Further, the Tenant's issue regarding individuals wearing perfume would not be a maintenance issue the Landlord is required to address under s. 20 of the Act and this portion of the Tenant's application is dismissed.
21. The Tenant's application under s. 30 of the Act is dismissed.

It is ordered that:

1. The Landlord shall pay the Tenant is \$1,253.00. This amount represents:
 - \$1,200.00 for compensation pursuant to s. 48.1 of the Act
 - \$53.00 for the cost of filing the application.

5. The Landlord shall pay the Tenant the full amount owing by October 6, 2023.
6. If the Landlord does not pay the Tenant the full amount owing by October 6, 2023, the Landlord will owe interest. This will be simple interest calculated from October 7, 2023 at 6.00% annually on the balance outstanding.
8. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

September 25, 2023

Date Issued

Jagger Benham

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.