



Order under Subsection 30 Residential Tenancies Act, 2006

Citation: Sergeeva v Off Campus Rez, 2023 ONLTB 64454

Date: 2023-09-25

File Number: LTB-T-014882-22

In the matter of: 204-333 King Street North
Waterloo, ON N2J 2Z1

Between: Evgenia Sergeeva Tenant

And

Off Campus Rez Landlord

Evgenia Sergeeva (the 'Tenant') applied for an order determining that Off Campus Rez (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 9, 2023.

The Landlord's Legal Representative Francisco Gomez, the Landlord's Property Manager Tara Brandie ('TB') and the Tenant attended the hearing. The Tenant met with Tenant Duty Counsel prior to the hearing.

Determinations:

Preliminary Issues

1. The Landlord's Legal Representative raised a preliminary issue prior to the start of the hearing, submitting that the tenancy between the Landlord and the Tenant was in fact a joint tenancy, and that three other tenants were parties to the lease however, we're not included as part of the Tenant's claim.
2. The Landlord's Legal Representative submitted that the Tenant's application was inappropriate and was filed in contravention of s. 183 of the Act which outlines that the Board shall adopt the most expeditious method of determining questions arising in a proceeding, which should have included the 3 other tenants included on the lease.
3. The Landlord's Legal Representative also relied upon s. 197 of the Act wherein he suggested that the Tenant's claim was vexatious for having negated to include the other tenants and requested the Board dismiss the Tenant's application on that basis.
4. Having reviewed the submissions of both parties, I had found that the Tenant's application was properly before the Board as there is nothing in the Act that prevents a single tenant

from bringing an application against a landlord in a joint tenancy. In fact, having reviewed s. 187 of the Act which outlines who the parties to an application are, the section states *and any tenants*. As such, the Landlord's Legal Representative's motion to summarily dismiss the Tenant's application was dismissed.

Tenant's Application

5. The Tenant testified that she had moved into the unit on September 2, 2021 and had moved out of the unit in April of 2022. The Tenant's application was filed on March 14, 2022.
6. The Tenant testified that the unit in question was a student housing unit that is rented out to students in the Waterloo area and the residential complex is a 10-floor building.
7. The Tenant testified that in the early fall of 2021 she started hearing loud thumping noises in the unit, which she had initially suspected had been emanating from the upstairs tenants.
8. After some time, the Tenant had realized that the sound started to intensify when the weather was windy. It was at this time that the Tenant had realized the sound was emanating from the residential complex's HVAC system.
9. The Tenant started making recordings of the sound and had entered into evidence recordings from November 17, 2021, and November 21, 2021. On November 22, 2021, the Tenant had submitted a maintenance request to the Landlord via e-mail. The Landlord responded by e-mail the next day advising the Tenant that the maintenance team would investigate the issue.
10. The Tenant followed up with a second request on December 2, 2021 via e-mail. An agent of the Landlord replied to the Tenant the same date that someone would come and inspect the unit that day. The Tenant testified that the Landlord had a contractor attend the unit in December of 2021.
11. A follow up e-mail was sent by the Tenant to the Landlord on January 12, 2022, in which the Tenant outlined that the noise from the HVAC system had persisted and that the contractor who inspected the HVAC had advised her after inspecting the fan that it may have been fixed as a result of his adjustment however, the contractor was unable to remove the fan with the tools he had at the time and mentioned that the fan should be removed if the noise continued. An agent for the Landlord responded the same date advising the Tenant that someone would come inspect the HVAC again.
12. On January 13, 2022, the Landlord's agent sought additional information from the Tenant by e-mail and had requested to know what time of day the banging was more prevalent. The Tenant responded the same date to advise that the noise would start when it was windy outside.

13. The Landlord's agent responded the same day, advising the Tenant that she had passed the Tenant's information to their contractor to assess the situation and advised the Tenant at that time to call the Landlord when the noise happens again to have them come in.
14. I note in the Landlord's agent's response that she advised the Tenant that she had advised her contractor that this request was more difficult than they thought, which is why the Tenant's videos had been provided by the Landlord to their contractor and have requested that the issue gets addressed ASAP. The Tenant responded the same date advising the Landlord's agent that she would keep her posted.
15. On January 14, 2022, the Landlord's agent requested the Tenant to turn on the exhaust fan when the noise started to see if it makes a difference. The Tenant replied on January 19, 2022 that the banging had started again with the wind and that the exhaust fan solution did not work. The Landlord's agent advised the Tenant the same date that someone would be scheduled to come inspect the unit.
16. On February 16, 2022, the Tenant advised the Landlord's agent that the "noises have returned". The Landlord's agent responded the same date that someone would be arriving within the hour. The Tenant testified that a contractor attended at the unit that date. The Tenant testified that the contractor had told her what the issue was and that he would return with a solution. The Tenant testified that after that inspection, she hadn't heard from the Landlord or their contractor for 4 weeks.
17. The Tenant e-mailed the Landlord's agent again on March 4, 2022, asking the Landlord for an update as the noise had occurred several times over the last couple of weeks. The Tenant followed up with an e-mail on March 6, 2022 advising the Landlord that the banging had continued and had reiterated to the Landlord that their contractor had advised her that they were aware of what the issue was and requested to know when someone would be attending the unit to conduct same.
18. On March 6, 2022, a different agent for the Landlord replied to the Tenant apologizing for the delay and advised her that her requests would be set on "high priority". The same date the Tenant requested a timeline as to when the repairs would be conducted. On March 7, 2022, the Tenant e-mailed the Landlord's agent again advising them that the noise had continued. Maintenance submissions from the Landlord's online portal dated March 6, 2022, March 7, 2022 and March 12, 2022 were entered into evidence.
19. On March 10, 2022, the Landlord's agent e-mailed the Tenant advising her that the Landlord's contractor had advised him that they believe the issue stems from the inside of the HVAC system however, they are only able to access the area through the exterior of the building, which would require a lift to address as the Tenant's unit was on the 2nd floor of the residential complex.
20. A further e-mail was sent to the Tenant on March 14, 2022 reiterating to the Tenant that the contractor required a lift or boom to address the issue from the exterior of the unit. The Landlord did disclose in this e-mail that an indoor, alternative option was available however, it would be "more work, more money and more disruptive to the residents".

21. The Tenant raised the fact that on February 17, 2022, the Landlord's contractor had provided the Landlord with two repair options after having subsequently inspected the unit the day prior. The Landlord was offered either the exterior repair option with the lift, or the interior option which would have involved cutting open drywall for access. The contractor advised that the former option would be "very messy and likely not much more cost effective than renting a boom lift". The Landlord's agent did not respond to these options until March 28, 2022, when the contractor was advised that the Landlord would opt for the exterior option which was completed on April 1, 2022.

Remedies

22. The Tenant testified that the noise had an impact on her, as she was in the 4th year of her program at the University of Waterloo and that due to the COVID-19 pandemic, the Tenant was effectively forced to be in the unit nearly 99% of the time she was a tenant. She testified that the noises were not allowing her to sleep, which hindered her ability to study or conduct interviews.
23. The Tenant testified that rent for the unit was \$2,930.00. She testified that is seeking a rent abatement of \$800.00, which represents 190 hours of having heard the noise in her estimation.

Landlord's Evidence

24. The Landlord's agent TB testified that she has been the general manager of the residential complex since February of 2022.
25. TB testified that the Landlord had chosen the exterior option for repair as it was a less disruptive fix than the interior option. That said, proper weather was required in order to facilitate the boom and as such, the Landlord worked as quickly as they could to have the boom attend as soon as possible, which it did on April 1, 2022.

Analysis & Findings

26. The Tenant submits that the Landlord took an unreasonable amount of time to resolve the issue. She submits that the Landlord's contractor had been aware of the issue as early as December 2021 and submitted that no one had attended at her unit again until February 16, 2022.
27. As outlined above, the Tenant takes further issue with the fact that the Landlord did not choose one of their contractor's options until March 28, 2022, after the options had been provided to the Landlord on February 17, 2022.
28. The Tenant further submitted that the Landlord could have completed the exterior repair at an earlier date as in her opinion, the weather should not have been in issue in doing so.
29. Section 20 of the Act outlines that a landlord is responsible for providing and maintaining a residential complex, including rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.

30. 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.
31. The Landlord's Legal Representative submitted that the Tenant has failed to prove on a balance of probabilities that the Landlord had been negligent in their duties as the Landlord responded immediately to each of the Tenant's complaints within a reasonable amount of time.
32. Further, the Landlord's Legal Representative submitted that the Landlord chose the exterior option as it was less intrusive considering the fact that the COVID-10 pandemic had still been an issue during the timeframe of the application, and the Landlord's contractor required some melting of the ice and snow to occur before the boom could properly be set.
33. That said, while there was a delay between the Landlord's contractor providing the Landlord repair options and a response to same, I am not satisfied that the Landlord is in violation of their maintenance obligations.
34. The Landlord's agents would respond to all of the Tenant's e-mails within a reasonable amount of time and it was clear from the Landlord's agent's e-mails to their contractor that they had taken the Tenant's complaints seriously. As well, the language of the responses to the Tenant made it clear to the Tenant that the Landlord was seeking to resolve this issue to the satisfaction of the Tenant as soon as possible.
35. Further, the Tenant is incorrect when she states that the Landlord's contractor knew of the issue in December. The contractor in December had suspected that the fan was an issue, but that wasn't identified until February 16, 2022.
36. That said, it was clear from the photos provided in the Landlord's evidence that the area in which the boom was required to be situated required some snow and ice to melt before being utilized.
37. While the interior option may have been faster, the Landlord's prerogative was to find the least invasive solution as possible that would lead to the least amount of disruption. The Landlord was entitled to make that choice and the issue was resolved within 3 days of the Landlord advising the contractor of same.
38. This was not an issue that was readily identifiable with an obvious solution that was ignored by the Landlord. This was a complicated issue that required exterior access to resolve during the winter months, also during a pandemic. As outlined above, I am satisfied on a balance of probabilities that the Landlord was not in violation of their maintenance responsibilities and the Tenant's application is dismissed.

It is ordered that:

1. The Tenant's application is dismissed.

September 25, 2023

Date Issued

Jagger Benham
Member, Landlord and Tenant Board

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