



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

**Citation:** Sprach v Carroll, 2023 ONLTB 63428

**Date:** 2023-09-25

**File Number:** LTB-T-009251-22

**In the matter of:** Unit 1-47 Church Street West  
Elmria, ON N3B 1M6

**Between:** Jennifer Sprach  
Peer Telling Tenants

**And**

Dianne Carroll Landlord

Jennifer Sprach and Peer Telling (the 'Tenants') applied for an order determining that Dianne Carroll (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 and the Tenants attended the hearing.

### **Determinations:**

1. As explained below, the Tenants proved on a balance of probabilities the following allegations contained in the application: The Landlord failed to adequately maintain the driveway.
2. Therefore, the Landlord must pay a rent abatement to the Tenants.
3. I find that the Landlord failed to meet the Landlord's obligations under subsection 20(1) of the Act to maintain the residential complex by failing to adequately maintain the driveway of the residential complex.
4. The Tenants moved into the unit on October 1, 2021 and had vacated the unit by September 2022. The Tenant's application was filed March 16, 2022.

### **Driveway**

5. The Tenants allege that the driveway of the residential complex had turned into ice after the first rain and snow of the season, which had resulted in numerous falls and vehicles sliding. The Tenants allege that as soon as photos of this issue were sent to the Landlord,

the Landlord dismissed their complaints and had told the Tenants to fix the driveway themselves.

6. Text messages were entered into evidence with respect to requests made by the Tenants to the Landlord regarding this issue on November 29, 2021, December 7, 2021, December 8, 2021. The Landlord's responded on December 8, 2021, stating that her contractor would not plow one inch of snow and advised the Tenants that she would bring salt to the residential complex the next date. The Landlord later responds that she had just been informed by her contractor that they no longer use salt for non-commercial properties.
7. The Tenants testified that they had salted the driveway themselves on January 17, 2022, February 18, 2022, February 19, 2022, March 11, 2022 and March 15, 2022. The Tenants testified that they had requested the Landlord to maintain the driveway these dates but were ignored.
8. The Landlord testified that she had hired a contractor to plow her driveway however, no contract or invoices for any work was submitted as evidence to support the Landlord's evidence.

#### *Plumbing, Electricity & Front Door Handle*

9. The Tenants further alleged issues with the plumbing however, the Tenants were unable to provide any documentation or photos to show precisely what the issue was and when the issue was brought to the attention of the Landlord.
10. Further, the Tenants also included claims regarding an incident where the Electrical Safety Authority had provided the Tenants notice of their power being shut off on or around February 7, 2022. The Tenants admitted in their evidence that the power was turned on shortly thereafter and as such, I am not satisfied that the Landlord failed to maintain this issue in accordance with s. 20 of the Act.
11. Further, the Tenants allege issues with the heating of the unit and the front door handle however, no evidence was tendered to show what the issue was precisely, when the Landlord was made aware and the Landlord's response to same. As such, I am not satisfied that the Landlord failed to maintain these issues in accordance with s. 20 of the Act.

#### Remedies

12. Rent for the unit was \$2,100.00 per month. The Tenants are requesting an abatement of rent in the amount of \$800.00. The Tenants were charged an additional \$100.00 in rent per month for an extra parking spot, as the Tenants had two cars. The Tenants are seeking \$200.00 per month for 4 months in which the driveway was not maintained.
13. The Tenants are also seeking \$400.00 for repair and replacement costs for plowing and salting the driveway. No invoices or receipts were provided in evidence to support these costs.

*Analysis & Findings*

14. 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.
15. Section 26 of Ontario Regulation 517/06 under the Act states that a landlord is required to maintain the exterior common areas in a condition suitable for their intended use, including the removal of unsafe accumulations of ice and snow.
16. Having reviewed the evidence of the parties, I am satisfied on a balance of probabilities that the Landlord failed to maintain the driveway as required under s. 20 of the Act, resulting in the Tenants having to plow and salt the driveway themselves on at least 5 separate occasions during the winter of 2021-22.
17. The Landlord testified that she had retained a contractor to conduct this work however, no contract or invoices were entered into evidence and while the Landlord testified that she checks the work of her contractors, no specific details were given with respect to this. The photos provided by the Tenants to the Landlord show a clearly snow covered and icy driveway that the Landlord seemed uninterested in rectifying in a reasonable manner.
18. With respect to the Tenant's requested remedies, I find that the requested rent abatement of \$200.00 per month for 4 months (December 2021, January 2022, February 2022 and March 2022) is reasonable and will be ordered. The Tenant's had paid additional rent for an additional parking space and were required to maintain the space themselves as a result of the Landlord's inaction regarding same. As such, the Landlord will be ordered to pay the Tenants a total rent abatement of \$800.00.
19. As such, I find further that the requested \$400.00 repair and replacement costs to be redundant in the circumstances and will not be ordered.

**It is ordered that:**

1. The Landlord shall pay the Tenants is \$848.00. This amount represents:
  - \$800.00 for a rent abatement for the period of December 2021, to March 2022.
  - \$48.00 for the cost of filing the application.
5. The Landlord shall pay the Tenants the full amount owing by October 6, 2023.
6. If the Landlord does not pay the Tenants 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 Tenants have 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.

2023 ONLTB 63428 (CanLII)