



Order under Subsection 30, 31 & 135 Residential Tenancies Act, 2006

Citation: Omojola v Cogir Real Estate, 2023 ONLTB 63479

Date: 2023-09-22

File Number: LTB-T-055920-22

In the matter of: 108-207 Morningside Avenue
Scarborough, ON M1E 3E3

Between: Oluwafunminiye Omojola Tenants
Abiddun Aydrinde

And

Cogir Real Estate Landlord

Oluwafunminiye Omojola and Abiddun Aydrinde (the 'Tenant') applied for an order determining that Cogir Real Estate (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 Tenants applied for an order determining that the Landlord substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household.

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

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

Only the Tenants attended the hearing.

As of 9:29 am, 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 Tenant's evidence.

Determinations:

1. As explained below, the Tenant proved on a balance of probabilities the following allegations contained in the application:
2. Therefore, the Landlord must repay the Tenants their last month's rent deposit, their out-of-pocket expenses and their repair expenses.

T1 Application

3. The Tenants allege that they had vacated the unit on November 1, 2021 and that the last month's rent deposit of \$1,667.00 that was collected by the Landlord when they moved into the unit on June 1, 2019 had not been applied to the month of November 2021.
4. The Tenants had decided to end the tenancy when they had found mouse droppings on their bed and where their children play. Various photos of mice and droppings were entered into evidence.
5. In September of 2021, after a particularly difficult night, the Tenants had stayed in a shelter. Once they became aware of the fact that they could not stay in the shelter due to their eligibility, they had advised the Landlord they had intended on leaving the unit due to the mice.
6. The Tenants testified that they had been in contact with the Landlord for 5 months prior to vacating and had advised them continuously that if the mice issue was not going to be resolved, that they would vacate the unit.
7. While I find that the Tenants did not give proper notice under the Act, having considered the circumstances and the evidence of the Tenants, I find that the Tenants vacating the unit in October of 2021 to be reasonable. The Tenants had paid rent for that month however, the Landlord was aware prior to that month that the Tenants had intended on vacating the unit should the mice issue not be resolved.
8. As such, I am satisfied that Landlord failed to apply the Tenants' last month rent deposit of \$1,667.00 to the month of October 2021 and the Landlord will be ordered to pay that amount to the Tenants.

T2 & T6 Application - Mice

9. The Tenants testified that the residential complex is a 5-storey building and that their unit was located in the basement. They testified that due to renovations taking place in a nearby property, the residential complex became infested with mice.
10. The Tenants testified that the issue had persisted for a year and the Landlords efforts to rectify the situation were inefficient in ridding the unit of mice. The Tenants testified that the Landlords had used poison baits but that due to various holes in the drywall, the mice would continue entering the unit. The Tenants had paid for their own patch kit from Canadian Tire to fix the holes.
11. When the Landlord was told about the holes, the Tenants realized that the mice had been coming through the front door and had to purchase weather stripping.
12. Photos of the mice were entered into evidence. The Tenants testified about the continued impact of the mice in the unit had on them, including various physical and mental health issues.

13. On the basis of the Tenants' uncontested evidence, 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 and failed to comply with health, safety, housing and maintenance standards.
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. In this case, the Tenants had made numerous requests to the Landlord regarding the issue which, while not ignored, the Landlord's approach to dealing with the issue involved simply killing the mice already in the unit as opposed to finding a way to prevent the mice from entering the unit. Based on the evidence and the photos, the amount of mice activity was clearly extensive and the impact on the Tenants has been proven through same.
16. Also, the Landlord substantially interfered with the Tenants' reasonable enjoyment of the rental unit by not adequately addressing the unit's issue with mice.

Remedies

17. The Tenants are seeking \$200.00 for their out-of-pocket expenses and repair costs. This request is reasonable and will be ordered.

It is ordered that:

1. The Landlord shall pay the Tenants is \$1,920.00. This amount represents:
 - \$1,667.00 for the Tenants' last month's rent deposit.
 - \$100.00 for the reasonable costs that the Tenants have incurred to repair property that was damaged as a result of the Landlord's actions.
 - \$100.00 for the reasonable out-of-pocket expenses that the Tenants have incurred.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenants the full amount owing by October 3, 2023.
3. If the Landlord does not pay the Tenants the full amount owing by October 3, 2023, the Landlord will owe interest. This will be simple interest calculated from October 4, 2023 at 6.00% annually on the balance outstanding.
4. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

September 22, 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.