



Order under Subsection 135 Residential Tenancies Act, 2006

Citation: Solman v DiCarlo, 2023 ONLTB 61880

Date: 2023-09-13

File Number: LTB-T-069556-22

In the matter of: #1, 3456A Bathurst Street
Toronto ON M5A2C4

Tenant

Between: The Estate of Norman Solman

And

Fiorena DiCarlo

Landlord

The Estate of Norman Solman (the 'Tenant') applied for an order determining that Fiorena DiCarlo and 3153428 ONT. Limited (the 'Landlord')

- collected or retained money illegally;
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household;
- harass, obstruct, coerce, threaten or interfere with the Tenant; and
- 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 September 5, 2023.

The Landlord, the Landlord's Representative, Berkan Altun and the Tenant's Agent, Adrianna Solman attended the hearing. Witnesses for the Landlord included: Marisa D'Alessandro and Davide D'Alessandro.

The application was amended, and 3153428 Ontario Limited was removed as a party to this application because it is not the Landlord.

The Landlord did not speak adequate English and the interpreter was inadequate at translating, therefore she provided little to no evidence at the hearing.

Determinations:

T1 application:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the interest on the last month's

rent deposit.

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Interest on rent deposit owing

2. The Landlord failed to pay the Tenant interest on the last month's rent deposit, as required by the *Residential Tenancies Act, 2006* (the 'Act'). The Landlord concedes and consents to pay \$25.00 for the interest on the last month rent deposit as claimed.

Compensation for N12

3. The Landlord gave the Tenant a notice of termination under section 48 of the *Residential Tenancies Act, 2006* (the 'Act'). The email to the MD, date May 14, 2019 at 12:57 a.m sent to alisolman@rogers.com, confirms that the compensation was paid and applied as a credit to the Tenant's July 2019 rent period. The Tenant's Agent has not established that the Landlord has not paid compensation as mandated by subsection 48.1 of the Act.

Order prohibiting rent increase

4. The Landlord's Agent did not advance evidence to support a finding that the Landlord increased the rent unlawfully. This portion of the application was withdrawn.

T2 application:

Harassment:

5. The Tenant's daughter, Alexandria Solman (AS) sent an email to the Landlord's Agent, Marisa D'Alessandro (MD) dated November 14, 2018, that claims the Landlord was harassing the Tenant by asking him to move. There were no dates or details of specific conversations between the Landlord and Tenant of unwelcomed behaviour contained in the email. The allegation was general and based on hearsay information as it did not come from the Tenant himself. It's also unknown how many times the Landlord called the Tenant. There were no further emails to the Landlord's Agent, Marisa D'Alessandro after November 2018 that would support a finding that the Landlord's conduct continued and AS was not at the hearing to testify. I find there was not enough evidence that the Landlord harassed the Tenant to vacate nor that her conduct impacted the Tenants' right's or lead the Tenant to make misinformed decision.
6. Although the Tenant vacated the unit on July 31, 2019 it was in response to the N12 Notice of Termination that was issued on March 29, 2019. The Landlord has a right to follow due legal process and move into the unit. The Tenant's Agent seeks moving costs and other out of pocket expenses, but this is not a bad faith application made under section 57 of the Act. Even if it was, the Tenant's Agent did not challenge MD's testimony that the Landlord moved into the unit around January 2020 after renovations were made.
7. The Landlord owes the Tenant \$53.00 for the application fee.

T6 Application:

8. Subsection 20(1) of the *Residential Tenancies Act, 2006* (Act) sets out a landlord's responsibility to repair as follows:

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 standard

9. In *Onyskiw v. CJM Property Management*, 2016 ONCA 477 (“Onyskiw”) (CanLII), the Court of Appeal for Ontario determined that a contextual approach should be adopted when considering a landlord’s potential breach of subsection 20(1) of the Act, and a breach will not be found if the landlord’s response to a maintenance issue was reasonable in the circumstances.
10. The issue before the Board in this application is to determine if a breach of ss. 20(1) has taken place and, if so, when the Landlord was made aware of the breach and, if the response was appropriate, reasonable and timely in the circumstances.
11. The Tenant’s Agent provided photographs taken on the date the tenancy terminated on July 31, 2019 that showed the following: the bathroom sink, a pot under the bathroom sink for leak, exposed cable wires running from an outlet, hanging wire attached to a light fixture missing light bulb; electrical box with exposed wiring situated in the closet, a window sill that showed pealed paint and missing caulking; and pile of garbage on the curb.
12. The Tenant is deceased, therefore there was no evidence led to establish when the Tenant first brought these issues to the Landlord’s attention. Both the Tenant and Landlord are elderly and communicated verbally with respect to all issues related to the tenancy until AS, stepped in as Agent for the Tenant in November 2018 at which time the communication started in writing with the Landlord’s Agent, MD. As such, based on the best evidence before me I find that’s the first time that some of these issues were brought to the Landlord’s attention before the application was filed on July 31, 2019 when the Tenant vacated.
13. The email dated November 14, 2018, at 9:32 p.m. complained about the kitchen/bathroom sink (“one of three sinks is operating”) and the toilet, and lack of garbage bin/tags. It also refers of electricity barely working, and only one burner working (inferences the stove). These were the only issues identified in writing before the application was filed on July 31, 2019.
14. *Bathroom sink*: On November 16, 2018 at 7:09 p.m. an email from Davide D’Alessandro to AS, states he’d send a plumber and look into the garbage bin issue. DD testified he sent a plumber on November 17, 2018. The photograph that captures the pot under the bathroom sink, taken on July 31, 2019, does not establish that the Landlord failed to meet his maintenance obligation. AS did not attend the hearing to challenge DD’s evidence that the plumbing was repaired and there were no other written complaints about the plumbing after November 17, 2018 that informed the Landlord the problem continued or started again. In accordance with Guideline 5 of the *Landlord and Tenant Board Interpretation Guidelines*, an abatement of rent is not an appropriate remedy if the Landlord was not aware of the alleged breach prior to the application. It appears that only when the Tenant left and after the application was filed that the Landlord became aware the leak required repair again.

15. **Stove:** The email dated November 14, 2018 made the Landlord aware that only one burner worked on the stove. MA testified the Landlord was aware of the problem. Although DD stated the stove was repaired, MD stated the stove was not repaired. MD testified it wasn't repaired because the Tenant was satisfied with one burner operating. I find the Landlord failed to meet her maintenance obligation having failed to repair what is broken. Despite this finding, the Landlord's actions did not impact the Tenant use of the stove given the Tenant was not cooking because his meals were prepared and delivered to him by a service provider. An abatement of rent is not appropriate as it did not impact the Tenant's use of the appliance.
16. **Garbage Bin/Tag:** AS's email of November 14, 2018 alerted the Landlord about a problem with respect to garbage disposal/bin. DD's email response indicates that he'd investigate and contact the city about the issue. There was no evidence about the outcome and the email chain is silent about whether the problem was corrected. The Tenant has lived in the unit since 1999 above a commercial unit operating a restaurant with shared garbage bins. How, when and where the Tenant disposed of his garbage before and after November 2018 is unknown. The Tenant's Agent's presented a photograph of the pile of garbage piled on the curb that was taken on July 31, 2019, which appears to be an isolated incident which coincides with the date the Tenant vacate. I find there was not enough evidence to establish that the Landlord substantially interfered with the Tenants reasonable enjoyment of the rental unit by not providing garbage bin/tag.
17. **Electricity:** The photograph taken on July 31, 2019, shows exposed wire cables and outlet on the floor and wires exposed on the electrical box which is situated in the closet. On it's face, the photograph proves the electrical wires does not meet housing and safety standards. There was no explanation for the exposed cable/ wires. There was also no evidence led, however as to the impact this had on the Tenant's use of the rental unit. It's unknown whether the exposed cable and outlet were the cause of the alleged electricity insufficiencies, whether it existed when the Tenant moved into the unit in 1999, whether it was added later or reported to the Landlord before the Tenant vacated in July 2019. DD denied having knowledge of the exposed cable and wires which was the best available evidence before me.
18. **Light fixture:** The photograph taken on July 31, 2019, showed a light fixture hanging from wire on the ceiling with missing light bulb which was taken on the date the Tenant vacated. It's unclear whether the reason for the loose light fixture was due to electrical problem or the fixture itself. The Landlord was made aware of insufficient electricity through AS's email dated November 14, 2018. The email chain from MD and DD and their testimony was silent on the issue and there was no evidence led that the problem was acknowledged or investigated. The Landlord has a duty to investigate, and it appears they did not. Having said that, AS was not at the hearing to present evidence on the issue and her email lacked details with respect to the specific problem. It's unknown what caused the light fixture to dangle and whether it was a related to damage, tampering or an electrical issue. The Tenant has lived in the unit since 1999 and there was insufficient evidence to establish that electricity was the cause of the state of disrepair of the fixture.

Other Maintenance issues:

19. The issues related to front door, windows, washer and dryer, lost use of the deck appears to be raised for the first time in the application. There was no evidence led by the Tenant's Agent as to when the Landlord was first made aware of these issues. Based on the best evidence before me, DD and MD both stated they were unaware of the issues and AS was not present to challenge their testimony. The Landlord cannot reasonably be expected to know about the issues unless she's been made aware of the problem nor was there evidence that these issues were latent defects that the Landlord ought to have been aware of. In accordance with the Board's Guideline 5, an abatement of rent would not be reasonable.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$78.00 which represents \$25.00 for interest on the last month's rent deposit and \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by September 24, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by September 24, 2023, the Landlord will owe interest. This will be simple interest calculated from September 25, 2023 at 6.00% annually on the balance outstanding.
4. The Tenant's Estate has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

September 13, 2023

Date Issued

Sandra Macchione

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.