



Order under Subsection 30 Residential Tenancies Act, 2006

Citation: Mayali v K-W Property Management Corp., 2023 ONLTB 59385

Date: 2023-09-01

File Number: LTB-T-010900-22

In the matter of: 10, 10 HICKORY ST E
Waterloo ON N2J4L4

Between: Jasser Mayali Tenant

And

K-W Property Management Corp. Landlord

Jasser Mayali (the 'Tenant') applied for an order determining that K-W Property Management Corp.(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 June 13, 2023.

Only the Tenant attended the hearing.

Determinations:

1. The Tenant filed the T6 application with the Board on February 23, 2022.
2. The Tenant moved in to the rental unit on September 5, 2021 and vacated the rental unit on April 10, 2022.
3. The lawful rent was \$570.00 due on the first day of each month.
4. The rental unit is a three storey complex with tow rental unit on each floor. Each rental unit has four bedrooms, a bathroom, kitchen and living / dining area.
5. The Tenant was one of four Tenant's occupying the rental unit.
6. The Tenant's T6 application claims 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 due to an infestation of flies in the Tenant's rental unit.

7. On any application before the Board the party making an allegation has the onus of proving that allegation on a balance of probabilities. That means the Tenant here must lead sufficient evidence to establish it is more likely than not the Landlord is in breach of section 20(1) of the Act and failed to maintain the rental unit in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.
8. It was the uncontested testimony of the Tenant that the rental unit he occupied had a fly infestation.
9. To support the Tenant's claim, the Tenant submitted evidence to the Board in the form of photos taken at various months during the Tenant's claim. In the photos there are what appear to be small "fruit flies" mostly dead on various surfaces of the rental unit. There are a few photos of the inside of the rental unit freezer where there are small collections of dead flies.
10. In addition to the Tenant's photo evidence, the Tenant testified he first notified the Landlord about the issue on November 14, 2021 and the Landlord responded on November 15, 2021 telling the Tenant they will send someone in on November 26, 2021.
11. The Tenant testified the Landlord sent in an exterminator on December 3, 2021 and treated the rental unit and killed the flies.
12. The Tenant claims the Landlord's response was unreasonable due to the time the Landlord was willing to deal with the issue.
13. The Tenant testified that he did not communicate with the Landlord between December 3 2021 and February 7, 2022.
14. The Tenant testified he contacted the Landlord on February 7, 2022 and indicated he wanted to vacate the rental unit. The Tenant testified between February 7, 2022 and April 10, 2022 when the Tenant vacated the rental unit, the Tenant is communicating with an agent for the Landlord, Nadia, that he is requesting compensation for the flies, and mentions they are on going.
15. The Tenant claims the fly infestation was "not healthy" and caused him to lose focus on school and this had a negative impact on his mental health, although the Tenant did not provide any evidence to the Board to support this claim.
16. The onus rests with the Tenant to provide sufficient evidence to support his claim there was a fly infestation in the rental unit. I do not find the Tenant's evidence persuasive enough, that the Landlord is in breach of section 20 of the Act. The Tenant's lack of particulars and specific details regarding the conversations he claims to have had with Nadia between February 7, 2021 and April 10, 2022 are such that I am not satisfied the Tenant has met that burden of proof.
17. I further note that the Tenant testified that he had no communication with the Landlord between December 3, 2021 the day the exterminator treated the unit, and February 7, 2022.

18. From the Tenant's own testimony, in my view, the fly issue was resolved by the Landlord as of December 3, 2021. Even if I have erred in my finding the fact the Tenant was not communicating with the Landlord between December 3, 2021 and February 7, 2022 indicates that even if the issue was not completely resolved the issue was not impactful enough for the Tenant to continue to contact the Landlord about the issue.
19. While there are many photos of small collections of flies on various surfaces in the rental unit over a period of time, based on the testimony of the Tenant I am not of the opinion the Tenant's claim rises to the level of a breach of the Landlord's obligations.
20. In *Onyskiw v. CJ, M Property Management*, 2016 ONCA 477 (CanLII), the Court of Appeal held that the Board ought to apply a contextual approach in determining whether a landlord has breached its maintenance obligations under the Act. A landlord will not be responsible for breaching its obligations if, after considering all of the circumstances, it is found that the landlord addressed the maintenance issues in a reasonable manner.
21. In respect to Onyskiw above, I make note the Tenant's own testimony is that the Landlord sent in an exterminator and treated the unit on December 3, 2021, and the Tenant ceased communication with the Landlord until his desire to leave the rental unit on February 7, 2022.
22. Given the Landlord's response and the Tenant's testimony I find the Landlord responded in a reasonable manner and in a reasonable time.
23. Given all the above, with the evidence before me and on a balance of probabilities I find the Landlord is not in breach of their maintenance obligations under the Residential Tenancies Act, 2006 (the 'Act') or failed to comply with health, safety, housing or maintenance standards due to an infestation of flies in the Tenant's rental unit.
24. For the reasons above the Tenant's application must be dismissed.
25. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
26. This order contains all reasons for the determinations and order made. No further reasons will be issued.

It is ordered that:

1. The Tenant's application is dismissed.

September 1, 2023
Date Issued

Greg Brocanier
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.