



Order under Subsection 30 and 31 Residential Tenancies Act, 2006

Citation: Damiani v Kennedy @ 182 Church Ltd. care of Metcap Living Management Inc., 2023
ONLTB 57501

Date: 2023-08-28

File Number: LTB-T-013701-22

In the matter of: 903, 182 CHURCH ST E BRAMPTON
ON L6V1H2

Between: James Umberto Damiani Tenant

And

Kennedy @ 182 Church Ltd. care of Metcap Landlord
Living Management Inc.

James Umberto Damiani (the 'Tenant') applied for an order determining that Kennedy @ 182 Church Ltd. care of Metcap Living Management Inc. (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.

The Tenant also applied for an order determining that the Landlord substantially interfered with the reasonable enjoyment of the residential complex by the Tenant.

This application was heard by videoconference on July 10, 2023.

The Landlord's agent Marites Estolas, the Landlord's representative Michelle Forrester, and the Tenant attended the hearing.

Determinations:

1. As explained below, the Tenant proved on a balance of probabilities that the Landlord failed to meet their maintenance obligations under the Act. Therefore, the Landlord must pay the Tenant \$3,290.79 in out-of-pocket expenses the Tenant will incur to fix his damaged property.

T6 Application – Facts

2. It is not in dispute that in March 2021 a grate at the bottom of the entrance/exit ramp in the rental property's parking garage broke. For approximately a week prior to the grate being replaced, the Landlord used a piece of wood to cover the hole.
3. It is also not in dispute that on March 12, 2021 when the Tenant drove up the exit ramp, the wood came loose, flew upwards, and hit the bumper of the Tenant's car. Security footage from the parking garage shows the incident.
4. The Tenant testified that he did not hear the impact when it happened and noticed the damage when he returned to his vehicle in a parking lot of a store he attended following the incident. The Tenant then obtained a copy of the surveillance video and pieced together what had occurred.
5. Photographs taken by a company called Assured Automotive during their quotation process were entered into evidence. The photographs show cracks in the back bumper of the Tenant's vehicle on both the left and right side.
6. The Tenant seeks the cost to repair his vehicle.
7. The Landlord submits that the damage to the Tenant's vehicle may have been caused by an undisclosed collision, not the wood hitting the vehicle. The Landlord submits that the areas where damage occurred are not consistent with where the wood hit the bumper. Additionally, the Landlord argues that the Tenant drove up the exit ramp at a high speed and that is what caused the wood to fly out.
8. Roland Foisy ('R.F') is the Landlord's building manager. He testified that the piece of wood covered the grate for about a week, and he checked on it everyday to make sure that no water was building up and the wood had not rotted. R.F testified that he secured the wood into the spot with a hammer, and it was a snug fit. R.F testified that the March 12, 2021 incident is the only incident of the wood coming loose.

T6 Application – Analysis

9. Section 20 of the *Residential Tenancies Act, 2006* ('the Act') establishes that 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 standards.
10. 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.

11. I find on a balance of probabilities that the Landlord failed to maintain the parking garage in a good state of repair and that the wood hitting the Tenant's vehicle is responsible for the damage to the Tenant's vehicle.
12. I found the Tenant to be a credible witness as his testimony was offered in a forthright manner and withstood cross examination well. As such I do not believe that the Tenant is concealing that he was in another accident on March 12, 2021 and is trying to pass off the cost of the damage to the Landlord. There is also no evidence that the Tenant was in another accident, just the Landlord's speculation based on where the damage to the vehicle is.
13. While I agree with the Landlord that the wood hit the center of the Tenant's bumper, not the sides where the majority of the cracks are, I note that the wood flips around when it hits the vehicle, and the entire bumper jolts. Additionally, as stated previously I found the Tenant credible and accept that he was only involved in one incident on March 12, 2021. It is more likely than not that the wood hitting the Tenant's bumper caused the damage and not some other collision the Tenant is not aware of.
14. I am also not satisfied that the speed of the Tenant's vehicle caused the wood to fly out. In the video you can see that the Tenant's vehicle briefly stopped before traveling up the exit ramp and the wood is only a few feet from where the Tenant starts moving. It is not clear how the Tenant would have picked up excessive speed in a such a short time. Additionally, while the video does show that the Tenant's acceleration is certainly not slow, I would not describe it as excessive or beyond what you would expect to see from a vehicle traveling up an exit ramp.
15. I also do not find the Landlord's temporary fix to be reasonable in the circumstances. The Landlord had an unsecured piece of wood in a place that residents frequently drive over. Additionally, that the wood could come loose when secured in this way was not unforeseeable to the Landlord. The wood was not designed for the spot it was in, nor was it secured in any way other than being fit into place.

Remedy

16. The Tenant seeks \$3,290.79 as out of pocket expenses to fix his vehicle.
17. When the incident originally happened, Assured Automotive quoted the Tenant \$1,958.12 to fix the damage. The Tenant also got a second quote from a company called Bodyworks Auto Collision for \$2,585.11.

18. The Tenant submitted a claim to his insurance company to cover the damage, but the cost to repair was lower than his deductible so the insurance company denied the claim.
19. As there was significant time between the incident and the hearing date, the previous quotes from the mechanics expired. Prior to the hearing, the Tenant went to a new company to get a new quote because Bodyworks has closed down and Assured Automotive only had an appointment after the hearing. The most recent quote is from a company called Phoenix Custom autobody Inc and estimates \$3,290.79 to fix the damage. That is the amount the Tenant seeks.
20. As a temporary fix the Tenant fitted another bumper to the back of his car, but he testified that it does not fully fit and does not match the exhaust. The Tenant wants his car restored to its state prior to the incident.
21. The Landlord submits that the Tenant is lying about not yet having his car fixed, as there is a bumper currently on the car, and there were also unrelated dents on the vehicle that were fixed in the weeks following the incident. The Landlord submits that the Tenant is concealing the invoice for the actual repairs and as such it is not clear what the true cost of the repair was.
22. As stated previously I found the Tenant to be credible and accept his testimony that he has not had the bumper of his car fixed and the bumper currently on his car is only a temporary fix that does not perfectly align or aesthetically match his car. As such, I reject the speculation of the Landlord that the Tenant is hiding an invoice for repair work already done.
23. Pursuant to section 16 of the Act the Tenant has an obligation to minimize his losses. The Landlord submits that while the first quotes would not be covered by the Tenant's insurance company, the new quote would be because it is higher than the Tenant's deductible. As such the Landlord should only be responsible for whatever the insurance company will not cover.
24. The Tenant did not resubmit his insurance claim based on his new quote. The Tenant submitted that there would be no point in doing that because the insurance company is not going to cover damage from an incident two years ago, that they already denied.
25. I find that the Tenant did attempt to mitigate his losses by initially getting two quotes for the repairs. That the quotes expired, and the cost of repair is now higher, is no fault of the Tenant and could not be mitigated by the Tenant. Additionally, I find the Tenant's explanation reasonable for why he has not resubmitted a claim to the insurance company. More than two years have passed since the incident occurred and the insurance company already denied the claim.

26. For all of those reasons I find the \$3,290.79 to be reasonable out of pocket expenses that the Tenant will incur to fix his vehicle.

T2 – Substantial Interference

27. The Tenant also filed a T2 application alleging that the Landlord substantially interfered with his reasonable enjoyment of the rental property. The application concerns the same March 12, 2021 incident as the T6 application and seeks the same remedy, the cost to repair the car. As I have already found a breach of the Landlord’s maintenance obligations and awarded the cost to repair the car, there is no need to also address the T2 application.

It is ordered that:

1. The Landlord shall pay the Tenant is \$3,338.79. This amount represents:
 - \$3,290.79 for the reasonable out-of-pocket expenses that the Tenant will incur to fix his vehicle and;
 - \$48.00 for the cost of filing the application.
5. The Landlord shall pay the Tenant the full amount owing by September 30, 2023.
6. If the Landlord does not pay the Tenant the full amount owing by September 30, 2023, the Landlord will owe interest. This will be simple interest calculated from October 1, 2023 at 6.00% annually on the balance outstanding.
7. If the Landlord does not pay the Tenant the full amount owing by September 30, 2023, the Tenant may recover this amount by deducting up to \$500.00 from his monthly rent until there is no longer any money owing.

August 28, 2023

Date Issued

Amanda Kovats

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.

