



Order under Sections 30 and 31 Residential Tenancies Act, 2006

Citation: Lutgendorf v Holtrop, 2023 ONLTB 57408

Date: 2023-08-24

File Number: LTB-T-015659-22

In the matter of: B2130 CONCESSION RD 3 BEAVERTON
ON L0K1A0

Tenant

Between: Hilary Laura Lutgendorf

and

Landlords

Annette Holtrop
John Holtrop

Hilary Laura Lutgendorf (the 'Tenant') applied for orders determining that Annette Holtrop ('AH') and John Holtrop (the 'Landlords'):

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household; and
- failed to meet the Landlords' maintenance obligations under the *Residential Tenancies Act*, 2006 (the 'Act').

The applications were heard by videoconference on July 11, 2023.

The Tenant, the Landlord's representative, L. Flores, and T. Holtrop ('TH'), being the daughter of the Landlords, as agent for the Landlords, attended the hearing.

Determinations:

Preliminary Issues

1. The Tenant filed T2 and T6 applications with the Board on March 18, 2022, claiming compensation associated with a number of issues dating back to many years prior to 2022.
2. The Landlords submitted that the claims were statute barred pursuant to subsection 29(2) of the Act, as the alleged conduct giving rise to the applications occurred more than one year before the applications were filed.

3. The allegations set out in the applications were somewhat vague, but the Tenant submitted photographs which purported to detail the allegations. Of the issues set out in that accompanying material, only one fell within the one year 'look back' period. That issue concerned a leak into the basement from outside the house, following a thaw and heavy rain, in February 2022. I determined that this one issue was properly before me and

denied the Landlords' request to dismiss the applications in entirety on the strength of subsection 29(2).

4. The Tenant also filed a form for request to pay rent into the Board pending the determination of this matter following the hearing of the applications. The request was not raised during the hearing but I would have denied the request in any event. As set out in the Board's Interpretation Guideline 2, orders to pay money into the Board would be most appropriate in cases where the hearing was to be adjourned for some length of time. There was no adjournment and the hearing of the applications proceeded to completion.

Landlords' Response to February 2022 Leak

5. The following facts were undisputed:
 - a) There were no problems of leakage into the basement in the year leading up to the March 2022 filing of the Tenant's applications except for an incident in February 2022, when water leaked into the basement following a big thaw;
 - b) On February 17, 2022 the Tenant sent a photo (Refer Exhibit 1, being photo entitled 20220217_072 611) to the Landlords' son and to the Landlords' representative. The photo depicted water on the basement floor and coming down the inside wall of the foundation. The Tenant described the inflow of water into the basement as having "come in like a garden hose". There was a hole in the mortar at the base of the foundation wall;
 - c) The Landlord AH and her daughter, TH, attended the unit either that same day or the following day and swept up the water in the basement. They replaced a blue tarp outside the house by the corner in which the leak had occurred. That tarp had been installed some months earlier by the Tenant, reportedly in an effort to stop leaks. The Landlords' son attended the same day as AH and TH had attended. He noted that the ground outside the house had heaved about 10 feet from the house. The ground was graded away from the house except for this heaved up area. He determined that the issue could not be corrected until the ground thawed and the regrading was done in April 2022. No steps were taken to investigate or address the condition of the foundation wall itself;
 - d) The Tenant acknowledged that the leakage problem abated somewhat in the corner of the basement where the ground had been regraded but testified that leakage

continued as an ongoing problem whenever there was heavy rain or a significant thaw. and

- e) The Tenant did not provide the Landlords with any notice of leakage problems subsequent to the February 2022 incident.
6. The Landlords alleged that the Tenant's March 2022 application had not been brought in good faith and was, instead, brought as a vendetta in response to the L1 application filed by the Landlords shortly before the Tenant's applications. The Tenant acknowledged that her applications had been brought after the Landlords' application was filed but her application was not a response to the Landlords' application. She had sought legal advice on receiving the Landlords' application and discovered that there was legal recourse for her own repair issues. I find that the Landlords' allegation of bad faith has not been made out.
7. The Tenant testified that she had contacted a municipal By-Law Officer and Building Inspector about the leakage issues sometime after the February 2022 incident. They initially attended the unit in September 2022 but told the Tenant that they needed further evidence of a problem before issuing an order. The Tenant testified that the two attended the unit again in June 2023 and that the Building Inspector told her, on July 3, 2023, that the municipality was sending a letter to the Landlords to start certain repair work within 4 weeks. The Tenant understood that the letter was being sent July 7, 2023. The Tenant submitted no documentary material in support of this testimony and TH, on behalf of the Landlords, testified that the Landlords had received no contact of any kind as of the hearing (July 11, 2023).
8. I must determine the reasonableness of the Landlords' response to the February 2022 incident. There is no question that they reacted promptly in clearing out the water and in addressing the regrading. No steps were taken, however, to investigate or address the leakage in the foundation itself.
9. As indicated above with respect to preliminary issues in this hearing, conduct of the Landlords prior to March 2021 is not before me. That said, evidence regarding information which the Landlords may have had about leakage prior to the February 2022 incident is relevant to my assessment of their response. The Tenant testified that she had complained to TH a number of times about leakage in the basement. She referred to a photo which she had sent in November 2021 to the Landlords' son of the tarp she had installed outside the house to address leakage. TH acknowledged receipt of the tarp photo but indicated that the Tenant had not expressly linked the installation of the tarp to a problem of leakage.
10. I find that it is more likely than not that the Landlords had some indication, in advance of the February 2022 incident, that leakage into the basement was a problem. Even if they were not expressly informed about the reason for the tarp, they ought to have made inquiry about why it had been installed. In the circumstances, I find that the Landlords' failure to investigate and address the condition of the foundation following the February 2022

incident amounted to a failure on the part of the Landlords to meet their maintenance obligations.

Remedy

11. The Tenant claimed compensation in the amount of 12 months' rent "to allow me enough time to find new living arrangements".
12. The connection between the requested remedy and the Landlords' failure to fully address the leakage is unclear to me but I have the jurisdiction to award an abatement of rent.
13. The unit is a three bedroom house. The basement is used for laundry and storage. Storage space is limited to the middle of the basement floor as leaks affect only the circumference of the floor. The Tenant testified that her main reason for bringing the applications was that she was tired of cleaning up the water on the occasions when the leaks occurred.
14. The Tenant testified that leaks occurred between 6 and 10 times per year. In that the Tenant made no further complaints to the Landlord following the February 2022 incident, I find that it is more likely than not that any such leaks subsequent to February 2022 were minor in nature, though the use of the basement space for storage was limited to an extent on an ongoing basis.
15. I consider a rent abatement of \$250.00 reasonable in the circumstances. This amount corresponds roughly to 10 days' rent at a per diem of \$24.66 calculated based on an estimated 10 days' of cleanup over the period from March 2022 to the date of the hearing.

It is ordered that:

1. The total amount the Landlords shall pay the Tenant is \$298.00. This amount represents:
 - \$250.00 for a rent abatement; and
 - \$48.00 for the cost of filing the application.
2. The Landlords shall pay the Tenant the full amount owing by September 4, 2023.
3. If the Landlords do not pay the Tenant the full amount owing by September 4, 2023, the Landlord will owe interest. This will be simple interest calculated from September 5, 2023 at 6.00% annually on the balance outstanding.
4. If the Landlords do not pay the Tenant the full amount owing by September 4, 2023, the Tenant may recover this amount by the amount owing from the rent for the month of October 2023.

August 24, 2023
Date Issued

Lynn Mitchell
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.