



Order under Subsection 30 Residential Tenancies Act, 2006

Citation: Cross v Popotia, 2023 ONLTB 32903

Date: 2023-08-17

File Number: LTB-T-076197-22

In the matter of: 303, 45 Front Street North
Campbellford ON K0L1L0

Between: Autumn Cross Tenant

And

Arif Popotia Landlord

2023 ONLTB 32903 (CanLII)

Autumn Cross (the 'Tenant') applied for an order determining that Arif Popotia(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 January 11, 2022 at 9:00 a.m.

Only the Tenant attended the hearing.

As of 2:32 p.m., 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. This T6 application was filed by the Tenant on January 29, 2021
2. The Tenant moved out of the rental unit on April 1, 2021
3. This was a 2 bedroom rental unit.
4. The monthly rent was \$750.00
5. In their application the Tenant alleges that
 - a) On June 20, 2020 the ceiling in the bedroom started to leak significantly
 - b) The Tenant was not able to sleep in her bed for 3 days
 - c) On November 25, 2020 the ceiling in the Tenant's bedroom started to leak.

- d) The Tenant's children were unable to sleep in their beds for 1 week
- e) On January 1, 2021 there was leaking in both the Tenants' and the Tenant's children's bedrooms
- f) On January 15, 2021 the ceiling in the Tenant's bedroom collapsed destroying the bed and everything on the bed
- g) The Tenant informed the Landlord several times both by phone and by text message

Tenant submissions

- 6. The Tenant testified that the roof leak was an ongoing issue, for 7 months. The Tenant had called the Landlord as well as sending text messages.
- 7. The Tenant submitted a series of pictures that depict that the roof, a "drop-ceiling" was leaking which was evident by the stains as well as stains on the furniture. The pictures also that the ceiling tiles had collapsed onto the bed.

Landlord submissions

- 8. The Landlord did not attend the hearing to make submissions and or contest the Tenant's testimony, evidence and or submissions.

Residential Tenancies Act, 2006 (the "Act")

- 9. Section 20 (1) of the Act states the following;

"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."

Analysis

- 10. Uncontested testimony and photographic evidence clearly show that there was leaking unto the Tenant's bedding and the Landlord failed to meet the Landlord's obligations under subsection 20(1) of the Act to maintain the rental unit and or residential complex and to comply with health, safety and maintenance} standards.
- 11. 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.

Remedies

9. The Tenant sought the following remedies:
- a) Remedy 1: an abatement of rent in the amount of \$2,250.00
 - b) Remedy 2: Costs to replace damaged property of \$1,800.00
 - c) Remedy 3: Costs to “hold water” that was leaking \$ 50.00
Moving Expenses \$1,000.00
 - d) Remedy 6: The Landlord must completely fix the building roof and the entire ceiling in apartment 303. The Landlord must also fix the lights in both bedrooms and the living room. The Landlord must fix the screen on the Tenant’s children’s bedroom and put screens in both bedroom windows and in the kitchen window

Findings

10. The Tenant sought an abatement of rent of \$2,250.00. The Board finds that the Tenants were unable to properly use 30% of the rental unit due to the roof leak from June 20, 2020 until they moved out of the rental unit. The Board will award and the Landlord shall pay the Tenant the sum of \$2,025.00 which is calculated as follows:
- Monthly rent of \$750.00 x 30% = \$225.00 x 9 months = \$2,025.00
11. The Tenant claimed \$1,800.00 for damages to their furniture and linens. The Tenant did not submit any invoices or bills to support their claim, however this amount seems reasonable to replace furniture and bedding linen for several people. The Board will award and the Landlord shall pay the Tenant the sum of \$1,800.00
12. The Tenant sought costs of \$50.00 for pots used to contain dripping water. Again in this instance the Tenant did not provide invoices however \$50.00 for several pots as depicted in the Tenant’s evidence seems reasonable. The Board will award and the Landlord shall pay the Tenant the sum of \$50.00
13. The Tenant sought \$1,000.00 for moving expenses. The Tenant did not submit that they moved out of the rental unit due to the ceiling water leak, thus the Board will decline to make an award in this instance.
14. The Tenant sought remedial repairs to the rental unit and the building. As the Tenant has vacated the rental unit and premises the Board will decline to make an order in relation to this item sought.
15. The Landlord shall pay the Tenant the \$53.00 application filing fee.

It is ordered that:

1. The Landlord shall pay the Tenant is \$3,928.00. This amount represents:
 - \$2,025.00 for a rent abatement for the period of July 2020 to March 2021
 - \$1,800 for the reasonable costs that the Tenant will incur replace property that was damaged/destroyed as a result of the Landlord's actions.
 - \$50.00 for the reasonable out-of-pocket expenses that the Tenant has incurred – the pots used to contain the ripping water
 - \$53.00 for the cost of filing the application.
5. The Landlord shall pay the Tenant the full amount owing by August 28, 2023.
6. If the Landlord does not pay the Tenant the full amount owing by August 28, 2023, the Landlord will owe interest. This will be simple interest calculated from August 29, 2023 at 6.00% annually on the balance outstanding.
8. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

August 17, 2023

Date Issued

Peter Pavlovic

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.