



Order under Subsection 30 Residential Tenancies Act, 2006

Citation: Marcelle v Al hakim, 2023 ONLTB 54507

Date: 2023-08-09

File Number: LTB-T-009143-22

In the matter of: Basement, 780 O'Connor Dr.
East York ON M4B2S4

Between: Victoria Marcelle Tenants
Jennifer Marcelle

And

Bahaa Al hakim Landlord

Victoria Marcelle and Jennifer Marcelle (the 'Tenants') applied for an order determining that Bahaa Al hakim (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 14, 2023.

The Landlord's Legal Representative, A. Maio, the Landlord and the Tenants attended the hearing.

The following witnesses testified at the hearing on behalf of the Landlord:

- Randa El-kadi (RE)
- Khouloud El Hakin (KE)

Determinations:

1. As explained below, the Tenants have not established on the balance of probabilities that the Landlord failed to meet his maintenance and repairs obligations under subsection 20(1) of the *Residential Tenancies Act, 2006* ("Act").
2. While both Tenants attended the hearing, only Victoria Marcelle (VM) provided testimony. Jennifer Marcelle (JM) chose to not provide testimony during the hearing when called upon.
3. The Tenants raised the following issues in this application: water leak from above into bathroom and mice/mice feces.

Evidence

4. VM stated that she discovered water damage on the wall of her bathroom on May 5, 2021 and immediately let the Landlord know. The Landlord stated he went to the unit when VM complained. He stated that his mother was cleaning on the main floor that day and believed this caused water to go down into the Tenants' bathroom. He explained that his mother is not from Canada and didn't realize that there was no drain in the floor to clear the water like there was back home. There was no evidence of any other complaints about water damage/leak between May 6, 2021 and November 20, 2021.
5. On November 21, 2021, VM stated she heard a swishing sound and let the Landlord know that there may be a possible water leak. The Landlord's father attended the unit. There was no evidence of water entering the Tenants' unit. As per the text messages provided by the Landlord, the Tenants advised on December 1, 2021 that there is now water damage in the bathroom. The Tenants also advised that their brother could take a look at it. The Landlord responded "ok, if he can fix it il pay whatever it costs." The Landlord also stated that they got someone to close the water tap in the upstairs bathroom so it should be fine now.
6. On December 3, 2021, the Tenants' brother was at the rental unit and asked the Landlord to have someone flush the toilet in the upstairs bathroom. The Tenants' brother cut an opening in the bathroom wall and the inside was wet. He was also able to determine that the leak is a result of the toilet in the upstairs bathroom and advised to call a plumber right away. The Landlord responded via text message that he called the contractor who renovated the basement who will come in 3 days, and that no one upstairs will use that bathroom.
7. There was no dispute that about 4 days later the Landlord's general contractor inspected the Tenants' bathroom and also advised that a plumber is needed. RE testified that she contacted a plumber on December 7, 2021 and the plumber came on December 8, 2021. It was not disputed that the plumber cut an opening in the ceiling of the Tenants' bathroom. According to the Landlord, the plumber advised that there is a problem with the pipe and will need to go through the floor in the upstairs bathroom to fix it.
8. VM stated that the Landlord's contractor advised her that work needed to be done in her bathroom on December 13, 2021, so she went and stayed at a hotel. The Landlord stated that he was not aware of this conversation and stated that the area affected was his bathroom upstairs. The Landlord stated that the only work done in the Tenants bathroom were the repairs to the ceiling and wall openings that were made by the plumber and the Tenants' brother, which were completed by the end of December 2021 when the repairs to the upstairs bathroom were completed.
9. VM stated that when the plumber opened the ceiling mice feces fell onto the bathroom floor and remained there for 3-4 weeks. RE testified that she didn't see any feces but had asked VM if they needed to clean up. According to RE, VM said "no." VM stated that she was having breathing issues since moving into the unit and believed the presence of mice feces to be the cause of these issues. VM stated that in February 2022 when she opened the vent above her bed, debris fell down including dead fruit flies and mice feces.

10. There was no dispute that when the Tenants mentioned mice feces and noise in the walls to the Landlord, the Landlord provided mice traps to the Tenants. VM confirmed that she set the traps around the unit and that no mice were ever caught. VM also assumed that the mice were getting in from openings but did not provide any evidence of any openings in the rental unit. KE testified that she contracted a pest control company in July 2021 to check for openings around the property. KE testified that they inspected the exterior of the house and place traps. KE further testified that they reported not finding any openings.

Analysis

11. The issues to be determined in this application is whether or not the Landlord breached his maintenance obligations pursuant to subsection 20(1) of the Act. Subsection 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.

12. 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.
13. In accordance with *Onyskiw*, the Landlord was not automatically in breach of his maintenance obligations once he became aware that there was a water leakage issue at the rental unit. A contextual approach and consideration of the entirety of the factual situation must be taken. When this approach is taken, it is clear from the evidence above that the Landlord responded immediately and effectively to the problems reported by the Tenants.
14. I find it more likely than not that the incident on May 5, 2021 was a result of excess water being used to clean the floor above the Tenants' unit, as there were no further complaints about water damage from the Tenants from May 6, 2021 to November 20, 2021. There was no evidence provided that as a result of this incident any repair was necessary to the Tenants' unit.
15. With respect to the water leak reported by the Tenants on November 21, 2021, although at this time there was most likely water leaking when the upstairs toilet was flushed, the Tenants' unit was not affected until December 3, 2021 when the Tenants found water damage on the bathroom wall. The Landlord immediately stopped using their bathroom above the Tenants' unit. The Tenants' unit had a small amount of water damage on one wall which did not impact the Tenants from using this bathroom. As well, the Tenants had another bathroom in their unit.
16. I find that the repair to the pipe was completed within a reasonable time by the Landlord as there were no further reports of any or additional water damage within the Tenants' unit.

As well, there was no dispute that the holes made in the Tenants' bathroom ceiling and wall (water damage area) were repaired by the end of December 2021.

17. Having considered all of the evidence, I find that the Landlord's response to the water leakage issue was reasonable and timely in these circumstances. Therefore, he did not breach his obligations pursuant to section 20 of the Act.
18. Based on the evidence before me, I was not satisfied that there was mice problem at the rental unit. VM confirmed that she never saw any mice, and none were ever caught in the mouse traps were set around the unit. VM stated that mice feces fell from the bathroom ceiling and bedroom vent. As per the photos submitted of the debris that fell from the vent, the amount was so miniscule that it did not support a finding that a mice problem existed. In any event, the Tenants led insufficient evidence to find that the presence of the mice feces affected the Tenant health. The Tenants did not provide any medical evidence to support a finding that their breathing issues were a result of the presence of mice feces.

It is ordered that:

1. The Tenants' application is dismissed.

August 9, 2023
Date Issued

Lisa Del Vecchio
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.