



Order under Section 31 Residential Tenancies Act, 2006

Citation: DeMenna v Ghosh, 2023 ONLTB 51666

Date: 2023-07-27

File Number: LTB-T-041357-22

In the matter of: Basement, 75 Pepperwood Cres Kitchener
Ontario N2A2R4

Tenants

Between: Valerie DeMenna
Natalie Labine

And

Subhadip Ghosh

Landlord

Valerie DeMenna and Natalie Labine (the 'Tenants') applied for an order determining that Subhadip Ghosh (the 'Landlord'):

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.
- withheld or interfered with their vital services or care services and meals in a care home.

This application was heard by videoconference on July 13, 2023.

The Landlord Subhadip Ghosh and the Tenants Valerie DeMenna and Natalie Labine attended the hearing.

Determinations:

1. This T2 application alleges the Landlord withheld a vital service and substantially interfered with the Tenants' reasonable enjoyment of the rental unit.
2. The rental unit is a two-bedroom apartment in the basement of a bungalow. The monthly rent was \$1,600.00. The Tenants vacated the rental unit on March 19, 2022.
3. Section 21(1) of the Residential Tenancies Act, 2006 (the Act) reads as follows:

A landlord shall not at any time during a tenant's occupancy of a rental unit and before the day on which an order evicting the tenant is executed, withhold the reasonable supply of any vital service, care service or food that it is the landlord's obligation to supply under the tenancy agreement or deliberately interfere with the reasonable supply of any vital service, care service or food.

4. Section 22 of the Act also states:

A landlord shall not at any time during a tenant's occupancy of a rental unit and before the day on which an order evicting the tenant is executed substantially interfere with the reasonable enjoyment of the rental unit or the residential complex in which it is located for all usual purposes by a tenant or members of his or her household.

Hot Water

5. It was not disputed that on Saturday, December 4, 2021, the hot water tank in the rental unit failed. One of the Tenants was having a shower and noticed there was no hot water and reported it to the Landlord. The parties agreed the problem was resolved four days later on Tuesday, December 7, 2021.
6. The Tenants position was the Landlord could have resolved the problem sooner but did not want to incur the increased cost of a weekend service call. The Tenants stated they had to shower in the upstairs unit while the problem was addressed.
7. The Landlord stated he had arranged for a weekend service call to address the problem on the day it occurred however the Tenants emailed him stating they would be away until the following day. The Landlord explained that since he does not live close to the unit, the Tenants needed to home to provide access to a technician. The Landlord's evidence was a technician attended the unit on Monday, December 6, 2021 to diagnose the problem and repaired it the following day.
8. I do not find on a balance of probabilities the Landlord withheld a vital service to the Tenants. Nothing in the evidence suggested the Landlord withheld hot water from the Tenants or that he deliberately interfered with the supply of hot water. The hot water tank suffered a failure and the Landlord had the issue resolved within four days. Two of those days were over a weekend.
9. I find the Landlord acted diligently and the period the Tenants were without hot water was not unreasonable in the circumstances. While the Tenants may have been inconvenienced by having to shower in the upstairs unit, in my view this does not amount to a substantial interference with the Tenants reasonable enjoyment, particularly since the Landlord would have no way of knowing the hot water tank would fail. Again, when he was advised, the

problem was rectified in a reasonable time. For these reasons, this portion of the application will be dismissed.

Electrical Outlets

10. The Tenants application states they had two electrical plugs in their bathroom that did not work. The application contains no dates of when the Landlord was advised apart from an estimate that it was when the Tenants moved in. The Landlord stated he was not aware of the issue and I did not find it would be procedurally fair to expect the Landlord to respond to the allegation in a meaningful way given the lack of details on the application. For this reason, the claim in relation to the electrical outlets was not considered.

Draft Above the Stove

11. The Tenants testified there was a draft above the stove that caused their heating costs to increase to \$200.00 in February of 2022. The Landlord acknowledged the Tenants told him about the issue in an email on December 4, 2021. The parties agreed the Landlord attended the unit and used spray foam to seal the draft although the Tenants stated the draft could still be felt afterwards.
12. The Tenants evidence was not clear as to when the Landlord attended unit to apply the spray foam. One Tenant testified it was within a month while the other Tenant's evidence was it was within a couple of days. The date range given by the Tenants varied from a couple of days to January or February of 2022. They could not say when the Landlord attended the unit to address the issue.
13. The Landlord explained the vent above the stove is not airtight as it is meant to allow venting when the stove is in use. His evidence was he attended the unit two days after being notified and applied spray foam as a precautionary measure.
14. The Tenants submitted no evidence the draft above the stove contributed to increased hearing costs. It was their evidence that the increase had to "come from somewhere". The Tenants submitted no utility bills to support their claim that an increase in hearing costs occurred. For these reasons, I am not satisfied on a balance of probabilities the Tenants have proven the draft above the stove substantially interfered with their reasonable enjoyment of the rental unit and this portion of the application will be dismissed.

Flood

15. The parties agreed that on February 16, 2022, a flood occurred in the rental unit. The Tenants first noticed a puddle on the floor and originally thought it might be cat urine. The Tenants confirmed it was water and eventually determined it was coming from the living room wall. Their insurance company suspected there was a crack in the foundation of the property. The Landlord's evidence was the cause of the flood was the window well.
16. The Tenants submitted video evidence showing an area carpet that was completely saturated with water. They submitted video evidence showing water seeping up through the vinyl flooring planks in the rental unit. The video also shows the base of the walls in an unfinished area and they are clearly wet.
17. The Tenants evidence was they asked the Landlord for fans to dry the area and he refused. The Tenants testified they had to mop up the water several times a day for the first week after the problem began and then twice a day in the second week. Their evidence was they had put down towels and blankets to absorb the water and within two weeks the issue stopped. They also moved their belongings to prevent anything else from being damaged.
18. The Landlord disputed the duration of the issue stating his insurance company's contractor attended the unit the day after the flood was reported. He submitted their initial report that states the Tenants had placed towels and blankets soak up the water. The Landlord testified he attended the rental unit two days after the flood was reported and saw no ongoing issues with water entering the rental unit.
19. The Landlord stated there was a significant rain event at the time the flood occurred. He denied the Tenants ever asked for drying fans. It was his evidence that he took no other steps based on his inspection of the unit. The Landlord acknowledged he did not return to the unit over the two-week period the Tenants claim the issue persisted.
20. The Tenants testified they were fearful of another flood and the potential for mold. Their evidence was that because of these fears, they moved out of the rental unit on March 19, 2022. They acknowledged they did not provide the Landlord with the 60 days notice required under section 44 of the Act but stated the Landlord agreed to their vacating the rental unit without giving the required notice. The Tenants also stated the Landlord agreed to return their rent deposit. The Tenants submitted no evidence of such an agreement and stated they were verbal conversations.
21. The Landlord testified the tenancy agreement was under a lease agreement that was due to expire on June 30, 2022. He submitted an email dated March 6, 2022 in which he advises the Tenants he has no problem with them moving out however they are breaking the lease if they move out by the end of March 2022. He goes on to state the Tenants are providing him less than one month's notice. The Landlord states he cannot guarantee he will return the rent deposit to the Tenants but will if a new tenant is found by the time they vacate the rental unit.

22. The Landlord also submitted an email from the Tenant Natalie Labine dated April 9, 2022 asking the Landlord if she could move back into the rental unit. The Landlord's position was the Tenant's request to move back into the unit less than one month after they vacated was evidence that undermined the Tenants' position they were fearful of another flood and mold. The Landlord testified a new tenant moved into the rental unit on May 1, 2022 and no issues had been reported by the new tenant.
23. I am satisfied on a balance of probabilities the Tenants have proven the Landlord substantially interfered with their reasonable enjoyment of the rental unit in relation to the flood that occurred on February 16, 2022. While the Landlord cannot be faulted for significant rainfall, in my view, his response to the resulting flood led to the Tenants taking on the entire burden of dealing with the results of the flood.
24. The Landlord's own evidence was he attended the unit two days later and observed no issues. He acknowledged he never re-attended the unit to check on the status. His evidence was he believed the Tenants' actions had mitigated any issues and he believed the problem was not ongoing. In short, he did nothing to assist the Tenants with the water that had clearly entered the rental unit.
25. I accept the Tenants' evidence that they were burdened with the task of mopping and soaking up the flood water and that the problem persisted for approximately two weeks. The only evidence of the conditions in the rental unit after the Landlord's visit came from the Tenants. I am therefore convinced the inaction on the part of the Landlord has substantially interfered with the Tenants reasonable enjoyment of the rental unit and this portion of the Tenants' application will be granted.

Remedies

26. The Tenants' application seeks \$1,600.00 in a rent abatement which is equivalent to one month's rent. Abatement of rent is a contractual remedy based on the principle that if you are paying 100% of the rent then you should be getting 100% of what you are paying for and if you are not getting that, then a tenant should be entitled to abatement equal to the difference in value.
27. While I find the Tenants are entitled to a rent abatement for the flood issue, in my view a 100% rent abatement for a problem that lasted approximately two weeks is not reasonable. The unit was habitable, and the Tenants provided no evidence they had to relocate while the issue was ongoing. Given the work the Tenants had to perform in the absence of any assistance from the Landlord, I find a rent abatement of 25% for the twoweek period is reasonable in the circumstances. This amounts to \$200.00. I calculate this by dividing the

monthly rent in half to reach the approximately two-week period being considered. This amounts to \$800.00. 25% of \$800.00 equals \$200.00 and this amount will be ordered.

28. The Tenants sought \$300.00 for the area rug that was destroyed because of the flood. They submitted no evidence showing the replacement cost of the rug. However, I am satisfied area rugs are not free and will order \$150.00 for the damaged area rug based on my knowledge of the cost of an entry level rug.
29. The Tenants sought an order terminating the tenancy effective March 19, 2022, the day they vacated the rental unit. I am not convinced the parties agreed to terminate the tenancy on this date. While the Tenants evidence was the Landlord verbally agreed to their vacating without notice I find the Landlord's evidence far more reliable. The Landlord, in the email submitted, clearly informed the Tenants they were breaking the lease agreement and not providing the notice required under the Act.
30. Further, I am not convinced on a balance of probabilities the Tenants vacated the rental unit out of necessity. The unit was habitable, and the flood resolved more than two weeks before the Tenants vacated. I do not accept the Tenants' explanation that they were fearful of another flood or the potential for mold as a valid reason to vacate the unit not in accordance with the Act. The Tenants' reason is speculative and not evidence of any peril they would face by remaining in the rental unit. I do not find the Tenants had to vacate the rental unit based on the actions of the Landlord or the conditions of the rental unit.
31. Additionally, three weeks after vacating, the Tenant Natalie Labine, emailed the Landlord advising she would be interested in re-renting the unit. I agree with the Landlord that this email from the Tenant undermines the proposition the unit had to be vacated based on the conditions of it. For these reasons, the Tenants' request for an order terminating the tenancy effective March 19, 2022 is denied.
32. The Tenants also sought an order for moving and storage expenses and out of pocket expenses related to their move from the rental unit. Since I have found the Tenants were not required to vacate the rental unit based on the Landlord's actions or the conditions of the rental unit, these remedies will be denied.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is \$403.00. This amount represents:
 - \$200.00 for a rent abatement.
 - \$150.00 the reasonable costs that the Tenants will incur to replace the area rug that was destroyed as a result of the Landlord's actions.

- \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenants the full amount owing by August 7, 2023.
 3. If the Landlord does not pay the Tenant the full amount owing by August 7, 2023, the Landlord will owe interest. This will be simple interest calculated from August 8, 2023 at 6.00% annually on the balance outstanding.

July 27, 2023

Date Issued

John Cashmore

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.