2023 ONLTB 45864 (CanLII)

Order under Section 30
Residential Tenancies Act, 2006

Citation: Cora St Pierre v Dimitrius Stavrou, 2023 ONLTB 45864
Date: 2023-06-26
File Number: LTB-T-010361-22

In the matter of: 118 Rochester Street Ottawa ON K1R7M1

Between: Cora St. Pierre — Tenant

And

Dimitrius Stavrou
1663443 Ontario Inc. — Landlords

Cora St Pierre (the 'Tenant') applied for an order determining that Dimitrius Stavrou (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, D. Stavrou, and the Tenant attended the hearing.

Determinations:

Determination of Landlord:

1. The Tenant filed her application naming Dimitrius Stavrou (DS) as the Landlord.
2. DS attended the hearing, and he alleges that he is an agent of the Landlord. He alleges that the Landlord is, in fact, 1663443 Ontario Inc. He said that the lease names the numbered corporation as the Landlord. He said that he is not the owner of the numbered company, and his connection to the rental unit is as property manager.
3. The Tenant said that she has only communicated with DS as Landlord, she believes DS is her Landlord, and she pays her rent by interac transfer to DS.
4. Neither party submitted a lease agreement into evidence.

5. The Act defines a “landlord” in subsection 2(1) as the owner of a rental unit or any other person who permits occupancy of a rental unit.
6. I find that either DS or the numbered corporation are the Landlord for the reasons that follow. The numbered corporation may own the property, and as owner, it would entitle the corporation to be a named Landlord, pursuant to subsection 2(1) of the Act. As it happens there was no documentary evidence before me to attest to who is the actual owner of the residential complex.
7. However, all the evidence suggests that the Tenant was only aware of DS as her Landlord, all her communication was with DS, and DS was the person who permits occupancy of the rental unit. Therefore, DS qualifies as a named Landlord pursuant to subsection 2(1) of the Act. DS cannot escape liability as a Landlord merely because the numbered corporation is the owner of the residential complex.
8. Consequently, I amended the parties to name both DS and the numbered corporation as Landlords of the rental unit.

2023 ONLTB 45864 (CanLII)

The Allegations:

9. The Tenant filed a T6 application, alleging that the Landlords were breaching health, safety, housing or maintenance standards because they failed to carry out proper snow removal during the winter.
10. The Tenant filed her application in February 2022, alleging breaches that occurred in the previous month. She also testified that the breaches continued throughout the beginning of 2022, and then again in the winter of 2022-2023, until the date of the hearing.
11. The residential complex is an apartment building with six units. The Tenant moved into her unit on the second floor in May 2021. She lives there alone.
12. The Tenant said that she first contacted the Landlord, DS, at the end of January 2022, because there was a major snowfall and there had been no snow removal. She submitted into evidence an email to DS dated January 27, 2022, in which she states that a “massive snow storm” had not been cleared all that day, and that it was snowing again that evening. The Tenant asks DS to attend to the snow clearing. They proceed to have a short communication about whether there is sufficient salt, and the Tenant replied that there was plenty of salt.
13. The Tenant submitted into evidence another email exchange with DS that commenced on February 6, 2022, in which she “follows up” regarding snow removal. She asks DS to attend to daily snow removal during a week that a lot of snow is expected. DS responds to her query on February 6, 2022, by writing, “No it may not be daily. It will depend on how much snow falls. Less than 5 cm never gets cleaned. Just apply additional salt.” He also writes that he cleared all the snow and ice in the previous week.
14. The Tenant said that DS only cleared the front of the building, not the back, on the occasions that he cleared snow. She said that she also uses the back entrance, and she

has to move her garbage bin from the back to the front for pick up, and this causes difficulty and hardship. The Tenant did not have documentary evidence of DS' refusal to clear the back, but she said that he frequently told her verbally that he does not remove the snow from the back of the building.

15. The Tenant said that the same problem of sporadic snow removal arose all through the winter of 2022-2023. The Tenant submitted photos of the front entrance of the building and the lower back staircase of the building with snow build-up. She also submitted into evidence an email dated Saturday, December 17, 2022, telling DS that there was already a lot of snow. She submitted his response, which was that he would come on Monday. She said that he came on Monday.
16. The Tenant estimated that there was insufficient snow clearing at least 6 or 8 times in the winter of 2021-2022 and the same in 2022-2023. She said that DS cleared the back twice in the winter of 2022-2023.
17. The Tenant said, further, that DS would spend long periods of time in Greece during the winter, and there would be no snow clearing at all during those times.
18. The Tenant's original application requested the remedy of an order to remove the snow. She also submitted an amended remedy request for $5,000.00 general damages for "neglect and distress" inflicted, as well as $200.00 per month for maintenance breaches as "penalty for bullying, intimidation and neglect."
19. The Tenant said that she had to trudge through the snow or kick it aside when it was not cleared, and she said that it was unsafe. She also said that she did not own a shovel, and she did not purchase a shovel. She said that neither she, nor any of the other tenants was asked to clear the snow for a fee.
20. DS said that he cleared the snow whenever it was necessary. He said that he lives in Manatick, which is approximately 25-30 km away, and he is sometimes unable to get to the residential complex right away because his own streets are not cleared.
21. DS said that because of the wind or situation of the back of the building, it is not necessary to clear the snow in the back of the building most of the time.
22. DS said that he was away in Greece in April of 2022, and in February of 2023. He said that he arranged for snow clearing during his absence in February of 2023, but he only found out after the fact that the person he hired was "called away to an emergency" and did not carry out the snow clearing.
23. DS said that he asked one of the residents in the residential complex to undertake snow clearing for a fee, but that person refused. He said that he did not ask any of the other residents, and he said it is "almost impossible" to find any one who will agree to clear the snow at the residential complex
24. DS said that he did not refuse to remove snow from the back of the building, but rather he told the Tenant that he had never done the back previously. He said that the back does not accumulate much snow.

2023 ONLTB 45864 (CanLII)

25. The Tenant submits that the Landlords have neglected snow removal and breached their maintenance obligations. She requests a rent abatement for the substantial interference to her reasonable enjoyment caused by two full winters of having to negotiate through dangerous snow and ice. She submits that this amounted to at least 7 full days of interference per winter.

26. DS submits that the application should be dismissed because no other Tenant has complained. He also submits that the snow was always removed.

2023 ONLTB 45864 (CanLII)

Reasons and Analysis:

Findings about Breach of Maintenance Obligation:

27. I find that the Landlords breached their obligation for maintenance under subsection 20(1) of the Act for the reasons that follow.

28. The standard for property maintenance in this case is found in subsection 26(1)5 of O. Reg. 517 to the Act. It provides that exterior common areas shall be maintained in a condition suitable for their intended use and free of hazards and, for these purposes, "unsafe accumulations of ice and snow" shall be removed. Further section 28 of the same O. Reg. 517 provides that driveways, ramps, parking garages, paths, walkways, landings, outside stairs and any similar area shall be maintained to provide a safe surface for normal use.

29. As set out in the Landlord and Tenant Board's Interpretation Guideline 5, it is established law that it is not sufficient to establish that there was a maintenance issue. The Board must also consider whether the Landlord's response, once informed of the issue, was timely, appropriate and effective to remedy the problem. Where this is the case, the Landlord cannot be said to have been in breach of their section 20 obligation to maintain.

30. DS said that he is aware that the Landlord is responsible for snow clearance maintenance. DS also said that he is the person responsible for snow clearing at the residential complex.

31. It is undisputed that DS does not always clear the snow in a timely fashion. The Tenant said that snow clearance is regularly neglected. DS testified that he lives far away and he cannot always get to the residential complex quickly, because the snow clearing in his own neighbourhood is not done quickly. The Tenant had documentary evidence of DS taking over two days to get to the residential complex to clear the snow after a heavy snowfall in at least one case. The Tenant also had documentary evidence of DS virtually ignoring her request to clear snow by asking her if there was enough salt at the property.

32. DS said that he told the Tenant that he was never asked to clear the back of the building before. He explained that this is because there is rarely any accumulation of snow in the back. DS provided no credible reason for why there is any less snow at the back than at

the front. The Tenant had photos of the back of the building with a large accumulation of snow. Although the Tenant had no documentary evidence of a request to DS to clear snow in the back, she said that she asked him verbally many times. I find that DS' testimony about the back of the building not accumulating snow, and his response when asked whether he clears the back proves, on a balance of probabilities, that DS regularly failed to clear the back of the building of snow, and that he did not see this as part of his responsibility.

2023 ONLTB 45864 (CanLII)

33. It is undisputed that DS is responsible for all the snow clearing. However, he lives quite far away from the residential complex and he himself said that it is difficult to get there to provide timely snow clearing. DS' testimony that it is impossible to find any one to help with the snow clearing who is situated closer to the property is not credible. The residential complex is in Ottawa, a sizeable city that is known for heavy snowfalls during the winter. I find that it is simply not credible that DS has made any effort at all to find snow clearing service for the residential complex. In any case, he had no documentary evidence at all of having attempted to find help, and he admits that he only asked one person living in the residential complex, and they refused.

34. On the basis of my findings in paragraph 31, 32 and 33 above, I find that the Landlords did not clear the snow in a timely, appropriate, or effective manner. DS was quite laissez-faire in his reaction to the Tenant's complaints about snow accumulation, he admits he often waited days to clear the snow, and I find the Tenant's allegation that DS almost never cleared the back of the building to be credible and supported by the testimony of both parties. DS left the country for lengthy periods of time in the winter, and it is undisputed that snow clearing was completely neglected during these times. Therefore, even when DS was present, and when he cleared the snow from the front of the building, his snow clearing was ineffective because it did not fulfill his maintenance obligation to keep all exterior common areas, paths and walkways clear.

<u>Remedy:</u>

35. As a result of my finding that there has been a breach of the Landlords' maintenance obligation, they will be ordered to remove the snow within 12 hours of any snowfall.

36. The Tenant asked for $5,000.00 general damages to penalize the Landlords for neglect and distress.

37. General damages for distress is an extraordinary remedy, and it is never ordered to penalize a Landlord. The Tenant did not reveal any circumstances that justify an award of general damages. She did not testify about any injury, slip or fall, as a result of the snow accumulation. In fact, the Tenant did nothing to go out of her way to ensure her safety when snow accumulates. She did not even obtain or borrow a shovel.

38. The Tenant asked for $200.00 per month in the winter months as a “penalty for bullying, intimidation and neglect.” While the Board does not generally order penalty remedies (except possibly an administrative fine), I considered this request as equivalent to a request for a rent abatement.

39. The Tenant was not particularly explicit about how the snow accumulation had substantially interfered with her reasonable enjoyment of the rental unit and residential complex. She said that she had to trudge through snow, and it was unsafe. However, there was never an injury in the residential complex, as mentioned above. Trying to get the Landlords to fulfill their maintenance obligations was stressful and annoying for the Tenant. The Tenant had to repeatedly contact DS to ask him to carry out his maintenance obligation, and she was often ignored, or DS’ response would minimize her concerns. He displayed this kind of cavalier attitude in his testimony as well, insinuating that the Tenant was making a big deal about nothing.

40. Therefore, I find that due to the stress, hassle, inconvenience caused by the Landlords’ breach, there was a substantial interference in the Tenant’s reasonable enjoyment of the rental unit and the residential complex because of the Landlords’ breach of their maintenance obligation with regard to snow removal. It created an unsafe environment, the Tenant was made to feel insecure and worried about merely exiting her unit or moving her garbage bins, and she had to plead with the Landlords to fulfill their obligation.

41. The Tenant failed to provide very exact numbers about how many days of the year the Landlords’ breach caused a substantial interference in her reasonable enjoyment. She said that it was at least 7 days per winter for 2 winters. I find that a total of 14 days for the past two winters is a reasonable estimate. Reasonable snow clearing service would have cost the Landlords at least $75.00 per day. Therefore, I find the Tenant will be awarded a rent abatement of $75.00 per day X 14 days= $1,050.00.

42. DS said that the residential complex has been sold, and the closing of the sale will take place on June 30, 2023. Therefore, the Landlords will be ordered to pay the amount owed to the Tenant on or before June 29, 2023. This application and remedy falls wholly within the period that the named Landlords remain Landlords of the Tenant.

It is ordered that:

1. The Landlords shall clear snow from all common exterior areas, exterior paths, stairs and walkways within 12 hours after a snowfall.
2. The Landlords shall pay to the Tenant $1,050.00 rent abatement.
3. The Landlords shall also pay to the Tenant $48.00 for the cost of filing the application.
4. The total amount the Landlords owe the Tenant is $1,098.00.

2023 ONLTB 45864 (CanLII)

5. If the Landlords do not pay the Tenant the full amount owing on or before June 29, 2023, the Landlords will start to owe interest. This will be simple interest calculated from June 30, 2023 at 6.00% annually on the balance outstanding.

<u>**June 26, 2023**</u>
Date Issued

Nancy Morris
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.

2023 ONLTB 45864 (CanLII)