



Order under the Residential Tenancies Act, 2006

Citation: Cox v DESTARON PROPERTY MANAGEMENT LTD, 2023 ONLTB 36330

Date: 2023-05-11

File Number: LTB-T-003428-22

In the matter of: 704, 1260 MARLBOROUGH CRT
OAKVILLE ON L6H3H5

Between: Renisha Cox Tenant

And

DESTARON PROPERTY MANAGEMENT LTD Landlord

Renisha Cox (the 'Tenant') applied for an order determining that DESTARON PROPERTY MANAGEMENT LTD (the 'Landlord'):

- Substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household (T2 application).
- 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 (T6 application).

The applications were heard by videoconference on April 3, 2023.

The Tenant, the Landlord's Agent, Samantha Gibson ('SG'), and the Landlord's Legal Representative, Mark Ciobotaru, attended the hearing.

Determinations:

1. For the reasons below, I find that the Landlord's failed to comply with their maintenance obligations under the Act. I find that the Landlord's failure to comply with their maintenance obligations substantially interfered with the Tenant's reasonable enjoyment of the rental unit. However, I also find that the Tenant failed to mitigate pursuant to s.16 of the Act. The Tenant's remedies are reduced accordingly.
2. The Tenant's application relates to the Landlord's failure reasonably deal with an infestation of ants in her rental unit.

3. The tenancy began November 1, 2021. The Tenant says she first discovered ants on November 2, 2021. She informed the Landlord on November 4, 2021. The unit was treated on November 9, 2021. After the initial treatment, the Tenant continued see ants and inform the Landlord. There is no dispute that every time the Tenant would inform the Landlord, the Landlord would respond by treating the rental unit. It appears from the evidence that

the Landlord treated the rental unit approximately 11 times. Nonetheless, the Tenant continues to have ants in her rental unit as of the hearing date.

Landlord Breached Maintenance Obligations

4. In the case *Onyskiw v. CJM Property Management*, 2016 ONCA 477 (*Onyskiw*) (CanLII), the Court of Appeal for Ontario determined that a contextual approach should be adopted when considering a landlord's potential breach of subsection 20(1) of the Act and a breach will not be found if the landlord's response to a maintenance issue was reasonable in the circumstances.
5. In this case, the Landlord's response was not reasonable in the circumstances. Accordingly, I find that the Landlord's breached subsection 20(1) of the Act.
6. Although the Landlord treated the rental unit each time the Tenant complained and utilized 2 professional treatment providers, the treatment consisted of applying "Ant & Roach Bait Gel" each time. In the face of continued complaints, the Landlord did not consult with their treatment professionals to explore other options, forms of treatment or investigate the source of the Ants. In my view, a reasonable Landlord would have at least attempted to consult with the treatment provider to explore other methods of treatment or conduct an investigation.
7. Although the Landlord says that the same treatments have successfully addressed the Ant infestation in other units except the Tenant's, the fact remains that the treatments were unsuccessful in treating the Tenant's unit.
8. The Landlord says this is because the Tenant is continuously not 100% prepared for treatments and submits notes and invoices from the treatment providers in support. The Tenant denies this. The evidence with respect to the Tenant's lack of preparedness is hearsay. The notes made in the invoices indicated vague statements like "housekeeping needs to be improved" and "fair housekeeping". The authors of the notes and invoices were not present at the hearing to testify or be subject to cross-examination. Therefore, I prefer the Tenant's evidence and give the hearsay evidence little weight in terms of determining the Tenant adequately prepared for treatment. I also note that SG admitted in cross-examination that issues with the Tenant's "housekeeping" were not communicated to the Tenant. I find it contradictory that, on one hand, the Landlord would say the Tenant's poor "housekeeping" contributed to the ongoing problem and, on the other hand, the Landlord did not communicate their concerns to the Tenant.

9. Nonetheless, by the Tenant's own admission, I find that the Tenant lacked diligence in preparing for treatment on some occasions. However, insufficient evidence was lead that would lead me to believe that this was a major factor in the Landlord's inability to successfully treat the rental unit. As explained below, I have taken the Tenant's lack of diligence into account in determining that the Tenant failed to mitigate her losses.

Landlord's Breach Substantially Interferes with Tenant

10. The Tenant is substantially impacted by the continued presence of the Ants. The Tenant submitted several videos showing Ants in her kitchen, on the floors, walls, and on her person. The Tenant testified that the kitchen is an integral part of their home where they have breakfast, lunch, and dinner. She says Ants are in her cupboards and she has to inspect her food before she eats. She says she can't have dinner or have anyone over. The Tenant testified that she has seen Ants in her bed. She says the Ants activity is constant.
11. Given the impact on the Tenant, the length of the infestation, and the landlord's unreasonable response, I find the Landlord has substantially interfered with the Tenant's reasonable enjoyment of the rental unit.

Remedies

12. Given the Landlord's breach, the Landlord's unreasonable response and the impact on the Tenant, the Tenant is entitled to a rent abatement of \$2,686.80. This amount represents a 10 percent rent abatement for the period January 2022 to March 2023 (15 months). No abatement is given for the months of November 2021 and December 2021 as during these months the Landlord was reasonably treating the rental unit.
13. The Tenant's request for general damages is denied. I was not satisfied that the Landlord knowingly misled the Tenant or misrepresented there were no pest issues with the rental unit. Prior to the commencement of the tenancy the Tenant viewed the rental unit in September 2021. The Tenant confirmed that when she viewed the rental unit, she did not see any signs of Ant activity and says the rental unit was in pristine condition. I also note that this is not a situation where the Landlord did nothing to respond to the Tenant's concerns. Although the Landlord's response was inadequate, I give the Landlord some credit for attempting to treat the rental unit.

Tenant Failed to Mitigate

14. Section 16 of the Act says when landlord or a tenant becomes liable to pay any amount as a result of a breach of a tenancy agreement, the person entitled to claim the amount has a duty to take reasonable steps to minimize the person's losses. In this case, I find the Tenant did not take reasonable steps to minimize her losses.

15. By the Tenant's own admissions, I am satisfied that she likely was not prepared during some of the treatments. For example, in the recent treatment on March 21, 2023, the Landlord submits a complaint/incident form from staff person, Martin Frost, who attended the rental unit to perform treatment. The report indicates the Tenant had food and dirty plates on the kitchen countertops, stove and sink. SG also gave uncontradicted testimony that during a visit to the Tenant's rental unit in December 2022, she observed the Tenant had left a pan on the stove with food in it and a garbage bag with food waste in it that was hanging from a door. The Tenant did not deny this. Rather, the Tenant explains that at the time of the March 21, 2023 treatment (approximately 9:15 a.m.), she had just finished making and having breakfast with her family. On other occasions, the Tenant confirms she occasionally leaves open garbage bags in the rental unit but generally does not do so.
16. In my view, the Tenant's actions show a lack of diligence in keeping a reasonable state of cleanliness given an ongoing Ant infestation. A reasonable tenant in these circumstances would clean dishes immediately and keep garbage bags in the rental unit closed so to limit access to exposed food or food waste. Therefore, I find the Tenant failed to take reasonable steps to minimize her losses.
17. Accordingly, the remedies awarded to the Tenant will be reduced by 20 percent (\$537.36).
18. This order contains all of the reasons for the decision within it and no further reasons will be issued.

It is ordered that:

1. The Landlords shall pay the Tenant a total rent abatement of \$2,149.44. This amount represents the rent abatement for the period January 2022 to March 2023, less 20 percent reduction for the Tenant's failure to mitigate.
2. The Landlords shall also pay the Tenant the cost of the application filing fee in the amount of \$48.00.
3. The total amount owing by the Landlord is \$2,197.44.
4. The Landlord shall pay the full amount owing by May 22, 2023.
5. If the Landlord does not pay the Tenant the full amount owing on or before May 22, 2023, the Tenants will start to owe interest. This will be simple interest calculated from May 23, 2023 at 6.00% annually on the balance outstanding.
6. The Tenant is entitled to deduct the full amount owing against their monthly rent charges until the full amount owing is paid in full.

May 11, 2023

Date Issued

Khalid Akram

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.