



Order under Section 30
Residential Tenancies Act, 2006

Citation: SMITH v BARTLETT, 2023 ONLTB 17562

Date: 2023-05-02

File Number: LTB-T-074404-22
(EAT-81012-19)

2023 ONLTB 17562 (CanLII)

In the matter of: 9930 HIGHWAY 509
OMPAH ON K0H2J0

Between: Angela Smith Tenants
Kevin Smith

and

Brian Bartlett Landlords
Lorraine Bartlett

Your file has been moved to the Landlord and Tenant Board's new case management system, the Tribunals Ontario Portal. Your new file number is LTB-T-074404-22.

Angela Smith and Kevin Smith (the 'Tenants') applied for an order determining that Lorraine Bartlett and Brian Bartlett (the 'Landlords') failed to meet the Landlords' 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 August 15, 2022.

Only the Tenants and the Tenants' representative, Linda Tranter attended the hearing.

The Landlords were 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 Tenants' evidence.

Determinations:

1. Based on the uncontested evidence before me, I find on a balance of probabilities that the Landlords are in serious breach of their maintenance obligations under subsection 20(1) of the Act. The application is granted.
2. Therefore, the Landlords must pay a rent abatement and costs to the Tenants totaling \$7,993.88.

Background Facts

1. The rental unit is 4-bedrooms, 2 bathrooms, 2 level permanent mobile home with a foundation, located in a rural area on a 4.9-acre lot.
2. The Tenants moved into the rental unit August 1, 2013 and moved out April 7, 2019 due to a fire.
3. The Tenants' T6 application was filed February 22, 2019.
4. The monthly rent was \$1,000.00 from August 1, 2013 to August 1, 2018 and increased to \$1018.00 on September 1, 2018.

Maintenance Issues

5. Pursuant to subsection 20 (1) 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.
6. Pursuant to subsection 29 (1) A tenant or former tenant of a rental unit may apply to the Board for any of the following orders:
 3. An order determining that the landlord has breached an obligation under subsection 20 (1) or section 161.
7. The Tenants filed a T6 application on February 22, 2019, which raised 14 maintenance issues: Septic Backup, Living Room Insulation, Radon Gas in Basement, Frozen Furnace Fuel Line, Blower on Furnace, Corroded Kitchen Pipes, Upstairs Bathroom Leak, Exterior Staircase & Railing, Collapsed Ceiling in Basement, Laundry Room Taps, Back Sliding Door, Outside Retaining Wall, Exterior Wall, Old Septic System.
4. The issues raised by the Tenant are subject to the one-year limitation period in subsection 29(2) of the Act, which provides that no application may be made by a tenant more than one year after the day the alleged conduct giving rise to the application occurs.
5. The Tenants filed their T6 application with the Board on February 22, 2019 and, as such, no remedy can be ordered in connection with any issues that occurred before February 22, 2018, except where the issues are ongoing.
6. Due to the time limitation and the insurance claims made as a result of the fire not all of the maintenance issues listed will be addressed in this order.

Septic Backup & Damage

7. Although the issue of the septic system is statute barred as the flooding and backups occurred between 2013 and 2016, the outstanding repairs resulting from the damage caused by the septic back up was ongoing up to the date the Tenant's vacated the rental property. The Tenants testified that after the floods, the Landlord failed to complete the repairs to the entire basement area, rendering it unusable as the following repairs were not completed; drywall, baseboards and flooring not replaced, the toilet and shower were not functional, and the baseboard electrical heating was not installed. The Tenants are seeking a rent abatement due to the outstanding repairs and loss of use of the basement.

Living Room Mould and Insulation

8. The Tenants' testified that beginning the first winter after moving into the rental unit in 2013 after they notified the Landlord that the living room was extremely cold causing ice to form on the walls which then created a mold issue. The Landlord informed the Tenants that it was because the area lacked proper insulation. Although the issue was first brought to the attention of the Landlord in the winter of 2013, the issue was ongoing every winter. Each year the Tenants addressed the issue with the Landlord and he would install plastic on the windows but refused to have the room insulated. The Tenants were unable to use this space during cold winter months. The Tenants are seeking a rent abatement due to the outstanding repairs and loss of use of this space for several months each year.

Radon Gas

9. The Tenants testified that due to the ongoing septic issues with the rental unit, there was a constant smell of sewage in the rental unit. Out of concern for their health and safety and lack of response by the Landlord on the issue, the Tenants hired professionals to conduct a test the radon levels in the rental unit. The first Test was conducted in the fall of 2018 and the second test was conducted in January of 2019. In the reports provided to the Board as evidence it detected concerning levels of radon in the rental unit. When the Tenants addressed this with the Landlord, the Landlord responded by telling the Tenants to move out.

Furnace Fuel Lines

10. The Tenants testified that in November 2013 the furnace stopped working, the Landlord responded by attending the following weekend to inspect the issue. The Landlord found that the fuel lines were freezing and proceeded to show the Tenant how to heat up the lines using a blow dryer. The Tenant told the Board that this occurred 4-5 time a week and although the Landlord attended the property for this issue multiple times, he never sent a professional to have the issue fixed. Each time this would occur the Tenants would be without heat for a few hours. This issue was ongoing throughout the duration of the tenancy. The Tenant is seeking costs for the work completed.

Blower on Furnace

11. In the fall of 2018 the blower on the furnace burnt out. The Tenants were without heat for approximately a week because the Landlord refused to call it professional. The Landlord

eventually sent a friend to fix a belt which later broke again, ultimately the issue was fixed.

Kitchen Pipes

12. The Tenants testified that shortly after the tenancy began the Tenants made the Landlord aware that the kitchen pipes were leaking, and it appeared that the pipes were rotting which caused the leaking to occur. The Tenant testified that the Landlord never addressed the issue, and it was ongoing up to the date the Tenants left the rental unit.

Upstairs Bathroom

13. The Tenants provided testimony with respect to the upstairs bathroom toilet did not flush properly from the start of the tenancy. When the Landlord came to address the problem, he provided instructions to the Tenants on how to plunge it, but never sought to rectify this ongoing problem. The Tenants submitted that the toilet required plunging after every use, however after an unreasonable amount of time the toilet was fixed.

Basement Ceiling

14. The Tenants testified that due to the leaking pipes in the upstairs bathroom, water damage to the ceiling caused it to eventually collapse. The Landlord was made aware of this issue; however, he never attended the unit to address the repairs.

Retaining Wall

15. The Tenant testified that the large retaining wall that surrounded the entrance to the rental property was crumbling and falling. The wall was approximately 100 feet long and 4 feet high and posed safety concerns for them and their four children. When the Tenant notified the Landlord, the Landlord responded by telling the Tenant to fix it himself. The Tenant told the Board that he spent 100 plus hours dismantling the retaining wall. The Tenant is seeking costs for the work completed.

Old Septic System

16. The Tenants testified that the old septic system that was the source of the many of the issues above continued to smell and was not repair and closed properly. When the Tenant's raised concerns about the health and safety implications with the Landlord they were served with an eviction notice.

Remedies

Rent Abatement

17. The Tenants told that Board that rental property had many problems from the onset of the tenancy and although the Landlord was made aware of each of the issues as they arose and those that continued throughout the tenancy, the Landlord was reluctant to remedy the issues. The Tenants stated that they and their four children lost the use of the

basement area where two of their children's bedrooms were located, the playroom, a bathroom and shared family space which forced their family of 6 to share two bedrooms, one bathroom and a small family room on the main level. In addition, the septic issue leaking onto the surrounding property and into the house was of great concern to their health.

18. Although the remedies that the Tenants are seeking are related to specific issues, I have given consideration to all of the circumstances.
19. An abatement is a contractual remedy designed to address the idea that rent is paid for a bundle of goods and services, and where a tenant is not receiving all of the goods and services being paid for, rent should be abated proportionally to the difference between what is being paid for and what is being received.
20. The Tenants in their application seek a rent abatement of **\$6,443.88** which represents a square foot calculation, based on the total square footage of the home being 2298 and the square footage that was impacted. The Tenants claim that the useable square footage is 1064. Given that the basement of the rental unit was unusable to the Tenants from the point when the septic backup occurred in 2013 to the date they vacated the rental unit, and many of the above noted issues remained unaddressed by the Landlord, the \$6,443.88 represents less than a 10% rent abatement which is more than reasonable in the circumstances, therefore, this amount will be awarded.
21. The Tenant also sought \$16,161.12 which represents the cost to replace the property that was damaged, destroyed or disposed of. As a result of an insurance claim issued, the Tenants are no longer seeking this remedy.
22. The Tenant is seeking reimbursement for repairs, replacement or work the Tenant did as a result of the Landlord failing to maintain the rental unit or residential complex. In the Tenants' application, they were seeking \$8,880.98. This amount represents some expenses that are statute barred as per the limitation period, and as a result the Tenant is only seeking the cost for his time in dismantling the retaining wall and the time spent three times per week each winter thawing the frozen fuel lines to the furnace to ensure his family had heat. The Tenant is seeking 60-100 hours of his time at \$25.00 per hour. In consideration of all the circumstances I find that an abatement of **\$1,500.00** is reasonable for the inconvenience and time lost on behalf of the Tenants.
23. In the Tenants' application they requested as part of their remedies that the Board Order the Landlord to do the repairs, replacement or other work that is necessary, and that the Landlord be prohibited from increasing the rent until the Landlord completes the necessary work. However, given that the property was destroyed by fire and the Tenants are no longer tenants, this remedy will not be awarded.

Rent Differential & Moving Costs

24. The Tenants are claiming moving costs and the difference in rent for one year as a result of having to move out of the rental property. Although I find that the Landlord breached their maintenance obligations for which an abatement will be awarded, the Tenants did

not move out as a result of the breach, but rather because of the fire that destroyed the rental property. There was insufficient evidence provided at the hearing to establish that the cause of the fire was attributed to any negligence of the Landlords, therefore a rent differential and moving costs will not be granted.

Out-of-Pocket Expenses

25. At the hearing the Tenants requested to include out of pocket expenses not included in the T6 application, given that the Tenants did not amend their application to include new remedies prior to the hearing I am not prepared to accept these remedies or amend the Tenants' application in the absence of the Landlord.
26. In considering the uncontested evidence, I find that a rent abatement and costs totalling **\$7,993.88** to be proportional in the circumstances for the cumulative impact on the Tenants with respect to the ongoing maintenance issues raised in this application.

It is ordered that:

1. The Landlords shall pay to the Tenants a rent abatement of **\$6,443.88**.
2. The repair(s) to work on the retaining wall and frozen fuel lines the furnace that was done by the Tenants is authorized. The Landlords shall pay to the Tenants **\$1,500.00**, which is the cost of the work completed.
3. The Landlords shall also pay the Tenants \$50.00 for the cost of filing the application.
4. The total amount the Landlords owe the Tenants is **\$7,993.88**.
5. The Landlords shall pay the Tenants the full amount owing by May 13, 2023.
6. If the Landlords do not pay the Tenants the full amount owing by May 13, 2023 the Landlords will owe interest. This will be simple interest calculated from May 14, 2023 at 6.00% annually on the outstanding balance.
7. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

May 2, 2023
Date Issued

Natalie James
Member, Landlord and Tenant Board

Eastern-RO
255 Albert Street, 4th Floor
Ottawa ON K1P6A9

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.