



**Order under Section 30
Residential Tenancies Act, 2006**

Citation: Kabakcio v Gioncola, 2023 ONLTB 31099

Date: 2023-04-13

File Number: LTB-T-034948-22

In the matter of: A, 4978 DUNDAS STREET WEST
TORONTO ONTARIO N9A1B7

Between: Huseyin Kabakcio Tenant

And

Giovanni Gioncola Landlord

Huseyin Kabakcio (the 'Tenant') applied for an order determining that Giovanni Gioncola (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 April 4, 2023.

The Tenant attended the hearing and declined to speak to Tenant Duty Counsel prior to the hearing.

The Landlord and the Landlord's daughter, Roberta Giancola attended the hearing.

Determinations:

1. As explained below, the Tenant has proven on a balance of probabilities that the kitchen sink was clogged with paint and plaster which caused it from draining.
2. Therefore, the Landlord must pay the Tenant the amount of \$421.50, which represents the reasonable out of pocket expenses the Tenant has incurred.

Tenant's Evidence

3. The Tenant testified that since the tenancy began on August 24, 2019, the kitchen sink had always drained slowly but never brought this to the attention of the Landlord as it was still draining and useable.
4. The Tenant testified that on December 6, 2021, the kitchen sink was clogged and was not draining. He did not call the Landlord immediately as he thought it was a small issue that he could rectify himself. He tried to unclog the drain by using Drano and purchased a twenty-five-foot-long drain auger to try and clear the drain, however this was unsuccessful. He realized that the clog was likely in the main drain and something that he could not rectify.
5. At approximately 7:00 pm on December 6, 2021, he called the Landlord's wife and asked if the Landlord could send a plumber to the property to investigate. The Landlord's wife advised the Tenant they have a friend who is a plumber, however, he is a senior and due to the Covid 19 pandemic he would be unable to attend the property at this time. The Tenant advised the Landlord's wife that if the Landlord wished, the Tenant could try and secure a plumber. The Landlord's wife informed the Tenant that this would be acceptable.
6. The Tenant was able to secure a plumber and provided the estimated costs to the Landlord of approximately \$300.00 to \$400.00 if the plumber came during regular hours. If the plumber came on an emergency call it could be as high as \$1000.00. The Tenant also provided the Landlord with the website of the plumber. The Landlord then advised that someone would be in touch with the Tenant to discuss.
7. On December 7, 2021, the Landlord's daughter, Roberta Giancola texted the Tenant and advised that either herself or her sister would be in touch with the Tenant that evening. The Landlord advised the Tenant that they would like the plumber to give the Landlord a call so they could discuss the issue and costs directly with the plumber.
8. The Landlord's daughter, Roberta Giancola advised the Tenant that if it was determined the kitchen sink was clogged due to the fault of the Tenant, the Tenant would be responsible to pay for the repairs. If it was determined it was the Landlord's fault, the Landlord would pay for the repairs.
9. The Tenant testified that on December 7, 2021, the plumber arrived at the rental unit at approximately 3:00 pm. The Tenant advised the plumber that the Landlord wished to speak to the plumber. The plumber contacted the Landlord's daughter, Roberta Giancola, and advised her that the repair would be approximately \$500.00. The Landlord's daughter advised the plumber to not proceed with the repairs as the quote was too high. The plumber advised her that there would be a charge of \$200.00 for the service call even if he did not proceed with the repairs.
10. The Tenant testified that he instructed the plumber to proceed with the repairs as he needed to have the drain unclogged as he needed use of his kitchen sink.

11. He testified the plumber sent a fifty-foot snake down the drain and successfully unclogged the drain. He testified the drain was clogged with plaster and paint inside the pipes.
12. He testified that at no time did he put any plaster or paint down the drain and believes that the plaster and paint have been inside the drain pipes since he moved into the rental unit in August 2019, and this would explain the slow drain of water in the kitchen sink.
13. The Tenant provided a copy of a paid invoice dated December 10, 2021, from Trinity Plumbing and Draining Services Inc in the amount of \$621.50 (Subtotal \$550.00 plus HST 71.50). The description on the invoice is as follows:
 - a) Check and investigate where the problem is
 - b) The kitchen drainer sink was clogged and overflowed
 - c) Snaked with heavy duty snake fifty feet long by 5/8"
 - d) Was very difficult to snake because it was full of plaster and paint inside the drainer pipe. Had to snake the drain several times.
 - e) Unclogged the main drain 1 1/2"
 - f) Tested the drain
14. The Tenant testified that on January 2, 2022, he sent the invoice to the Landlord's daughter, Roberta Giancola, requesting to be reimbursed for the costs he had incurred. She stated she wanted to speak to the Landlord and Tenant Board and advised the Tenant it was not the Landlords responsibility to pay for the clogged drain.
15. He testified that the Landlord offered to reimburse the Tenant the amount of \$300.00, which he declined as he wanted the full amount reimbursed.

Landlord's Evidence

16. The Landlord's daughter, Roberta Giancola testified that the Tenant called the Landlord's wife on December 6, 2021, regarding the clogged drain. She testified that the Landlord's wife has a language barrier and did not tell the Tenant to go ahead and call a plumber.
17. She testified that on December 6, 2021, she advised the Tenant that their plumber had Covid 19, and therefore was not able to attend the rental unit to fix the clogged drain and that this was not an emergency plumbing issue.
18. She stated that she advised the Tenant that he could obtain quotes and provide these quotes to the Landlord for review and approval.
19. She testified the Tenant advised her of the quote he received from the plumber which had a wide range of anywhere between \$300.00 and \$1000.00.
20. She testified the Tenant did not provide the Landlord with sufficient time to get quotes from other plumbers.

21. She testified the Tenant went ahead and told the plumber to proceed with the repairs even after she told the plumber to not continue with the work on December 7, 2021, as the quoted price was too high. She stated the Tenant paid to have the issue rectified. She testified the Landlord agreed to reimburse the Tenant the amount of \$300.00 with no liability of guilt, however the Tenant refused as he wanted the full invoice of \$621.50 to be paid as well as the cost of \$49.99 plus tax for the cleaning auger he purchased.
22. She testified the Tenant has lived at the rental unit since August 24, 2019, and at no time before December 6, 2021, was the Landlord ever notified of an issue with the kitchen sink.
23. She states the signed Lease Agreement between the parties states the Tenant will pay for any maintenance issues related to the Tenant's negligence.
24. She testified the Landlord did not put paint or plaster down the drain at any time before the Tenant moved into the rental unit.

Analysis

25. Based on the Tenant's evidence I am satisfied that the kitchen drainpipe was clogged with plaster and paint
26. There was no evidence before me that suggests the Tenant was responsible for putting plaster and paint down the kitchen sink or that the clogged drainpipe was due to the negligence of the Tenant. I accept the Tenant's testimony that since the beginning of the tenancy in August 2019, the kitchen sink, always drained slowly. While this may have been an issue the Tenant should have brought to the attention of the Landlord, I accept that the kitchen sink drain was still operating but was draining slow.
27. On a balance of probabilities, the plaster and paint were in the drainpipe when the Tenant moved into the rental unit in August 2019, and that is why the kitchen sink was draining slowly.
28. While I accept the Tenant was trying to rectify the issue without bothering the Landlord and purchased a drain cleaner auger, before doing so the Tenant should have contacted the Landlord and advised of the clogged drain and discuss next steps. The Tenant did not provide any receipts for the purchase of the cleaning auger.
29. I am persuaded by the Tenant's testimony that he had a conversation with the Landlord's wife on December 6, 2021, and at that time she advised him that he could find a plumber as their plumber could not attend due to Covid 19.
30. I accept the testimony of the landlord's daughter, Roberta Giancola that there may have been a language barrier during the conversation, however, the Landlord's wife did not appear at the hearing to provide testimony of this conversation.

31. I accept the Landlord's daughter, Roberta Giancola's testimony that she advised the Tenant's plumber not to proceed with the work as the quote was too high and the Tenant proceeded to have the repairs conducted.
32. While I find that having a clogged kitchen sink does require a repair in a timely manner, I would not consider this an emergency plumbing call.
33. The invoice the Tenant provided dated December 10, 2021, from Trinity Plumbing and Draining Services Inc in the amount of \$621.50, indicates that the price reflects a Plumbing Emergency Call.
34. While I accept the clogged drain needed to be rectified in a timely manner the Tenant did not give the Landlord sufficient time to obtain quotes from other plumbers before the Tenant proceeded to have the issue rectified on his own on an emergency basis.
35. I find it was unnecessary to have an emergency call to a plumber, which resulted in extra costs being incurred. The Tenant could have provided the Landlord with time to have a plumber of their choice quote the amount for repairs. I note the Tenant advised the Landlord on December 6, 2021, and hired his own plumber on December 7, 2021, even after the Landlord had said not to proceed as the quote was too high.

Remedy

36. The Tenant incurred expenses in the amount of \$621.50, for the unclogging of the drainpipe and \$56.48 for the drain cleaner auger he purchased to try and rectify the clogged drain prior to calling the Landlord.
37. I find the amount the Tenant is requesting is unreasonable as the charges represent an emergency call. The charges would have been less if the Tenant provided the Landlord with time to obtain their own plumbing quote and if the Tenant had not advised the plumber on December 7, 2021, to proceed with the repairs. I also find the charge for the cleaning auger could have been avoided if the Tenant had called the Landlord and advised the Landlord of the issue before trying to rectify on his own. The Tenant did not provide a copy of a receipt showing the charges for the cleaning auger.
38. Considering these circumstances, I find it reasonable to award a reimbursement of out-of-pocket expenses the Tenant incurred in the amount of \$421.50, which represents a portion of the paid invoice dated December 10, 2021 in the amount of \$621.50. This amount represents a \$200.00 reduction from the paid invoice which would be a reasonable amount that was charged for an emergency call. I note the plumber had stated on December 7, 2021, that if he was not permitted to do the repairs there would still be a \$200.00 service charge.

It is ordered that:

1. The Landlord shall pay the Tenant is \$421.50. This amount represents the reasonable costs that the Tenant has incurred to repair property that was damaged as a result of the Landlord's actions.
2. The Landlord shall pay to the Tenant \$53.00 for the cost of filing the application.
3. The total amount the Landlord owes the Tenant is \$474.50.
4. If the Landlord does not pay the Tenant the full amount owing on or before April 27, 2023, the Landlord will start to owe interest. This will be simple interest calculated from April 28, 2023 at 6.00% annually on the balance outstanding.

April 13, 2023

Date Issued

Trish Carson

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.