Order under Section 31
Residential Tenancies Act, 2006

Citation: Stacey-allen v Basiri, 2023 ONLTB 20894
Date: 2023-02-27
File Number: LTB-T-062951-22

In the matter of: Basement, 410 PRESLAND RD
OTTAWA ON K1K2B5

Tenant

Between: Seneca-heather Stacey-Allen

And

Morvarid Basiri Landlord

Seneca-heather Stacey-Allen (the Tenant) applied for an order determining that Morvarid Basiri (the Landlord) substantially interfered with her reasonable enjoyment of the rental unit or residential complex and withheld or deliberately interfered with the reasonable supply of a vital service, care service, or food that the Landlord is obligated to supply under the tenancy agreement. . (T2 application).

This application was heard by videoconference on February 9, 2023.

Only the Tenant attended the hearing.

As of 10:35 am, the Landlord was 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 Tenant's evidence.

Determinations and Reasons:

Introduction:

1. As explained below, the Tenant has proven on a balance of probabilities some the allegations in the T2 application and shall be awarded remedy as detailed below.
2. The rental unit is a basement apartment in a residential complex. The upper unit is occupied by a family.
3. The Tenant moved into the unit on May 22, 2022 upon execution of a lease agreement.
4. The lawful monthly rent was $1,695.00.
5. On the date of the hearing, the Tenant said she vacated the unit on November 27, 2022 after the Landlord accepted short notice for the termination of tenancy by way of an N9 notice. Although the Landlord did not return a signed copy of the notice, email correspondence confirmed she accepted the Tenant's notice to terminate the tenancy.

6. The Tenant said she paid November 2022 rent and the Landlord returned the last month's rent deposit to the Tenant.

7. The Tenant's T2 application filed October 27, 2022 alleges that the Landlord provided false information about the upstairs tenants at the commencement of the tenancy, the Landlord did not respond to a leak in the foundation which led to water damage to the electrical panel and the Landlord withheld or interfered with the Tenant's heat in the rental unit.

8. The Tenant submitted as evidence photographs, invoices, correspondence and other documents.

9. On the date of the hearing, the Tenant advised that she did not provide copy of the submissions to the Landlord and understood service was effected when she uploaded them to TOP. I explained to the Tenant the Board file did not contain consent forms from the Landlord nor Tenant and Board Rule 19 for disclosure requires service upon the party at least 7 days prior to the hearing. I accepted the Tenant's position that the submissions included correspondence between the Tenant, Landlord and various parties and the Landlord would have been aware of these communications.

10. Although this order does not specifically address each piece of evidence individually or reference all of the testimony, I have considered all of the evidence and oral testimony when making my determinations.

The Upstairs Tenants

11. The Tenant testified that at the onset of the tenancy she asked the Landlord who resided in the upper unit. The Tenant said the Landlord provided false information when she told her that 3 people lived upstairs when in fact, the Tenant said there is a family of 5 including 3 minor children.

12. The Tenant said that she has notified Child Protective Services and local police of incidents that occurred in the upper unit. She said that as a result of previous employment in the filed of child welfare, she suffers from mental health issues and would not have rented had she been made aware of the upper tenants.

13. Although this may be the case, the Tenant testified that she at no time notified the Landlord of any issues related to the behaviour of the tenants in the upper unit. There was no evidence before me that suggests he Landlord intentionally misled the Tenant and in fact, the composition of the family could have changed after the tenancy commenced. As the Landlord was not put on notice of any issues related to the upper and lower tenants, I cannot make a finding that the Landlord is in breach of their obligations under s.22 of the Act. This portion of the T2 application shall be dismissed.

Water Leak and Electrical Panel

14. The Tenant testified that she advised the Landlord of a leak in the foundation on July 24, 2022 around the electrical panel in her unit and the Tenant expressed concern for mold.

15. The Tenant then said the Landlord responded around July 25, 2022 and advised that she would look into the issue. The Tenant said she followed up again on August 9, 23 and 28 2022 and the Landlord had not had a contractor investigate the issue. On September 8,

2022 the Landlord advised the Tenant the crack in the foundation would be expensive and she would further investigate. The Tenant said the electrical panel and foundation issue was fixed late September 2022.

16. I advised the Tenant that this matter before me is a T2 and not a T6 application about maintenance and asked for the impact of the situation as it relates to substantial interference.

17. The Tenant said the issue of the crack, leak and electrical panel was a safety concern and she was fearful of the impact of water around the electrical panel and potential for the loss of power and potential mold. The Tenant's concerns are speculative in nature. No evidence was submitted to support the proposition that the Tenant suffered any loss of power or medical conditions as a result of mold.

18. Based on the above, I find that although the Tenant may have experienced concern for the potential risk of water leak and mold, no evidence was adduced to suggest that she suffered any result from the issue. Nor can I make a finding that the impact on the Tenant rose to a level of "substantial" as prescribed by the Act.

19. In my view, the Tenant failed to provide sufficient evidence to support a finding of substantial interference in relation to the water leak and mold. A minor inconvenience for a brief period is considered a normal part of life for which abatement should not be granted. The problem with the water leak was a minor issue and time it took to remedy was not unreasonable given its nature.

20. With respect to section 22 of the Act the statutory language creates both an objective and subjective test. The interference must be substantial; minor inconveniences will not be a breach of s. 22. The use of the word "reasonable" imports an objective standard; in other words, if the Landlord's behaviour is reasonable given the context and all of the circumstances it is unlikely that the Board will find that the impact on the Tenant of that behaviour substantially interferes with his reasonable enjoyment. Accordingly, this portion of the Tenant's T2 application shall be dismissed.

Withholding or Interfering with Vital Service

21. The main issue in the T2 application relates to interference with vital services, namely lack of heat.

22. The Tenant's allegations about inadequate heat are based on section 21(1) of the Act which states:

    21 (1) 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.

23. "Vital service" is defined in section 2(1) of the Act as "hot or cold water, fuel, electricity, gas or, during the part of each year prescribed by the regulations, heat."

24. Further requirements concerning heat are contained in section 4 of Ontario Regulation 516/06:

    4. (1) For the purpose of the definition of "vital service" in subsection 2 (1) of the Act, September 1 to June 15 is prescribed as the part of the year during which heat is a vital service. O. Reg. 516/06, s. 4 (1).

    (2) For the purposes of subsection (1), heat shall be provided so that the room temperature at 1.5 metres above floor level and one metre from exterior walls in all habitable space and in any area intended for normal use by tenants, including recreation rooms and laundry rooms but excluding locker rooms and garages, is at least 20 degrees Celsius. O. Reg. 516/06, s. 4 (2).

    (3) Subsection (2) does not apply to a rental unit in which the tenant can regulate the temperature and a minimum temperature of 20 degrees Celsius can be maintained by the primary source of heat.

25. The Tenant said there is no heat source in her unit nor a thermostat. The Tenants said that when she notified the Landlord of the inadequate heat prior to September 1, she believed by placing her on notice, the Landlord ought to have rectified the issue once September 1 came and went. The Tenant said the Landlord told her to discuss the issue with the upstairs tenants which she did with no positive effect. The Tenant testified and provided evidence that she routinely communicated with the Landlord from August 2022 to the date she moved out in November 2022. The Tenant said until the date she moved out she continued to have inadequate heat in the rental unit.

26. The Tenant testified and provided temperature readings on several occasions with an average temperature around 18 degrees during the cold months. The Tenant also said that she attempted to use space heaters but was advised by her insurance provider that usage of such devices would void her insurance policy.

27. With respect to the space heaters, the Tenant said that when in use, she would blow fuses and the unit could not accommodate the space heater and making a cup of coffee at the same time. The Tenant also said that although she had a work-from-home arrangement with her employer, she had to leave to work from the employer's office due to the cold and lack of electrical capacity.

28. I am satisfied the Landlord breached their obligation to provide adequate heat for the cold period of the year. One should not have to rely on space heaters and risk insurance coverage nor have to leave their home to find warmth in which to work. Accordingly, the Tenant is entitled to a rent abatement as set out under the heading "Remedies Sought" below in this order.

    Remedies Sought

29. In the T2 application the Tenant seeks remedy by way of; rent abatement, moving and storage and out of pocket expenses. The Tenant's request for Board intervention with the lease agreement is moot as the Tenant vacated the rental unit.

Rent Abatement:

30. Abatement is a contractual remedy. It reflects the idea that a tenant is paying for a bundle of goods and services and if he or she is not receiving everything being paid for the rent should be abated proportional to the difference.
31. In this case, the Tenant seeks the total of one months rent in the amount of $1,695.00. The Tenant was unfamiliar with percentage calculation with respect to rent abatement and believed one month rent was a reasonable request. Based on my knowledge of previous like cases before the Board, I find an abatement at 30% of the total rent paid for September, October and November 2022 to be reasonable in this circumstance. I say this because the Tenant provided temperature readings where the unit was on average at 18 degrees. The Tenant had to resort to space heaters which compromised the electrical capacity within the unit and was in contravention of her insurance, frequently left to find heat and to work in an adequately heated environment. The calculation is as follows: ($1,695.00 x 30%=$580.50x3=$1525.50). An order will issue accordingly.

Out of Pocket Expenses:

32. Although the Tenant seeks out of pocket expenses on the T2 applications, no details were provided to explain what costs were actually incurred by the Tenant. The Landlord was not made aware of what the Tenant would be seeking. As such, no remedy will be awarded to the Tenant.

Moving and Storage Expenses:

33. The Tenant seeks the sum of $500.00 related to the costs she incurred to move into the rental unit.
34. At the hearing the Tenant said she believed the Landlord should be held responsible for the Tenant's cost to move into the rental unit. In order to be awarded remedy, a breach must have occurred and if the Tenant is successful in the claim, the remedy flows from the breach. In this case, there was no breach at the onset of the tenancy agreement and the as a result, the Landlord is not responsible for the costs incurred by the Tenant to move into the unit, no remedy shall flow to the Tenant for this portion of their application.
35. As the Tenant was successful with the application, the Landlord shall pay the Tenant the cost to file the application in the sum of $48.00.
36. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy terminated November 27, 2022.
2. The Landlord shall pay to the Tenant a rent abatement of $1,525.50.
3. The Landlord shall also pay to the Tenant $48.00 for the cost of filing the application.

4. The total amount the Landlord owes the Tenant is $1,573.50.
5. If the Landlord does not pay the Tenant the full amount owing by March 15, 2023, they will owe interest. This will be simple interest calculated from March 16, 2023 at 5.00% annually on the balance outstanding.
6. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

February 27, 2023
Date Issued

Dana Wren
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.