



Order under Subsection 30 Residential Tenancies Act, 2006

Citation: Gill v Percy Zaifman Holdings C/O Sterling Karamar, 2023 ONLTB 73717

Date: 2023-11-10

File Number: LTB-T-045139-22

In the matter of: 606, 5 Frontenac Street
London Ontario N5Z3Y2

Between: Gregory Gill Tenant

And

Percy Zaifman Holdings C/O Sterling Landlord
Karamar

Gregory Gill (the 'Tenant') applied for an order determining that Percy Zaifman Holdings C/O Sterling Karamar (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 July 12, 2023.

The Landlord's Legal Representative, L. Groshok and the Tenant attended the hearing.

M. McCarten and R. Sokalski testified on behalf of the Landlord.

Determinations:

1. As explained below, the Tenant proved on a balance of probabilities the some of the allegations contained in his application.
2. The Tenant moved into the rental unit on November 14, 2014. The Tenant lives in the unit by himself and the monthly rent at the time of the application was \$765.32. This application was filed on March 7, 2022.

3. The Tenant alleges that the Landlord failed to meet their maintenance obligations with respect to the following:

- Ventilation in the bathroom
- Black growth in the bathroom
- Loose retainers on bathroom mirror
- Insects through vent in bathroom
- Defect in bathroom ceiling
- Yellowish orange drips in bathroom

- Lifting caulking in shower
- Bathroom counter trim lifting
- Damaged bathtub stopper

4. With respect to all issues raised in the Tenant's application, the Tenant first notified the Landlord on March 17, 2021 by sending a letter. The Tenant did not send any follow up communication regarding these alleged ongoing issues.

Tenant's Evidence

Bathroom ventilation

5. The Tenant testified that he contacted the Landlord by way of letter dated March 17, 2021 regarding the ventilation issue in the bathroom. The letter states: "There is a vent in an upper corner of the bathtub wall intended to exhaust bathroom air to the outside which there is not connected any functioning system of mechanical ventilation".
6. In response to the letter, the Tenant testified that he received a phone call from the Landlord on March 24, 2021 and was advised that there was a system of natural ventilation in place. He testified that at that time, no one came to inspect the vent.
7. The Tenant testified that as a result of the ventilation issue, there is moisture build up causing mold, yellowish orange liquid drips down the walls and he can smell odors from other units such as feces, marijuana, and aftershave.
8. The Tenant testified that he lives on the top floor and can hear everything. He testified that he used to hear a spinning sound. He submitted a video into evidence taken November 30, 2022 where there is sound or spinning sound coming from the vent. He no longer hears it. He testified that he believed the spinning sound was the sound of the ventilation system working. He testified that he did not notify the Landlord about the change in the sounds he was hearing from the vent.

9. The Tenant testified that the bathroom has no windows, and he uses fans to circulate the air.

Black Growth in Bathroom

10. The Tenant testified that as a result of poor ventilation, there is black mold in the bathroom. The Tenant testified that he notified the Landlord by letter dated March 17, 2021. The letter states: "the bathroom ceiling and bathroom walls are covered with black mould"
11. The Tenant testified that the Landlord did not do anything regarding the mold and the mold is still present.
12. The Tenant testified that he hired a technician from T. Harris Environmental Management Inc. to preform an inspection regarding the mold. The Tenant submitted a report from the above noted company dated June 19, 2023 into evidence. The Tenant testified that this was a visual inspection only and no lab tests were preformed. The report states that there is approximately 60 square feet of sporadic mould spotting on the walls and the ceiling throughout the bathroom as well as on the ceramic tile walls surrounding the bathtub. Pictures of the findings were included with the report.
13. The Tenant testified that he attempted to get the health unit to inspect the bathroom, but they refused, and he was advised to clean the mould with soap and water.
14. The Tenant testified that he tried to clean the mold with soap and water, and it did not come off at all. He testified that he attempts to mitigate the growth of mold by reducing the length and temperature of his showers, places a window fan in the bedroom and leaves the bathroom door open during showers, and ventilates the bathroom as much as possible.

Bathroom Mirror Retainers

15. The Tenant testified that he notified the Landlord on March 17, 2021 by letter with respect to the retainers holding up the bathroom mirror. The retainers were loose, and the Tenant feared that the mirror would fall off of the wall. He testified that the Landlord did not fix the issue. He testified that he stuck paper between the gaps. He testified that the issue was fixed on July 10 2023.

Insects

16. The Tenant notified the Landlord on March 17, 2021, by letter that there were insects coming in from the vent in the bathroom. He testified that this happens in the warmer

months. He testified that 80-90% of the bugs were spiders, he has seen 2 large “stink” bugs and a moth. The Tenant submitted a picture of a spider crawling on what appears to be the shower wall.

Defect in ceiling

17. The Tenant notified the Landlord on March 2021, by letter that there was a circular area of the bathroom ceiling that is bulging downwards. The Tenant testified that nothing was done to fix this issue. The Tenant submitted a picture of the building ceiling into evidence.

Yellowish Liquid

18. The Tenant notified the Landlord on March 17, 2021 that there were yellow orange drips on the bathroom door frame and ceiling. The Tenant believes that this is due to nicotine. The Tenant submitted several pictures of the yellowish drip marks into evidence.

Caulking- shower

19. The Tenant notified the Landlord on March 17, 2021 that the caulking in the shower was lifting. The Tenant submitted a picture of the shower caulking into evidence.

Bathroom Counter Trim

20. The Tenant notified the Landlord on March 17, 2021 that the bathroom vanity counter trim was lifting away from the side of the counter. The Tenant submitted a picture of the lifting trim into evidence. The Tenant testified that this was fixed on July 10, 2023.

Damaged Bathroom Stopper

21. The Tenant notified the Landlord on March 17, 2021 that the bathroom stopper was ripped off the chain. The Tenant testified that this was addressed on July 10, 2023.
22. The Tenant testified that after the initial letter to the Landlord on March 17, 2021, he did not send any additional requests in writing regarding the issues contained in the original letter.

Landlord’s evidence

23. M. McCarten testified on behalf of the Landlord, He is a property manager with the Landlord and deals with maintenance issues in the complex. He testified that ownership of the building changed in June 2021 and a letter was sent to all Tenants informing them of this.
24. Mr. McCarten testified that he was not aware of the maintenance issues contained in the Tenant’s letter of March 17, 2021 until he received a list of outstanding maintenance issues

on July 7, 2023. He testified that he served notice of entry and attended the unit on July 10, 2023 to address the issues.

25. Mr. McCarten testified that he attended the unit on July 10, 2023. Pictures of the condition of the bathroom were taken on this day and submitted as evidence. The pictures show what appears to be mold or mildew on areas of the walls and ceiling, yellow drip marks on the walls, and pictures of the bathtub, mirror and sink area.
26. Mr. McCarten testified that he cut a piece of what he referred to as mildew off of the wall and it was not penetrating through the exterior paint or the drywall underneath the paint. He testified that generally when that happens, the mold, or mildew is a result of poor housekeeping.
27. Mr. McCarten testified that while he was in the unit, he did not observe any pests in the bathroom.
28. Mr. McCarten testified that he and the person who attended the unit with him that day cleaned the bathroom door and replaced the screw for the mirror. He testified that a new chain was ordered for the bathroom stopper and should be in soon, but that the missing chain did not affect the use of the stopper. He testified that he was in and out of the unit getting supplies did not recall everything that was done that day.
29. Mr. Ron Sokalski testified on behalf of the Landlord. He testified that he helps out with maintenance request in the complex. He testified that he was unaware of any issues in the Tenant's unit until he attended with the property manager on July 10, 2023. Previous to the attendance on July 10, 2023, he testified that he was in the Tenant's unit to replace a smoke detector in April 2022 and the Tenant did not make him aware of any other issues.
30. Mr. Sokalski testified that the mold or mildew that was on the bathroom door came off very easily. He testified that the mold or mildew on the wall did not come off as easily. He testified that he cut out a little piece of the paint where the mold/mildew appeared on the wall and that it did not penetrate the paint or the underlying wall. He testified that he took a video of this and it was submitted into evidence. The video shows a little piece of the paint with mildew being cut with an exacto knife and lifted off of the wall. There is no spot on the back of the piece or on the wall where the piece was cut from.
31. Mr. Sokalski testified that the mold or mildew issue was a surface issue. He testified that it can be removed with over-the-counter products.

32. Mr. Sokalski testified that the ventilation system in the complex is original. He testified that it is in working order and they perform regular maintenance on it. He testified that it is not a motorized system, it is a wind turbine, meaning that it continuously draws. He testified that the roof turbine is always spinning slightly, and it would spin faster in the wind. He testified that he has not received any other complaints regarding issues with ventilation in other units. He testified that there are no City work orders and that the venting systems comply with all requirements.
33. Mr. Sokalski testified that he replaced the clips that hold the mirror. He took videos of his work and they were submitted as evidence. One video was before anything was replaced and shows one mirror clip slightly loose. The other video shows all clips tightened.
34. Mr. Sokalski testified that while he was in the unit he did not observe any insects in the bathroom or notice any smells.
35. In relation to the ceiling in the bathroom, Mr. Sokalski testified that there was a bulge and it needs to be repaired. He testified that it looked like an older patch of paint that had blistered.

Analysis

36. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, the Court of Appeal held that the LTB should take a contextual approach and consider the entirety of the factual situation in determining whether there was a breach of the landlord's maintenance obligations, including whether the landlord responded to the maintenance issue reasonably in the circumstances. The court rejected the submission that a landlord is automatically in breach of its maintenance obligation as soon as an interruption in service occurs.
37. Based on the evidence before me, I find on a balance of probabilities that the Landlord failed to meet their maintenance obligations with respect to the bathroom stopper chain, the mirror clips, the damage on the bathroom ceiling, the caulking in the shower and the bathroom counter trim.
38. It is clear that the Tenant notified the Landlord in March 2021 of these issues. It is evident through both parties' evidence and testimony that these issues remained until July 10, 2023. The issue with the bathroom ceiling was not fixed as of the date of the hearing. Remedies for the issues listed above will be discussed below.
39. As for the remaining issues in the application, I do not find that the Landlord is in breach of their maintenance obligations.
40. Based on the testimony of the Landlord's witness, there is nothing wrong with the ventilation system. Although the Tenant submitted that the ventilation system is not in

accordance with City by-laws, He failed to submit anything to support that or dispute the Landlord's assertion that the system is in good working order. There are no city orders in relation to the ventilation system and the Landlord maintains that the system is original to the building and is not subject to the city by-law in that it is "grandfathered in". The onus is on the Tenant to prove the allegations in his application and on this point, he has failed to do so. This portion of the Tenant's application is dismissed.

41. With respect to the mold or mildew, it appears from the evidence of the Landlord, specifically, the video evidence where a piece of the mold or mildew affected area was cut away from the wall, this is a surface issues, more likely than not related to housekeeping issues. Although the Tenant submitted a report from a mold company, the company did not remove any samples to preform tests affected areas. No one from the company was at the hearing to provide any clarity or to explain the findings in the report. This portion of the Tenant's application is dismissed.
42. With respect to the Tenants allegation regarding insects, I do not find that there was sufficient evidence lead to establish an ongoing or substantial issue with insects in the bathroom. The Tenant testified to a handful of occasions within the last 2 years that he saw an insect in the bathroom. He notified the Landlord in his letter dated March 17, 2021, but did not mention this issue again. If this was an issue of more than just the occasion insect, it would be reasonable to expect the Tenant to notify the Landlord on more than just one occasion. This portion of the Tenant's application is dismissed.
43. With respect to the yellow drip marks, the Tenant failed to establish that this was a result of a breach of maintenance obligations on behalf of the Landlord. The Landlord's witness testified that he wiped it off the wall and it came off easily. It is more reasonable that this is a result of a housekeeping issue and not a maintenance issue. This portion of the Tenant's application is dismissed.

Remedies

9. The Tenant requested an abatement of rent. I find that the Tenant is entitled to an abatement of rent, however, the issues that the Tenant was successful on are mostly minor issues and did not have a major impact on the Tenant. I find that the Tenant is entitled to an abatement of 2% of his rent from April 2021 until July 2023, when most of the issues were fixed, with the exception of the bulge in the bathroom ceiling. The Tenant is therefore entitled to \$428.76, this represents \$15.88 x 27 months.

10. The Landlord will be ordered to fix the bathroom ceiling within 30 days of the date of the order.

It is ordered that:

1. The Landlord shall pay the Tenant is \$428.76.
2. The Landlord shall also pay the Tenant \$53.00 for the cost of filing this application.
3. The total amount owing to the Tenant is 481.76.
5. The Landlord shall pay the Tenant the full amount owing by December 31, 2023.
6. If the Landlord does not pay the Tenant the full amount owing by December 31, 2023, the Landlord will owe interest. This will be simple interest calculated from January 1, 2024 at 7.00% annually on the balance outstanding.
8. If the Landlord does not pay the Tenant the full amount owing by December 31, 2023, the Tenant may recover this amount by deducting the amount from the rent owing for the month of January 2024.
9. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.
10. The Landlord shall repair the bulge in the bathroom ceiling on or before January 30, 2024.

December 15, 2023

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Emily Robb

Member, Landlord and Tenant Board

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