



Order under Section 30 and 31 Residential Tenancies Act, 2006

Citation: Gauthier v Cote, 2022 ONLTB 11979

Date: 2022-12-01

File Number: LTB-T-029149-22

In the matter of: B, 110 BANNERMAN AVE
TIMMINS ON P4N2Y4

Between: Diane Gauthier Tenant

And

Michel Cote Landlord

Diane Gauthier (the 'Tenant') applied for an order determining that Michel Cote (the 'Landlord') or the Landlord's superintendent or the Landlord's agent:

- 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.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.

This application was heard by videoconference on November 10, 2022.

Only the Tenant attended the hearing.

As of 9:15 a.m., 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 Tenants' evidence.

Determinations:

1. At the outset of the hearing, the Board confirmed the address of the Landlord was correct. The Board also confirmed that the notice of hearing was mailed to the Landlord and that the notice had not been returned to the Board.
2. At the outset of the hearing, the Tenant requested that the Board consider the amended application. The Board granted this request.
3. As explained below, the Tenant has proven on a balance of probabilities the allegations contained in the amended application. Therefore, the Landlord must pay a rent abatement to the Tenant, and ensure proper snow clearance is performed and adequately address the Tenant's complaints in a timely manner.
4. It was uncontested that the Landlord stopped performing snow clearance at the residential complex after amending the terms of the rental agreement.

5. It was also uncontested that the Landlord had unilaterally changed the assigned parking of the Tenant to a location further away from the entrance and closer to the public sidewalk.
6. It was also uncontested that another Tenant had deliberately made efforts to block the Tenants parking and reasonable access to the parking spot by placing cinder blocks on the parking lines around the Tenants assigned parking spot. This lasted several months before the other Tenant removed them.
7. Finally, it was also uncontested that an unknown woman has been pounding on the Tenant's door and shouting profanities at the Tenant and suggesting the Tenant should move out.
8. It was uncontested that the Tenant had regularly complained to the Landlord about these issues and that the Landlord refused to take any action.
9. Therefore, I find that the Landlord has substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant.
10. The Landlord cannot contract out of their statutory obligation found at section 20(1) of the Act to perform maintenance in a residential complex. Although this would be a maintenance application, I was satisfied that had the Landlord attended there was sufficient detail for the Landlord to know the case he had to respond to. The Landlord has amended the rental agreement to place this burden on the Tenants. Problems arose when the other Tenants decided to deliberately move the snow onto the Tenant parking spot and the Landlord failed to take any action to address this. As a result, I find that the Landlord failed to meet the Landlord's obligations under subsection 209(1) of the Act to maintain the residential complex by failing to undertake snow clearance.
11. The Tenant submitted that the behavior of the Landlord towards the Tenant changed in the summer 2018 when the Tenant rebuffed the romantic overtures of the Landlord. At that point the Landlord compelled the Tenant to sign a new lease agreement and to back date it to January 3, 2018. In that agreement, the Landlord at paragraph 9 placed the onus on the Tenant to perform their own snow removal.
12. The Tenant testified that the Tenant had been a long-term Tenant of this Landlord having lived in different rental units owned by the Landlord.
13. It was uncontested that the Landlord does not appear to have take any action to address the Tenant concerns when they are raised.
14. It was uncontested that the Landlord is aware that the tenant has a disability and that the Tenant uses a walker inside the rental unit. At one point the Landlord had even purchased a wheelchair for the Tenant to use, when they were together at restaurants.
15. I was satisfied that the Landlord is aware of his obligations under the Ontario Human Rights Code to accommodate the Tenants disability. In this instance it would require assigning the Tenant a parking spot closest to the principle entranceway used by the Tenant; as well as ensuring snow clearance is completed in a timely and effective manner so as to not cause a risk of a slip and fall of the Tenant(s), occupants and visitors.

16. I was satisfied that the Landlord substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant. The Landlord deliberately reassigned parking for a Tenant with a mobility disability, failed to address issues raised by the Tenant surrounding the actions of the other tenant to obstruct, coerce or threaten the Tenant, particularly when that Tenant obstructed the Tenants assigned parking.
17. The Tenant testified that the impact to her has been significant and dramatic. The Tenant has been attempting to find a new rental unit, albeit without success. The Tenant testified that at times she is afraid in her own home because of the unknown woman that has on more than one occasion pounded on her door. She indicated that the Landlord has become increasingly angry at her, often hanging up the phone when she calls to report issues; or suggesting the Tenant just ignore what is happening.

Remedies

18. The Tenant has a disability that limits her mobility is a significant issue in deciding on a remedy. The Landlord is aware of this disability and has attempted to compel the Tenant to conduct her own snow clearance; something the Tenant is unable to do given the disability. The Landlord has taken steps to harass the Tenant by changing her parking spot further away from her main entranceway and failing to address the conduct of other Tenants towards this Tenant. Therefore, I find that the Tenant is entitled to a rent abatement.
19. The Tenant submitted that because of her disability and the conduct of the Landlord, including his failure to address ongoing issues that a substantial abatement in the amount of 60% would be appropriate.
20. 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.
21. Although this contextual approach is applied to a Landlord's maintenance obligations, I would also take a contextual approach, considering all of the circumstances to determine a quantum rent abatement.
22. I am also guided by the Board's Interpretation Guideline 5 respecting how to determine a rent abatement. Parking and reasonable access to parking for a disabled person with mobility issues is an important concern. The Landlord has taken deliberate actions to make this more difficult than it should be on the Tenant; and combined with the Landlord's failure to take action to address harassment of the other Tenants shows a blatant disregard for this Tenant.
23. I would also import a negative view of the Landlord for his failure to appear at this hearing.

24. Having reviewed other Board decisions where rent abatements have been awarded, I am satisfied that in this case where there is substantial disruption to the Tenant's reasonable enjoyment of the rental unit that this warrants an abatement of 50%. Turning to the question of the time-frame for the abatement, I have considered that the typical snow clearance season would run from December to April on average, and that the ongoing harassment the Tenant faces that the abatement should be from December 2021 until November 2022, the date of the hearing. $50\% \times 12 \text{ months} \times \$740.00 / 2 = \$4,440.00$.
25. In consideration of the Tenant's disability and the Landlord's obligation under the Human Rights Code to accommodate the Tenant, the following additional remedies shall also be ordered:
- a. The Landlord shall restore the Tenant's parking space so that the Tenant can park closest to the main entrance she uses.
 - b. The Landlord shall retain a visitor parking space at the residential complex. This is to ensure that a space is available so that the PSW that assists the Tenant will have onsite parking when at the residential complex.
 - c. The Landlord shall ensure that the visitor and this Tenant's parking and walkways are cleared of snow and ice in a timely fashion. Failing which the Tenant may pay for these services and deduct the full cost from the monthly rent.
 - d. The Landlord shall address the ongoing harassment caused by the other Tenant, occupants and visitors to the residential complex to ensure it stops.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant as a rent abatement is $\$4,440.00 + \48.00 application fee = $\$4,488.00$
2. The Landlord shall pay the full amount owing by December 12, 2022.
3. If the Landlord does not pay the Tenant the full amount owing by December 12, 2022, the Landlord will owe interest. This will be simple interest calculated from December 13, 2022, at 4% annually on the balance outstanding.
4. If the Landlord does not pay the Tenant the full amount owing by December 12, 2022, the Tenant may recover this amount by deducting up to 50% of the monthly rent from the rent each month until the full amount has been recovered, including interest.
5. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.
6. The Landlord must restore the Tenants parking spot or assign a parking space nearest the usual entrance used by the Tenant.

7. The Landlord shall ensure that a Visitor parking spot is retained and is responsible for maintaining it at the residential complex.
8. The Landlord shall ensure that snow and ice clearance for the Tenant's parking and the visitor parking along with the walkway is undertaken in a timely manner.
9. If the Landlord fails to maintain the parking and walkway, the Tenant may pay for these services and deduct the full amount from the monthly rent.
10. The Landlord must refrain from any intimidating or harassing conduct against this Tenant, and including ensuring no other Tenant, occupant or visitor to the residential complex engages in such conduct.
11. If the unwelcome conduct is not stopped, and if in the six months from the date of this order, the Tenant decides to relocate to a new residence, the Landlord shall pay the Tenants moving expenses in full, within 30 days. The provisions of paragraphs 3 and 5 shall also apply to this provision.

December 1, 2022
Date Issued

Robert Patchett
Vice Chair, Landlord and Tenant Board

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