



**Order under Section 30 and 31
Residential Tenancies Act, 2006**

Citation: Labelle v Talbot, 2022 ONLTB 9478

Date: 2022-10-19

File Number: LTB-T-028995-22

In the matter of: Basement Unit, 42 COMMERCIAL AVE
TIMMINS ON P4N2W7

Between: Dominic Talbot Landlord

And

Angel Labelle Tenant

2022 ONLTB 9478 (CanLII)

Angel Labelle (the 'Tenant') applied for an order determining that Dominic Talbot:

- entered the rental unit illegally.
- altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys.
- 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.
- withheld or interfered with the Tenant's vital services or care services and meals in the care home.

The Tenant also applied for an order determining that 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 October 4, 2022. The Tenant, the Tenant's legal representative, P. Raymond, and the Landlord attended the hearing.

Preliminary Issues:

Withdrawal of Issues in T2 Application

1. The Tenant made a request to withdraw the allegations that the Landlord entered her unit illegally and harassed, obstructed, coerced, threatened or interfered with her. The Landlord consented to the withdrawal.
2. The Tenant's request was granted. Rule 15.4 of the Board's Rules of Procedure states that the Board may exercise its discretion to grant a request to amend an application made at the hearing if satisfied that the amendment is appropriate and would not prejudice any party

and is consistent with a fair and expeditious proceeding. I find no prejudice to the Landlord in this amendment.

Exclusion of Evidence

3. The Tenant requested that I do not consider the Landlord's evidence because it was served and filed the morning of the hearing. The Tenant submitted that she would be prejudiced by accepting the evidence, as there was not enough time to go through it and clarify the accuracy of the evidence, such as the text messages.
4. The Landlord stated that he sent and filed the evidence late because he had been ill for a week and was required to isolate. He was unable to get access to his documents while he was isolating.
5. The Tenant's request to exclude the Landlord's evidence was denied. The evidence was pertaining to information about termination of the tenancy which is relevant to the issue of the Landlord alleging to have illegally locked the Tenant out. As such, I found that the prejudice to the Landlord in refusing to accept this evidence outweighs the prejudice to the Tenant in accepting it. The Tenant was asked if time was required to review the evidence sent by the Landlord. The Tenant confirmed she was ready to proceed.

Determinations:

6. As explained below, the Tenant has proven on a balance of probabilities the following allegations contained in the application:
 - The Landlord was in breach of his maintenance obligations.
 - The Landlord substantially interfered with her reasonable enjoyment.
7. Therefore, the Tenant is entitled to remedies, which are set out in the order below.
8. The tenancy began on October 1, 2021. The Tenant occupies a two-bedroom unit with her children. The lawful monthly rent was \$950.00. The Tenant was no longer in possession of the unit after June 30, 2022.

Maintenance

9. I find that the Landlord failed to meet his obligations under subsection 20(1) of the *Residential Tenancies Act, 2006* (the 'Act') to repair the rental unit. The Landlord has not completed repairs to the windows, bedroom, or bathroom in a timely manner.
10. 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.

Window Screens

11. There was no dispute that the Tenant did not have screens on her windows. The Tenant testified that she informed the Landlord in November 2021 and he stated that he was going to have someone to check it out. She stated that as a result of the missing screens, her unit was broken into several times. The Landlord stated that he was aware her windows lacked screens. He did not have an explanation as to why he did not repair the windows. However, he was not responsible for the break-ins because the presence of a screen should not prevent burglars from accessing her unit.
12. I find that the Landlord failed to meet his maintenance obligations by not replacing the Tenant's screens in her windows. It was undisputed that the windows lacked screens, the Landlord was aware of this issue, and he did not take steps to address it.

Water Damage from Leak

13. There is no dispute that there was a leak from the upstairs unit which caused damage to the Tenant's bedroom in January 2022. There was also no dispute that the issue was not adequately remedied until after the Tenant vacated June 30, 2022.
14. The Landlord states that after the flood occurred in or about the first week of January 2022, he rented a dehumidifier to address the moisture and installed new flooring from January 5 to 9, 2022. After that, on or about January 10 – 12, he checked for mould and only observed water damage from the wall to the ceiling. After this point, he tried to hire contractors to do the repairs. However, due to the unavailability of contractors in Timmins, he could not get someone to examine the issue until February 2022, and in March 2022, a contractor attended the upstairs unit to undertake repairs from the flood there.
15. I find that the Landlord did not complete the repairs in relation to the leak within a reasonable amount of time. The flood took place in January 2022 and the repairs were still not completed by June 2022, over six months later. I accept that part of the delay was caused by circumstances beyond the Landlord's control such as the availability of his selected contractor. However, the Landlord did not provide sufficient evidence, such as information as to what other contractors were contacted and when, to persuade me that he could not have hired someone else within a reasonable amount of time.

Mould in Bathroom

16. The Tenant testified that there was black mould in her bathroom. She first noticed it approximately a week after the leak in January 2022. She stated that she could smell it because she's allergic to mould. On January 24, 2022 a by-law officer attended her unit and confirmed that it was mould. The Tenant stated that the issue persisted until she vacated the unit. Submitted into evidence were photographs of the mould in the bathroom.
17. The Landlord agreed the Tenant contacted him about mould. He testified that a by-law officer did not contact him about mould and from his experience as a landlord, he would have received a call. When his contractor attended the unit to undertake the repairs after the Tenant left, the contractor did not report any mould issues.

18. I find that the Landlord failed to meet his maintenance obligations by not addressing the mould issue. The pictures persuade me that this substance was mould. It was undisputed that the Landlord was aware of this issue, and he did not take steps to address it.

Substantial Interference

19. The Tenant testified that her reasonable enjoyment of the rental unit was substantially interfered with because of the delay in the Landlord's repair of the bedroom. I find that the repair work in the rental unit substantially interfered with the Tenant's reasonable enjoyment of the rental unit.
20. Section 8 of O.Reg. 516/06 under the Act contains rules that I must apply when a tenant is alleging that maintenance or repairs substantially interfere with the reasonable enjoyment of the unit or complex for all usual purposes by a tenant. In this case, the Tenant was significantly inconvenienced by the repairs because she lost use of the bedroom for over six months and the interference was unreasonable in the circumstances because the work was not completed in a timely manner. Therefore, in accordance with subsection 8(3) of O.Reg. 516/06, the interference caused by the work was substantial. As the Landlord did not provide the Tenant with an accurate and comprehensive notice concerning the work to be carried out, the Tenant is entitled to remedy pursuant to subsection 8(4) of O.Reg. 516/06.
21. Regarding the windows, I do not find that the Landlord's failure to repair the screens constitutes a substantial interference with reasonable enjoyment within the meaning of Section 8 of O.Reg. 516/06.

Illegal Lockout

22. The Tenant testified that on June 22, 2022, she was locked out of her unit. She tried to use her key to enter the unit and it did not work. The Landlord did not provide her a replacement key. She was rendered homeless, and she was required to stay with a friend.
23. The Landlord testified that he did not change the locks to the Tenant's unit. The Landlord stated that the lock remained the same since October 2021. The Tenant was asked what happened on June 22, 2022 in reply, and she stated that she could not access her unit because she could not find her keys.
24. Section 24 of the Act states that a landlord shall not alter the locking system on a door giving entry to a rental unit or residential complex or cause the locking system to be altered during the tenant's occupancy of the rental unit without giving the tenant replacement keys.
25. On a balance of probabilities, I find that the Landlord did not change the locks to the rental unit. I prefer the Landlord's evidence that he did not alter the locking system. His evidence was supported by the Tenant's reply evidence, which was that she only could not access her unit because she could not locate her keys. The Tenant's claim is therefore dismissed.

Vital services

26. The Tenant testified that the Landlord withheld or interfered with her vital services. It was undisputed that the heater stopped working in November 2021. The Landlord provided her with space heaters, but it was insufficient to heat her home. She was without heat for 5-6 months. She stated she got sick, and Child and Family Services (CFS) did not allow her children to reside in the unit because there was insufficient heat.
27. The Landlord testified that because of the lockdowns during COVID, he could not get the actual heating unit that he needed to install. It was installed on January 21, 2022 by J Tech plumbing and heating. He stated that while the heater was broken, he provided the Tenant with four space heaters for each room. He stated he often followed up with the Tenant to check if the heat was sufficient, to which she replied that everything was fine.
28. On a balance of probabilities, I do not find that the Landlord withheld or interfered with vital services. I do not find that the Tenant was without adequate heat for 5-6 months as the believable and credible testimony of the Landlord was that it was repaired on January 21, 2022. I also do not find that CFS barred the Tenant's children from residing in the unit due to the heating issue, as there was insufficient evidence to support this claim, such as a letter or report from CFS. Furthermore, I also find that the Landlord provided her with space heaters and was advised by the Tenant that they were working sufficiently. As such, I do not find that the Landlord withheld or interfered with the Tenant's vital services. The Tenant's claim is dismissed.

Remedies

Rent Abatement

29. Abatement of the rent is the usual remedy granted in landlord and tenant matters. It reflects the idea that if a tenant is paying for a bundle of goods and services and not receiving everything being paid for the tenant is entitled to abatement proportional to the difference in value of what is being paid for and what is being received.
30. Regarding the window screens, I find that the Tenant is entitled to 5% rent abatement from November 1, 2021, when the Landlord was aware of the issue, to the date she vacated on June 30, 2022. I fix this amount at 5% because the issue was largely cosmetic in nature. The Tenant could not persuade me that the lack of screens resulted in an increased number of burglaries. This amount is \$380.00.
31. Regarding the water damage from the leak, I find that the Tenant is entitled to 20% rent abatement from January 10, 2022, when the Landlord was aware of the issue, to the date she vacated on June 30, 2022. I fix this amount at 20% because of the impact on the Tenant. The Tenant stated that many of her items became wet, including her dresser, clothes and mattress. She also could not use of her bedroom, so she slept in the spare bedroom on the floor. This amount is \$5,340.33. This rent abatement is for both the Landlord's breach of subsection 20(1) of the Act and the substantial interference caused by the repairs.
32. Regarding the mould in the bathroom, I find that the Tenant is entitled to 5% rent abatement from January 10, 2022, when the Landlord was aware of the issue, to the date she vacated on June 30, 2022. I fix this amount at 5% because the issue was largely cosmetic in nature.

The Tenant did not lead sufficient evidence, such as a mould report or by-law investigation report, to persuade me that the mould was toxic black mould. This amount is \$267.02.

33. The Tenant made a request that all monies be made payable to the Public Guardian and Trustee (PGT). However, as they are not a named party to this application, this request is denied. The parties and the PGT may make arrangements regarding the payment of funds.

Administrative Fine

34. The Tenant is requesting that the Landlord be ordered to pay an administrative fine. Pursuant to the Board's Interpretation Guideline 16, an administrative fine is a remedy to be used by the Board to encourage compliance with the Act, and to deter landlords from engaging in similar activity in the future. This remedy is not normally imposed unless a landlord has shown a blatant disregard for the Act and other remedies will not provide adequate deterrence and compliance. I do not find that this is an appropriate case for an administrative fine as I do not find that the Landlord's conduct shows a blatant disregard for the Act. In the alternative, I find that the rent abatement above provides adequate deterrence.

35. This order contains all of the reasons within it. No further reasons shall be issued.

It is ordered that:

1. The Landlord shall pay to the tenant \$5,987.35, representing an abatement of rent.
2. The Landlord shall also pay to the Tenant \$48.00 for the cost of filing the application.
3. The total amount the Landlord owes the Tenant is \$6,035.35.
4. If the Landlord does not pay the Tenant the full amount owing on or before November 6, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 7, 2022 at 2.00% annually on the balance outstanding.

October 19, 2022

Date Issued

Camille Tancioco

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.