AMENDED
Order under Subsection 30
Residential Tenancies Act, 2006
And section 21.1 of the Statutory Powers Procedures Act

Citation: Babatunde v Chao, 2024 ONLTB 54183
Date: 2024-08-02
File Number: LTB-T-084720-23-AM

In the matter of: Basement #2, 12 Beattie Avenue
Etobicoke Ontario M9W 2M3

Between: Solomon Babatunde — Tenant

and

Michael Chao — Landlord

I hereby certify this is a true copy of an Order dated
Nov 22, 2024
Landlord and Tenant Board

The order contained a clerical error. This amended order was issued to correct the order dated November 8, 2024. The amendments are underlined for ease of reference.

Solomon Babatunde (the 'Tenant') applied for an order determining that Michael Chao (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 (the “T6 Application”)

The Tenant also applied for a reduction of the rent charged for the rental unit due to a reduction or discontinuance in services or facilities provided in respect of the rental unit or the residential complex (the “T3 Application”).

This application was heard in videoconference room 127 on July 15, 2024.

The Landlord and the Tenant attended the hearing.

Determinations:

Preliminary Issues

1. At the outset of the hearing, the Landlord requested that the application be dismissed because the address of the rental unit should not contain the designation “West” in the name of the street. He submitted that he was not comfortable proceeding on this basis because he cannot be sure if there isn’t a Beattie Avenue West some place else. If there is, he submitted, he would not be able to speak intelligently about this hypothetical address. On hearing the submission and evidence of the parties, I rejected the Landlord’s request because he confirmed that he had not been confused or otherwise prejudiced by

the inadvertent inclusion of the designation “West” in the street address. The application and the style of cause are amended to correct the address of the rental unit.

2. The Landlord also requested that the application be dismissed because he had not received the Tenant’s disclosure in a timely manner. He indicated that he had not signed the “Consent to Disclosure through Tribunals Ontario Portal” form because he was not obliged to. He confirmed he had received it but chose not to sign it because it would have been contrary to his interests to do the Tenant any favours. He further submitted that he had been unable to log on to the LTB portal because his internet has been unstable. He only reviewed the disclosure a few days ago and felt unprepared to proceed. After hearing the submissions and the evidence of the parties, I accepted the Tenant’s evidence that he had sent the disclosure to the Landlord by email on June 17, 2024 because the Landlord confirmed it. That is well within the deadlines stipulated in Rule 19 of the *Rules of Procedure.* I denied the Landlord’s request to dismiss the application. He did not request an adjournment and the hearing proceeded.

The T6 Application

3. The Tenant applies under section 30 of the *Residential Tenancies Act, 2006* (the “Act”) for a finding that a Landlord has breached the Landlord’s maintenance obligations. Apart from some lightbulbs in the kitchen which may need replacing, the essence of the Tenant’s complaint is that flooding which began around May 2023 damaged his MacBook laptop. The Tenant says the technicians at the Apple Store assessed his laptop and determined it had been damaged by water. They advised it would be more costly to repair than replace. He would like $1,467.67 to buy a new one.

4. The application also seeks an order requiring the Landlord to fix the leaking roof which is now moot because the parties confirmed it has been fixed.

5. The Tenant has submitted videos of the leaking roof. The Landlord does not dispute that the roof leaked for a while. He said he made best efforts to fix it including having 10 different contractors visit to investigate the cause. They eventually cut the ceiling but still couldn’t find the cause. It was especially difficult to investigate the source of the leak because it was intermittent. The Landlord speculates that it may have been caused by accidental water spillage from the residential unit above. He spoke to those occupants and the leaking stopped. The Tenant agrees the leaking did not occur after November 17, 2023 but not before his laptop computer had been damaged.

6. I find that the Tenant has proven on a balance of probabilities that the Landlord failed to meet the Landlord's obligations under subsection 20(1) of the Act to repair or maintain the unit for the following reasons.

7. In *Onyskiw v. CJM Property Management Ltd*.[1], the Court of Appeal for Ontario held that the Board 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

[1] 2016 ONCA 477.

in the circumstances. The court rejected the submission that a landlord is automatically in breach of its maintenance obligation as soon a fault occurs.

8. In this case, I cannot accept the Landlord's explanation that he did his "best". He offered no corroborating proof of the 10 contractors that the says he enlisted to fix the problem or of any other attempts to fix the problem. No bills, invoices, estimates, notices of entry or other communication was presented to substantiate these visits. On the contrary, the Tenant tendered text messages which show the Landlord was dismissive of his complaints about the leaking roof. Acknowledging that a breach of section 20 of the Act does not automatically occur the instant a maintenance problem occurs, I cannot accept that the delay between May and November 2023 was reasonable in the circumstances. Even if the Landlord is right in saying that the leak occurred as a result of the accidental spillage in the upstairs unit and not because of any fault in the physical plant of the residential complex, he still had the obligation to correct the problem which he did not discharge in a timely manner.

Damaged Property

9. The Landlord denied that the Tenant's laptop was damaged by the leak in the roof. He gave me no evidentiary basis for this supposition. The Tenant has shown me a video indicating that his laptop computer does not power up. He testified the Apple technicians confirmed it was damaged by water. The Landlord was not able to point to anything that would give me any doubt about the Tenant's credibility or the reasonableness of his claim. In the absence of any evidence to the contrary, I accept the Tenant's testimony that the cost to replace the laptop will be lower than the cost to repair it based on the advice he's received from the Apple technicians. I also accept his uncontested evidence that the cost to replace his computer is $1,299.00 plus HST. The Tenant has proven his damages on a balance of probabilities and the Landlord will be ordered to pay the cost of replacing the Tenant's laptop computer.

The T3 Application

10. The Tenant applies under section 130 for a reduction in rent because of the discontinuance in services or facilities that he is entitled to under the tenancy agreement. He testified that when he moved in on October 1, 2022, he had access to internet, laundry and parking which were improperly withdrawn. He relies on an unsigned version of the tenancy agreement that specifically includes internet but does not mention laundry or parking. The Landlord submitted that an unsigned lease is "invalid" and therefore cannot form the basis of the relationship between the parties.

11. The Landlord says he has no obligation to provide internet, laundry or parking under the tenancy agreement. He also produced an unsigned "updated lease agreement". It is identical to the Tenant's version of the lease except that the word "internet" is missing from section 2 which in the Tenant's version says "Electricity, water, hearing and internet are included." The Landlord submitted it is this version which accurately reflects the intention of the parties when they entered into the tenancy agreement. The Landlord sent his "updated" version to the Tenant in September 2023.

12. I cannot find on a balance of probabilities that laundry and parking were included in the tenancy agreement as the Tenant alleges. The version of the lease he relies on does not include it. The fact that he used the laundry and parking for two months before the Landlord objected is not sufficient for me to find that these were included as implied terms of the tenancy agreement when they were specifically left out of both versions of the lease.

13. About the internet, the parties agree that on moving in the Tenant had access to the WiFi until November 1, 2022. The Landlord admits that on November 1, 2022 he changed the password and took the position that the Tenant has no right to use the internet. Yet when the Landlord sent a handwritten note of November 25, 2022 to the protest about the Tenant's use of the laundry and parking he made no mention of internet:

> Please do not use my laundry, I am not obliged to provide you free laundry service.
>
> Please do not park your vehicle on my driveway or any part of my property, I am not obliged to provide you free parking.

14. I prefer the Tenant's appreciation of the agreement which is borne out by the version of that lease that he was given when he entered into the tenancy agreement. The Landlord says he never signed that version because it was only a working draft. Yet the version he has placed in evidence is also unsigned. He produced no communication to indicate that the "draft" version was only a working copy subject to revision. It was prepared by him as was the "updated" version. Guided by section 202 of the Act that requires me to ascertain the real substance of all transactions and activities relating to the tenancy, I find it more probable that the Tenant's version that explicitly includes internet is the true reflection of the parties' agreement.

15. I am satisfied that internet is a service or facility under the Act. The definition of "services and facilities" in subsection 2(1) of the Act is non-exhaustive and includes a several examples of services commonly found in most homes including electronic communications and media. This is consistent with previous findings of the Board that have found internet connectivity to be a service for the purposes of the Act.[2]

16. I find the discontinuance of internet service was not reasonable in the circumstances because it was in breach of the Landlord's obligations under the tenancy agreement. The discontinuance had a negative impact on the Tenant who had relied on the internet for his online courses. He was forced to travel to campus in order to use the internet.

17. In accordance with section 39(3) of the O. Reg. 516/06, the Landlord will be ordered to reduce the rent by $55.00 a month which is the Tenant's estimated cost of replacing his internet services. Without any evidence to the contrary, I find that $55.00 a month is a fair and reasonable cost for internet services.

18. The monthly rent was $700.00. The rent is reduced to $645.00 a month starting on November 1, 2022, the day that the discontinuance or reduction first occurred. The

[2] See for example *EAL-70820-18 (Re)*, 2018 CanLII 88584 (Ont. LTB); *TET-15961-21 (Re)*, 2021 CanLII 147673 (Ont. LTB).

Landlord will be ordered to refund the Tenant $55.00 a month starting November 1, 2022 until November 30, 2024 which is the end of the current rental period.

19. The Tenant incurred costs of $53.00 for filing this application and is entitled to reimbursement of those costs.

20. This order contains all my reasons for decision. I will not issue further reasons.

It is ordered that:

1. The lawful monthly rent is reduced to $645.00, effective retroactively to November 1, 2022 being the date the internet service was discontinued.

2. The total amount the Landlord shall pay the Tenant is $2,895.87. This amount represents:

   - $1,375.00 for a rent rebate for the period from November 1, 2022 to November 30, 2024.

   - $1,467.87 for the cost to replace property that was damaged as a result of the Landlord's actions.

   - $53.00 for the costs of filing this application.

6. The Landlord shall pay the Tenant the full amount owing by December 3, 2024.

7. If the Landlord does not pay the Tenant the full amount owing by December 3, 2024, the Landlord will owe interest. This will be simple interest calculated from December 4, 2024 at 6.00% annually on the balance outstanding.

8. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

November 8, 2024
Date Order Issued
November 22, 2024
Date Order Amended

Nersi Makki
Member, 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.