



Order under Section 34
Tenant Protection Act, 1997

File Number: TST-04468

In the matter of: Lansdowne Ave.
Toronto ON M6H 3Z8

Between: Tenant

and

Ruby Young Landlords
Julian Pikulik

the 'Tenant') applied for an order determining that Ruby Young and Julian Pikulik (the 'Landlords') failed to meet their maintenance obligations under the *Tenant Protection Act, 1997* or failed to comply with health, safety, housing or maintenance standards and for an order determining that the Landlords substantially interfered with her reasonable enjoyment of the rental unit.

The hearing was held in Toronto on April 23, May 21 and August 20, 2002. All parties attended on all days.

It is ordered that (for the attached reasons):

1. The application is dismissed.

September 11, 2002
Date Issued

Jeffrey Rogers
Member, Ontario Rental Housing Tribunal

Toronto South District
2nd Floor, 79 St. Clair Ave. E
Toronto ON M4T 1M6

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

The Tenant's position was that she had not contested the claim in the Small Claims Court because it was her intention to have the issue of the continuation of the tenancy resolved in this application.

It was ruled that the Tenant's request for an order terminating the tenancy could only be seen as a collateral attack on the default judgment based on continuing obligations under the lease. Such an order would be inconsistent with the judgment and, in these circumstances, it would be an abuse of process to permit the hearing to continue, while the judgment stood.

The hearing was therefore adjourned to allow the Tenant an opportunity to move to set aside the judgment. Costs of the adjournment were reserved. The Tenant had successfully brought the motion, when the hearing continued on August 20th. In the interim, the Tenant had filed what was proposed as an amended application, seeking only termination of the tenancy, effective March 31, 2002.

The Evidence

The Tenant's position was that she was forced to leave the unit because of the poor and dangerous living conditions. She filed written details of her allegations with the application. The Landlords also filed a detailed written response. It was decided that the most expeditious way to proceed with the hearing was to treat the written details, supplemented by oral evidence as examination-in-chief. The parties were then given the opportunity to cross-examine on all of the evidence.

The Fridge

The evidence of the Tenant was that there was a problem with her fridge that caused several floods in her unit starting in March 2001. When she reported the problem, the Landlords told her to contact the repairman herself to make the necessary arrangements. Knowing that it was the Landlords' responsibility to do this, she ignored their direction, apparently without letting them know that she had taken this position, until June 25th. On that date she sent the Landlords an e-mail, which stated, among other things, that she was too busy to contact the repairman and asked the Landlords to do it themselves.

On September 10th she sent a further e-mail in which she reported that the fridge was slowly dying, that she was defrosting it "like every other week", and asked the Landlords to set a date for repair or replacement. On September 12th she reported a small flood on the kitchen floor but that the fridge was still working. She indicated that she was afraid that one day she would come home to find that all of her food had gone bad because the fridge had died during the day. The fridge was not replaced until the first week of October.

The Tenant summarized this history as putting up with constant flooding, daily defrosting of the freezer, sleepless nights from the noises the fridge made and food spoilage from time to time. She admitted in cross-examination that she did not tell the Landlords that her food was spoiling. She said that it was not important at the time. She just wanted to have the fridge fixed.

Julian Pikulik was the only witness for the Landlords. His evidence was that he was unaware of any floods except for the one in September that precipitated the fridge being replaced. This flood was the result of the Tenant having removed the defrost pan and the Tenant was told to replace the pan.

The Furnace

The Tenant's evidence was that she began hearing noises from the furnace on September 18, 2001. She talked to the Tenant downstairs, in whose unit the furnace was located. That Tenant told her that she had informed the Landlord about the problem and the Landlords had given her

instructions on how to solve it. The Tenant then reported the problem to the Landlords herself by e-mail. The Landlords replied on September 19th that they had attended to the problem right away.

Apparently, the problem was solved.

However, the Tenant's evidence was that she would learn at the end of October that it was the other Tenant who had taken care of the problem, after getting instructions from the Landlords over the telephone and this made her feel that her life had been put at risk.

_____ was the Tenant downstairs. She gave evidence for the Tenant. Her evidence was that she solved the problem on the Landlords' instructions, by throwing a switch. The evidence provided no explanation as to precisely how this activity, performed by billions of people daily, without injury, threatened the Tenant's life.

Julian Pikulik's evidence that the noise was caused by _____ turning on the humidifier when it had no water and that he went over and turned it off himself.

The Tenant's evidence was that her life was also put at extreme risk by dust coming out of the vents and the Landlords' reaction to _____'s complaints about the dust. The Landlords gave _____ new filters and instructions on how to change them. _____'s evidence was that she was not qualified to change the filters and did not change them.

However, there is no evidence that either _____ or the Tenant complained to the Landlords about dust, after the initial complaint.

The Landlord's evidence was that he went over and changed the filter himself and did not ask any Tenant to solve the problem.

Electrical Problems

The Tenant's evidence was that she reported a loss of electricity in her kitchen and living room to the Landlords on October 30, 2001. The Landlords refused to take action but instead instructed the Tenants on how to fix it. When she refused and indicated that she would not be paying the rent unless the Landlord solved the problem, Julian Pikulik attended and replaced a blown fuse on November 2, 2002. In the meantime she was without electricity and living in fear of what had caused the electrical outage that had affected the whole house.

The Landlords' response to the Tenant's complaint was in fact to tell the Tenant to change the fuse. The response also gives instructions on co-operating to find out what had caused the problem. It also states that if the Tenants are unable to do this, an electrician will be called but that the Tenants would be held responsible for the cost if the problem was being caused by one of their own appliances.

There was no evidence of any reoccurrence of this problem in the Tenant's unit, after the fuse was replaced.

Cable

Cable was not included in the rent under the second lease that the parties negotiated, effective September 2001. The Tenant's position was that this nevertheless caused her to incur unexpected expense.

Cable was included when the Tenant first moved into the unit. It was disconnected and then the service was restored. The Tenant found out that all of the Tenants in the complex were getting cable on a subscription that _____ had taken out and she told _____ this. _____ then negotiated a deal whereby the Landlords paid a part of the bill.

The Tenant's evidence was that this arrangement somehow caused her to be uncomfortable in _____'s presence because _____ was under the impression that the Tenant was taking advantage of her.

's evidence was that she told the Tenant that it was unfair that her subscription was supplying all of the Tenants with cable, but she did not ask the Tenant for payment. Presumably, the unfairness was remedied by the arrangement she made with the Landlords with regard to payment.

Personal Information

The Tenant's evidence was that the Landlords gave her name and telephone number to all of the Tenants in the building on October 31st, resulting in harassing telephone calls from a Tenant named _____, who moved in around that time. When she confronted him, _____ said that he had gotten her name from looking at her mail and then looking up her number. However, he could not have done this because her number is not listed.

The Landlord denied giving her number to _____. The e-mail containing the Tenant's number was not addressed to _____ and it indicates that _____ had not yet moved in and that the Landlords would contact _____ themselves.

Smoking

Neither of the leases that the Tenant signed described the complex as a non-smoking complex. It was the Tenant's evidence that it was advertised as such and that she discussed it with the Landlords before she signed the first lease.

All was well until _____ moved in. He smoked. The Tenant's evidence was that, as a result of his smoke penetrating her unit, she began to wake up with daily nose bleeds, acquired a cough and got the occasional skin rash. She endured this from November until she moved out at the end of February.

Although she "verbally advised" the Landlords of this problem on several occasions, commencing November 1st, they did nothing.

The Tenant did not complain about this particular problem, in writing. The Landlords denied that they represented the complex to be a non-smoking environment.

Changing the Locks

The Tenant's evidence was that she came home on November 29th to find keys sitting on the steps inside the main door. She tried them and found that they opened the main door and the door to her unit. She entered her unit and was overwhelmed by the strong smell of cigarette smoke, clear evidence that someone had been in the unit. Presumably, this was different from the strong smell of cigarette smoke that she said filled the unit daily from November to February. The Landlord later told the Tenant that the keys had been found in the eaves by a roofer who had given them to _____. The Landlords admitted that they had left the keys there and admitted that _____ had entered her unit.

The Tenant requested that the Landlords change the locks but the Landlords refused until after she told them that she had filed an application with the Tribunal (which she had not). The Landlords finally changed the lock to the main door only, on December 5th. By e-mail of December 6th, the Tenant informed the Landlords that the problem was satisfactorily resolved and that she had contacted the Tribunal to cancel the application she had filed.

The Landlord's evidence was that the keys belonged to former Tenants who had left them outside for emergencies. No one used them to enter the Tenant's unit and the lock was changed on December 1st, not December 6th. The Tenant was told that she could change the lock immediately, at her own expense, if she felt that her safety was at risk, but she declined to do so.

Findings and Order

Section 34 and 35 of the *Tenant Protection Act* give the Tribunal the jurisdiction to order a wide range of remedies, upon finding that that a Landlord has breached the sections of the Act under which this application is brought. The exercise of jurisdiction to make an order terminating the tenancy should be reserved for cases of serious breach. One would expect that this jurisdiction would most often be exercised where a serious breach creates an emergency that forces a Tenant to vacate the unit or where there is a history of breaches, an ongoing serious breach and no reasonable prospect that the Landlord will remedy the problem.

The first option should be to consider an order that makes the Landlord comply with the obligations imposed by the Act.

In the present case, I do not find that either of these requirements for an order terminating the tenancy has been satisfied. There was no emergency, there was no history of serious breach and no ongoing serious breach.

Any problem with the fridge, the furnace, the electricity, the cable and the lock had been cured for several months.

I find that the problem with the fridge was only serious to the Tenant, in retrospect. At the time, she reported that the fridge was still working and it was not serious enough for her to take time out of her busy schedule to call a repairman. She reported a fear that her food may spoil, not that her food had spoiled, she was defrosting every other week and not daily.

The noise from the furnace was remedied within a few days by throwing a switch, a task that I am confident that [redacted] could undertake without risk of injury to anyone, even if she was the one who did it. As for the dust, if it persisted, surely the Tenant would have been mentioned it in one of her comprehensive e-mails and this issue could conveniently have been included in the previous application she claimed to have filed. Similarly, if the Tenant was getting daily nosebleeds from smoke entering her unit, I am sure she would have taken stronger action than mentioning it to the Landlords verbally.

The problem with the electricity really was only a blown fuse, the Tenant did get the cable she paid for, except for brief interruptions and her relationship with [redacted] appears to have survived the ordeal intact. Indeed [redacted] appeared surprised by the Tenant's claim that there had been friction between them.

The problem with the lock was solved within a few days to the Tenant's satisfaction. As for harassment from [redacted], one wonders why he would use keys to enter the Tenant's unit and then leave them for her to find, how he got her telephone number from an e-mail that was not addressed to him and if he did, why he would protect the Landlords by denying the source. Perhaps the Landlords could have been more prudent in distributing the Tenant's number, but if the problem was caused by [redacted] having the number, surely it could have been solved by changing the number, as [redacted] said that she did, and not by invoking the ultimate remedy available to a Tenant under the *Tenant Protection Act*.

As indicated above, I do not find that the requirements for an order terminating the tenancy have been satisfied I have therefore made an order dismissing the application.

Costs

The Landlords sought an order for costs against the Tenant on the adjournment to allow the Tenant an opportunity to move to set aside the default Judgment. The Tribunal's guideline on costs provides that costs, other than an application fee, will not be awarded to a successful party, unless the conduct of the other party is found to be unreasonable. Although the Tenant's conduct in not filing a defence in the Small Claims Court resulted in the adjournment, I am not satisfied that there was any intent to delay the determination of this application. I am therefore not satisfied

that it is appropriate to award costs of the adjournment. The application has therefore been dismissed, without costs.

September 11, 2002

Date Issued

Jeffrey Rogers

Member, Ontario Rental Housing Tribunal

Toronto South District
2nd Floor, 79 St. Clair Ave. E
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