



I hereby certify this is a true copy of an Order dated
JAN 25, 2023
Landlord and Tenant Board

**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Harmer v Sabeeh, 2023 ONLTB 16633

Date: 2023-01-25

File Number: LTB-L-006405-22

In the matter of: 2012, 78 HARRISON GARDEN BLVD
NORTH YORK ON M2N7E2

Between: Eden Melissa Harmer Landlord

And

Noor Sabeeh and Samir Abbas Tenant

Eden Melissa Harmer (the 'Landlord') applied for an order to terminate the tenancy and evict Noor Sabeeh and Samir Abbas (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 12, 2022.

The Landlord, the Landlord's husband Adam Harmer, the Landlord's representative, David Olevson, the Tenant, Samir Abbas and the Tenant's representative Roderick McRandall attended the hearing

Determinations:

Rent Arrears

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Tenant vacated the rental unit on October 3, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit.
4. The lawful rent is \$2,792.51. It was due on the 4th day of each month.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to October 3, 2022 are \$24,967.04.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

8. The Landlord collected a rent deposit of \$2,700.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
9. Interest on the rent deposit, in the amount of \$134.99 is owing to the Tenant for the period from December 4, 2018 to October 3, 2022.

Section 82 Issues Raised by Tenant at the Hearing

10. The Tenants' representative filed a notice of issues the Tenants intends to raise at the hearing pursuant to section 82 of the Residential Tenancies Act, 2006 (the 'Act'). The Tenants submitted that the issues had been served to the Board and the Landlord on October 5, 2022 which was within 7 days of the hearing as set out in the Board's Rule 19.4. I am satisfied that there is jurisdiction to hear the section 82 issues.
11. The Tenants made submissions for a rent abatement based on the following section 82 issues: 1) illegal entry; 2) locks changed by the Landlord, 3) substantial interference and 4) harassment, and coercion.
12. As a remedy to the above noted issues, the Tenant is seeking an order from the Board for rent abatement for the period of time that the Landlord is in breach of the Act.

May 9, 2022

13. It was the Tenant's evidence that on May 9, 2022 an agent of the Landlord's agent entered the unit and was seen on the Tenant's video recording walking around the rental unit and opening the refrigerator. The Tenant was completely unaware of the entry as he was away. The Tenant indicated that the illegal entries provided a home that was not peaceful to live in and was unsettling.
14. The Landlord contested the Tenant's testimony providing evidence that notice was provided to the Tenant on May 8, 2022 that the Landlord would be entering the rental on May 9, 2022 between the hours of 8:00 a.m. and 8:00 p.m. This notice to enter was provided so that the locks were being changed as the key had been stolen from a lock box. I am satisfied that the notice of entry was valid and this was not an illegal entry.
15. I find that the Landlord's agent also substantially interfered with the Tenants reasonable enjoyment of the rental unit on May 9, 2022. The notice provided to the Tenants identified that the reason for the entry was to change the locks due to theft of a key. The Landlord's agent's behaviour on this day rises to the level of substantial interference which would lead to a rent abatement as the notice was provided to change the locks not to inspect the rental unit.

June 22, 2022

16. On June 22, 2022, the Landlord entered the rental unit and proceeded to remove all of the Tenants' personal belongings out of the rental unit. The police were called and the Tenant was eventually permitted to move his belongings back into the rental unit. The Tenant

testified that this entry had an impact on them as they were required to move all of their belongings back into the unit and reorganize them which took two days.

17. The Landlord contested the Tenant's evidence and stated that notice of intent to enter was provided as there were some repairs that were required. The Landlord provided evidence that notice was provided to the Tenant on June 9, 2022 by placing it under his door that entry would be between June 21-25, 2022 for an inspection.
18. The Landlord testified that he was not aware of the requirement to have an order to confirm eviction and/or abandonment from the Board. Regarding the removal of the Tenants' items, the Landlord acknowledged that this was not the correct protocol.
19. I find that the Landlord breached the Tenants' privacy and entered the rental unit illegally in contravention of section 27 of the Act. The notice was not provided to the Tenants at least 24 hours in advance and does not specify a day of entry and a time of entry between the hours of 8 a.m. and 8 p.m. for an inspection. For this reason, the Tenant will be issued a rent abatement for the illegal entry on June 22, 2022.
20. I find that the Landlord substantially interfered with the reasonable enjoyment of the rental unit by the Tenant or member of the Tenant's household in contravention of section 22 of the Act. The Landlord's continued pattern of behaviour of illegal entries which culminated in this event of removing the Tenants' belongings without a formal termination of the tenancy from the Board putting the Tenant in position to have to move belongings from the moving dock and the hallway back into the rental unit. The Landlord escalated the dispute to the level where the police were called ultimately putting the Tenant back into the rental unit and deescalating the event.

September 2, 2022

21. On September 2, 2022 an agent of the Landlord entered the rental unit. The Tenant was alerted by an alarm system and was able to return to the rental unit to find a man taking pictures. The man provided his name and DL when asked but left when the police were called. This entry had an impact on him as he was not expecting anyone and this person was there taking pictures.
22. The Landlord did not contest the Tenant's evidence that the entry on September 2, 2022 was planned as the Tenant advised the Landlord that he would be vacating the rental unit prior to September 3, 2022 as such they had their agent inspect. It was reported that the Tenant was still there.
23. I am satisfied that the entry on September 2, 2022 did not comply with section 27 of the Act to provide 24 hours notice to enter the rental unit. The entry on September 2, 2022 was also without notice as the Landlord was not certain that the Tenant had vacated the rental unit. For this reason, the Tenant will be issued a rent abatement for the illegal entries on September 2, 2022.
24. I find that the Landlord substantially interfered with the reasonable enjoyment of the rental unit by the Tenant or member of the Tenant's household and harassed, obstructed, coerced, threatened the Tenant in contravention of sections 22 and 23 of the Act.

Altered Locking System without Replacement Key

25. For reasons outlined below, I find that the Landlord changed the locks illegally in contravention of section 24 of the Act. For this reason, the Tenant will be issued a rent abatement for the period that he was locked out May 9, 2022 to October 3, 2022.
26. On May 9, 2022 he was away from the rental unit. When he returned home, his key would not work and the door had been left unlocked. The Tenant had noticed that he came home he found that the key fobs to the common areas of the condo had been disabled. The Tenant was not provided with access or a key. The Tenant submitted a video into evidence that showed a man in his rental unit and he did not know who that person was nor did he provide access to this person.
27. The Tenant testified that not having a key to his apartment was very stressful as he could not secure his belongings. He had to use an alarm system and run home each time it was activated as he did not know if someone was stealing his belongings. This also added to his unsettling feeling living at the rental unit. It was uncontested that the Tenant was never provided a key to his unit when the locks were changed.
28. The Landlord testified that the locks had been changed as the security desk had advised that the keys that were placed in the lockbox during the sale of the condo unit had been stolen on May 7, 2022. Given the theft the Landlord made the decision to change the locks. The Landlord did not provide a key to the Tenant as the security desk had advised that the Tenant had abandoned the rental unit around May 6, 2022. The Landlord confirmed that he now understands that the Tenant had not vacated the rental unit as per the security desk and that he should have had an eviction or an abandonment order from the Board.
29. I am satisfied that the locks were altered on May 9, 2022 and the Tenant was not provided a key to the rental unit in contravention of section 24 of the Act. For this reason, a rent abatement will be issued to the Tenant.

Substantial Interference and Harassment

30. For reasons outlined below, I find that the Landlord substantially interfered with the reasonable enjoyment of the rental unit by the Tenant or member of the Tenant's household and harassed, obstructed, coerced, threatened the Tenant in contravention of sections 22 and 23 of the Act. For this reason, a rent abatement will be issued to the Tenant.
31. I am satisfied based on the evidence before me that the Landlord did send text messages, posted harassing information on social media, failed to provide a key to the rental unit to the Tenant and unilaterally removed the Tenant's belongings from the rental unit without the Tenant's knowledge or consent. The Tenant acknowledges owing rent and receiving a notice of termination for the Landlord's own use; however, these issues do not give the Landlord the right to evict the Tenant without a Board order.
32. The Tenant testified that on February 28, 2022, he was sent a threatening message by the Landlord's husband Adam regarding monitoring his move with the sheriff to escort him out if necessary. It was the Tenant's understanding that the Landlord required him to move based on a Notice of Termination N12 for Landlord's own use. The Tenant testified that he

had no intention of moving out of the rental unit without an Order from the Board. It is the Tenant's position that the notice served by the Landlord was defective because the date of termination was not on the last date of the term or rental period.

33. The Tenant led evidence that on March 30, 2022 he discovered a post that he was tagged by the Landlord identified by a picture and screen name 'Eden Adam' the combined first names of the Landlord and her husband. The display picture showed a picture of the Landlord and her husband on the website GoFundMe. The post stated that he and his wife could not pay their rent and was asking for assistance. It was 'tagged' on Facebook and LinkedIn accounts that the Tenants have. The Tenant came to understand that the post was live after 15 hours of its posting as business associates and friends contacted him about it. The Tenant indicated that this impacted his ability to earn money and embarrassed him and his wife in social and employment settings.
34. The Landlord contested the Tenant's evidence indicating that they were under the impression that the Tenant was moving out as it was confirmed that they had received an offer to purchase the rental unit. The Landlord testified that the sale fell through. The Landlord did not provide evidence as to how it was determined that the Tenant would be vacating the rental unit.
35. The Landlord did not contest the GoFundMe Post and the 'tagged' social media posts regarding the Tenant being in arrears. It was the Landlord's evidence that they were attempting to mitigate the arrears by fund raising. It was confirmed that no money was raised by the GoFundMe post.

Section 82 Analysis

36. Section 22 of the Act states:

A landlord shall not substantially interfere with the reasonable enjoyment of the rental unit for all usual purposes by a tenant.

I find that the Landlord's actions rose to the level substantial interference and that the breach impacted the Tenants reasonable enjoyment of the rental unit. There was a pattern of behaviour from the Landlord with respect to this tenancy. The lock change, the removal of the Tenant's personal items, the harassing texts, and posts on social media led by the Tenant's evidence that provides a clear picture that the Landlord interfered with the Tenant's right to reasonable enjoyment of the rental unit starting February 28, 2022 and lasted until October 3, 2022 for these reasons the Tenant will be awarded an abatement of rent.

37. Section 23 of the Act states:

A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.

I find that the Landlord's actions rose to the level of harassment. I am satisfied that based on the evidence before me the Landlord intentionally set out to harass the Tenant via text message and social media posts that caused an impact on the

38. Section 24 of the Act states:

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.

I find that the key fob access was disabled and locks were changed on May 9, 2022 and the Landlord did not provide the Tenant with access to the residential complex and residential unit during the Tenant's occupancy. I am satisfied based on the evidence before me that the Tenant was not provided a key or key fob up to the date the Tenant vacated the rental unit.

39. Section 26 of the Act states:

A landlord may enter a rental unit at any time without written notice in the case of emergency or if the tenant consents to the entry at the time of entry.

I find that the Landlord did enter or permit their agents to enter the rental unit without notice on June 22, 2022 and on September 22, 2022

40. The illegal entry of a rental unit is a breach of a tenant's privacy. The leading case with respect to breach of privacy is *Wrona v. Toronto Community Housing Corp.*, [2007] O.J. No. 423 (Ont. Div. Ct.). In that case the Tenant was provided with notice but the notice failed to meet the mandatory requirements of the *Act*. The Divisional Court granted the tenant an abatement of \$1,000.00 for a single illegal entry which was well in excess of 100% of the monthly rent charged. I am guided by the court in *Wrona* in my determination as to the appropriate amount to award the Tenant with respect to the breach of her privacy rights.

Remedy

41. 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 Tenants are entitled to abatement proportional to the difference in value of what is being paid for and what is being received. In this case, the Tenants has sought remedy against the Landlord and the arrears of rent owing. In considering the abatements I considered the circumstances of the Tenants. The remedies flowed based on the Tenants' the impact of the Landlord's breach of section 22, 23, 24 and 26 of the *Act* for and abatement of the monthly rent for the period February 28, 2022 until October 3, 2022.

42. For the illegal lockout the locks were changed and the key fob was deactivated on May 9, 2022. At no time was the Tenant provided a key or access to the residential complex. The Tenant did have access to the rental unit and was able to use the premises until October 3, 2022. For this reason, an abatement of \$3,360.33 for the period of May 9, 2022 to October 3, 2022 is granted to the Tenant.

43. Based on the precedent established by *Wrona*, I find that a reasonable amount of rent abatement for the two entries on June 22, 2022 and September 2, 2022 I find that an

abatement of rent of \$500.00. This is calculated as \$350.00 for the June 22, 2022 date which is the most egregious entry as the Landlord entered the rental unit and removed the Tenant's belongings and \$250.00 for the September 2, 2022 entry.

44. For the harassment, based on the uncontested evidence before me, The Landlord's behaviour demonstrates an intention to remove either shame, intimidate or bully the Tenant by illegal means. For the period February 23, 2022 to March 30, 2022 there were three occasions of this type of behaviour, February 28, 2022, March 30, 2022 and June 22, 2022. The Tenants are entitled to an abatement \$139.63 for each of the months of February, March and June, 2022 for a total of \$418.89.
45. For the substantial interference, considering the overall tenancy and the interactions between the Tenant and the Landlord between February 28, 2022 to October 3, 2022, I have found that the Landlord's conduct constitutes substantial interference. I find that it would not be unreasonable to issue an abatement of 10% per month from March to October, 2022. The total amount that will be ordered is \$2,224.08.
46. This rent abatement of \$6,503.30 will be offset against the \$24,967.04 that the Tenants owe the Landlord on the L1 application for arrears of rent. The Divisional Court in *Marineland of Canada Inc. v. Olsen*, [2011 ONSC 6522](#), has indicated that when the Board is aware of situations such as this, where there are two applications involving the same parties, it should be made clear to the parties that any amount owed to one party under a Board order is to be set off against monies awarded to the opposing party.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of October 3, 2022, the date the Tenant moved out of the rental unit
2. The total amount the Tenants owe the Landlord for the arrears of rent on the L1 application is \$24,967.04 owing up to the date the Tenants vacated the rental unit and including the cost of the filing fee, last months rent deposit and interest on the deposit. The total amount the Landlord owes the Tenants is \$6,503.30 for the rent abatement. These two shall be set off against each other as a result the total amount the Tenants owe the Landlord is \$15, 814.75.
3. If the Tenant does not pay the Landlord the full amount owing on or before February 5, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 6, 2023 at 5.00% annually on the balance outstanding.

January 25, 2023
Date Issued



Camille Clyne
Member, Landlord and Tenant Board

15 Grosvenor St, 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay as the tenancy is terminated

Rent Owing To Move Out Date	\$24,967.04
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,700.00
Less the amount of the interest on the last month's rent deposit	- \$134.99
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$6,503.30
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$15,814.75