



Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: Singh v Constantine, 2023 ONLTB 79212

Date: 2023-12-11

File Number: LTB-T-066711-22-RV

In the matter of: Basement Unit, 2 Hampstead Court
Markham Ontario L3R3S7

Between: Harmanpreet Singh Tenant

And

Jebin Constantine Landlord

Review Order

File TNT-34254-21 has been moved to the Landlord and Tenant Board’s new case management system, the Tribunals Ontario Portal. The new file number is LTB-T-066711-22.

Harmanpreet Singh (the 'Tenant') applied for an order determining that Jebin Constantine (the 'Landlord') and James Constantine, the Landlord’s agent, (the 'Landlord's Agent'):

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

This application was resolved by order TNT-34254-21 issued on May 9, 2022.

On May 26, 2022, the Tenant requested a review of the order.

This application was heard in by videoconference on November 15, 2023.

The Landlord, the Landlord’s Agent, James Constantine, the Landlord’s legal representative, Rizna Rishafy, and the Tenant attended the hearing. Samandeep Singh, a former tenant, attended the hearing as a witness for the Tenant.

Determinations:

The request to review:

1. The Tenant’s request for a review is based on the ground of not being reasonably able to participate in the proceedings.
2. The hearing that gave rise to the order under review took place on April 7, 2022 by video teleconference. The Tenant did not attend the hearing held on April 7, 2022.



3. At the review hearing on November 15, 2023, the Tenant testified that he only found out about the hearing held on April 7, 2022, after he had received the order TNT-34254-21 issued on May 9, 2022, dismissing his application.
4. After the Tenant received the order, he contacted the Board, and filed this request to review.
5. The Tenant always intended to participate in the proceedings. He did not provide the Board with consent to receive Notices of Hearing by email. As such, the Tenant had expected to receive the Notice of Hearing by mail. As it happened, the Board sent the Notice of Hearing by email. The email ended up in the Tenant's spam folder. The Tenant, however, was not checking his email to see if he had received a Notice of Hearing.
6. The Landlord submitted that the Tenant only filed the request to review after he was served with the Landlord's L10 application. The Landlord's position was that the Tenant would not have filed the request to review if the Landlord had not filed the L10 application.
7. In *King-Winton v. Doverhold Investments Ltd.*, 2008 CanLII 60708, the Divisional Court held that "being reasonably able to participate in the proceeding must be interpreted broadly, natural justice requires no less."
8. Based on the above, I find, on balance, that the Tenant was not reasonably able to participate in the proceedings, as he was not aware of the hearing held on April 7, 2022. The Tenant always intended to participate in the proceedings. He did not provide the Board with consent to receive Notices of Hearing by email. He did not expect to receive the Notice of Hearing by email. Whether or not the Tenant's motive to file the request to review was because the Landlord filed the L10 application, is not relevant in determining whether or not the Tenant was aware of the hearing on April 7, 2022, and as such whether or not the Tenant was reasonably able to participate in the proceedings.
9. Accordingly, the Tenant's request to review was granted and his application proceeded to a hearing.

The T2 application:

10. In the application the Tenant alleged that Landlord and the Landlord's Agent harassed, obstructed, coerced, threatened or interfered with him.
11. By way of background, the rental unit was the basement of a home. The basement consisted of two rooms and common areas. The Tenant moved into the rental unit on or about October 6, 2020, together with another tenant, SS. The parties entered into a fixed term lease with the termination date of May 31, 2021. Both Tenants were named on the lease. Each Tenant occupied a separate room in the basement. SS moved out in June 2021. The Tenant continued to reside in the rental unit and moved out on or about August 30, 2021.
12. The Tenant's position was that the Landlord's conduct, and especially the conduct of the Landlord's Agent, the Landlord's father, amounted to harassment. According to the



Tenant, the Landlord demanded that the Tenants pay increased rent after the end of the fixed term, or move out of the rental unit. Furthermore, the Landlord did not permit the Tenant to park his vehicle on the premises after the expiry of the fixed term of the lease.

13. According to the Tenant, the lawful monthly rent was \$1,300.00 plus 1/3 of the utilities. The Tenants paid this amount (\$1,300.00) plus 1/3 of the utilities to the Landlord until May 31, 2021 (the end of the fixed term lease). At the commencement of the tenancy, the Tenants provided the Landlord with post dated cheques for \$1,300.00 per month for the time period from October 2020 until and including May 2021. They also gave the Landlord a last month's rent deposit.
14. In May 2021 the Landlord's Agent told the Tenants that they had to move out at the end of term or pay increased rent of \$1,400.00. He told the Tenants that the Landlord found other prospective tenants who were willing to pay higher rent. As such, the Landlord's Agent requested that the Tenants pay the higher rent or move out. The former Tenant, SS, then moved out. The Tenant HS found another prospective co tenant; however, this person refused to move in because he felt that the Landlord required too much private information.
15. The Landlord requested that the prospective Tenant's get vaccinated against Covid-19. The Landlord was also concerned about the prospective Tenant's age and mobility. The prospective Tenant did not appreciate these questions and decided not to move in.
16. According to the Tenant, at the insistence of the Landlord, he paid \$1,375.00 for the rent for June 2021, and provided proof of payment.
17. The Tenant did not pay rent for July and August 2021, allegedly because he was unable to secure a roommate, as the Landlord did not like the Tenant's candidate.
18. According to the Tenant, the Landlord called the Tenants at 10.40 p.m. on June 28, to demand rent and then threatened to call the police if the Tenants did not pay the rent by the end of June.
19. At the beginning of July 2021, when the Landlord began to ask for \$1,400.00, the Tenant advised the Landlord that he would be moving out in August 2021.
20. In an L10 application filed by the Landlord in November 2021, the Landlord set out the monthly rent as being \$1,375.00 for August and September 2021.
21. In addition, according to the Tenant, the Landlord prevented the Tenant from parking his car on the driveway, despite the fact that pursuant to the lease, the Tenant was entitled to parking on the driveway.
22. The Tenant submitted into evidence recordings of conversations between the Landlord's Agent regarding rent and parking. The Tenant also submitted a Notice of Termination given to the Tenant by the Landlord, wherein the monthly rent was set as \$1,350.00 (July, August 2021).



23. The Tenant moved out of the rental unit because of the conduct of the Landlord and the Landlord's Agent.
24. The Tenant now pays \$1,500.00 a month for a rental unit that is slightly smaller than the rental unit he had occupied previously. He is the sole Tenant on the new lease. The new lease, also indicates that the rent includes utilities, whereas the Tenant had to pay 1/3 of the utilities in the rental unit subject to this application.
25. The Tenant's testimony was corroborated by the Tenant's former co-tenant, SS. SS testified that the Tenants had two parking spots on the premises during the term of the lease. He also confirmed that the Landlord called him close to midnight on June 28, 2021, but when the Landlord realized that SS was sleeping, the Landlord said he would call the next day. SS further confirmed that after the expiry of the fixed term lease, the Landlord wished to increase the rent in excess of the rent increase guidelines. The Landlord said that he had found another set of tenants that would pay even more, so he gave the Tenants an ultimatum to either pay higher rent or move out. SS moved out of the rental unit at the end of June 2021. I found the testimony of SS concise and credible.
26. The Landlord testified as well. According to the Landlord the lawful rent was \$1,350.00 with a \$50.00 discount for the first month of the tenancy. The lease presented into evidence states that the monthly rent was \$1,350.00 with a \$50.00 discount. According to the Landlord, the discount applied to the first month of the tenancy only. The Landlord also stated that there was one parking spot available to the Tenants pursuant to the lease. The Landlord denied making phone calls during inappropriate times or threatening to call the police. He also denied attempting to raise the rent unlawfully.
27. In cross examination, the Landlord admitted that he called the Tenant late at night to find out about the rent. He denied threatening to call the police.
28. The Landlord stated that he did not wish to approve the potential co tenant of SS due to concerns about the candidate's ability to navigate steps to the basement due to the candidate's age.
29. I found the Landlord's testimony vague and ambiguous at times.
30. Moreover, despite the fact that the Tenant dealt mostly with the Landlord's Agent, the Landlord's father, who collected the rent and dealt with the Tenants throughout the tenancy, the Landlord's Agent did not testify, although he was present at the hearing. The Landlord's position was that his father did not testify due to a language barrier and due to animosity between the parties. The recordings presented as evidence at the hearing, however, did not indicate a significant language barrier that would prevent the Landlord's agent from testifying. In any case, the Landlord could have summoned an interpreter to assist with the testimony.

Law and Analysis:

31. In considering the Tenant's application, I have considered the following sections of the *Residential Tenancies Act, 2006* (the 'Act'):



32. Section 23 of the Act states:

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

33. There is no definition of “harassment” under the Act, but the Board often adopts the definition from the *Ontario’s Human Rights Code*, which is a course of conduct that a reasonable person knows or ought to know would be unwelcome.

34. Section 38 (1) of the Act states that:

If a tenancy agreement for a fixed term ends and has not been renewed or terminated, the landlord and tenant shall be deemed to have renewed it as a monthly tenancy agreement containing the same terms and conditions that are in the expired tenancy agreement and subject to any increases in rent charged in accordance with this Act.

35. Section 110 of the Act states that:

No landlord shall increase the rent charged to a tenant for a rental unit, except in accordance with this Part.

36. Section 116 of the Act states:

No landlord shall charge rent for a rental unit in an amount that is greater than the lawful rent permitted under this Part.

37. Section 119 (1) of the Act states:

A landlord who is lawfully entitled to increase the rent charged to a tenant for a rental unit may do so only if at least 12 months have elapsed,

(a) since the day of the last rent increase for that tenant in that rental unit, if there has been a previous increase; or

(b) since the day the rental unit was first rented to that tenant, if clause (a) does not apply

A landlord shall not increase the rent charged to a tenant for a rental unit without first giving the tenant at least 90 days written notice of the landlord’s intention to do so.

38. Based on the evidence before me I am satisfied that the conduct of the Landlord and the Landlord’s Agent amounted to harassment. I say this because the Landlord had no right to request an increased rent after the expiry of the fixed term lease, as the tenancy was renewed as a monthly tenancy agreement containing the same terms and conditions that are in the expired tenancy agreement, that is the same rent and same rights and obligations, including parking.

39. I find that the lawful rent was \$1,350.00 and the Tenant’s were given a \$50.00 discount for prompt payment (by providing post dated cheques), for the duration of the fixed term of the lease. As such, the Landlord had no right to request rent above \$1,350.00 and ask the Tenants to leave if they did not pay the increased rent of \$1,375.00 or more, after the fixed term of the tenancy expired.



40. The Landlord's conduct, including demanding that the Tenant pays a higher rent or move out and preventing the Tenant from parking in the driveway, was unwelcome and without any lawful basis, and as such amounted to harassment.
41. In conclusion, I find that the Landlord and the Landlord's Agent were in breach of section 23 of the Act by harassing the Tenant.
42. I am also satisfied that the Tenant moved out because of the conduct of the Landlord and the Landlord's Agent.

Remedies:

43. The Tenant requested a rent differential of \$2,400.00, because his monthly rent increased by \$200.00 per month, from \$1,300.00 to \$1,500.00 per month.
44. I am not satisfied, based on the evidence before me that the Tenant is entitled to a rent differential. The lawful rent in the previous unit was \$1,350.00 with a discount of \$50.00. The Tenants were also responsible for one third of the utilities. According to the evidence submitted, the Tenant's portion of utilities for 4 months was \$632.00, that is over \$150.00 per month. Utilities are included in the Tenant's new unit. As such, I am not satisfied that the Tenant in fact pays more in his new unit than he paid in his old unit. Accordingly, this claim shall be denied. In addition, the Tenant is the sole Tenant in the new unit, whereas he had to share his previous unit with another Tenant. As such, I am not satisfied that the new unit is comparable.
45. The Tenant also requested moving expenses in the amount of \$150.00. The Tenant presented an invoice for \$70.72 for a U-Haul rental. The Tenant also testified that he had to pay for gas and paid a friend to help him move. This evidence was not contested. I find the claim reasonable and a direct result of the Landlord's breach. As such, I find the Tenant is entitled to \$150.00 for moving costs.
46. The Tenant also requested that the Landlord pay a fine.
47. Guideline 16 of the Board's Interpretation Guidelines speaks about fines. 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.
48. A fine may be ordered where a Landlord or a Landlord's Agent harassed, obstructed, coerced, threatened or interfered with the tenant during the tenant's occupancy of the rental unit.
49. I am satisfied that the circumstances warrant an imposition of a fine. The Landlord acted in blatant disregard of the Act. The purpose of the Act is set out in section 1 of the Act which states:

The purposes of this Act are to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and tenants and to



provide for the adjudication of disputes and for other processes to informally resolve disputes [emphasis added].

50. In considering the amount of the fine I have considered the nature and severity of the breach, and the effect of the breach on the Tenant, and the fact that the Landlord is a small scale Landlord.

51. Accordingly, the Landlord shall be ordered to pay fine in the amount of \$500.00 to prevent similar conduct in the future.

It is ordered that:

1. The request to review order TNT-34254-21 issued on May 9, 2022, is granted. The order is cancelled and replaced with the following order.
2. The Landlord shall pay the Tenant \$150.00.
3. The Landlord shall also pay the Tenant \$48.00 for the application filing fee.
4. The total amount the Landlord shall pay to the Tenant is \$198.00.
5. The Landlord shall also pay an administrative fine in the amount of \$500.00 to the Landlord and Tenant Board by February 6, 2024.
6. If the Landlord does not pay the Tenant the full amount owing on or before February 6, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 7, 2024, at 7.00% annually on the balance outstanding.
7. If the Landlord does not pay the administrative fine to the Landlord and Tenant Board on or before February 6, 2024, the Landlord will owe interest. This will be simple interest calculated from February 7, 2024, at 7.00% annually on the balance outstanding.

January 22, 2024
Date Issued

Jana Rozehnal
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.