

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

Citation: Marshall v Brady, 2023 ONLTB 65700

Date: 2023-10-12

File Number: LTB-T-067277-22

LTB-T-053035-22

LTB-T-006351-23

In the matter of: 2, 111 OAKWOOD ST
PORT COLBORNE ON L3K5G4

Tenant

Between: Leslie Marshall
Paul Marshall

And

Landlord

Kevin Brady
Carol Brady

Leslie Marshall, and Paul Marshall (the 'Tenant') applied for an order determining that Kevin Brady and Carol Brady (the 'Landlord') substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household and harassed, obstructed, coerced, threatened or interfered with the Tenant. (T2 LTB-T-067277-22, filed November 18, 2021; T2 LTB-T-053035-22, filed September 16, 2022)

The Tenants also applied for an order determining that the Landlords gave a notice of termination in bad faith (T5: LTB-T-006351-23, filed September 16, 2022).

This application was heard by videoconference on July 20, 2023.

The Landlords, the Landlord's Representative, Danielle Thomas, the first-named Tenant, the Tenant's Representative, Curt Anderson, and the Tenant's Witness, Nicole Viccica, attended the hearing.

Determinations:

1. As explained below, the Tenants proved some of the allegations contained in their applications on a balance of probabilities. Therefore, the Landlords must pay the Tenants \$3,816.00.

Background and Context

2. The rental complex has three units: the Landlords' home, the Tenants' rental unit and an apartment that was never occupied for the duration of the tenancy.

3. The parties were friends at one point, having vacationed in the same area in Florida during the winter months. The Landlord, Kevin Brady, and the Tenant Paul Marshall are brothers-in-law.
4. The Tenancy began January 1, 2017. Rent was \$675.00/month.
5. In early 2020, the Tenant, Paul Marshall (PM), suffered a catastrophic accident that left him in a quadriplegic state. The Tenant was hospitalized for approximately 6-months before returning home to receive in-home care from various health professionals.
6. On March 16, 2021, the Landlords served an N12 to terminate the tenancy on May 31, 2021. The notice was served for the purpose of having the Landlord's mother occupy the rental unit. At the hearing, both parties agreed that the relationship between the parties deteriorated when the N12 was served to the Tenants.
7. Order SOL-20854-21 was issued September 21, 2021, granting the Landlords' application to evict the Tenants to allow the Landlords' mother to move into the rental unit.
8. The Tenants appealed the order to the Divisional Court on October 13, 2021.
9. On April 6, 2022, the Divisional Court dismissed the Tenants' appeal and lifted the stay on the order.
10. The tenancy terminated on April 30, 2022.
11. As of this date, PM is living in a nursing home to receive the care he needs.

T2 Applications

12. On November 18, 2021, the Tenants filed a T2 (LTB-T-067277-22) with the Board. This application alleges the following:
 - a) The Landlords tampered with the delivery of hot water in August 2020 and January 2021.
 - b) The Landlords used security cameras to substantially interfere with the Tenants' reasonable enjoyment of the rental unit and to harass the Tenants.
 - c) The Landlords attempted to intimidate the Tenants by glaring at the Tenants and their guests, threatening the Tenants, recording the Tenants, damaging the clothes on the Tenants' clothesline, and by taking photos of the Tenants' vehicle.
 - d) The Landlords disposed of the Tenants property in May 2020 when the Landlords removed a wood enclosure from the back porch, and then disposed of it without any notice to the Tenants,

e) The Landlord's stopped supplying the following utilities, forcing the Tenants to become responsible for their payment:

- i) Electricity in November 2017
- ii) Internet in August 2020, and
- iii) Cable TV in December 2020.

13. Section 29(2) of the *Residential Tenancies Act*, 2006 (the 'Act'), states:

(2) No application may be made under subsection (1) more than one year after the day the alleged conduct giving rise to the application occurred.

14. The following portions of the Tenants' claims on this application will not be considered because the alleged conduct of the Landlords occurred beyond the one-year period from when this application was filed:

- a) Alleged tampering with hot water in August 2020,
- b) Removal of the wood enclosure in May 2020
- c) Issues with the supply of electricity in November 2017 and the internet in August 2020.

All other allegations will be addressed, since they appear to fall within the one-year limitations period set pursuant to section 29(2) of the Act.

15. On September 16, 2022, the Tenants filed a second T2 application (LTB-T-053035-22) with the Board. This application alleges the following:

- a) The Landlord harasses the Tenants and their guests by glaring at them, and making aggressive comments towards the Tenants and their guests from December 3, 2021, until the termination of the tenancy on April 30, 2022,
- b) The Landlords interfered with the Tenants' use of the laundry facilities,
- c) The Landlords tampered with the hot water tank on January 5, 2022,
- d) Further invasion of privacy by using the security cameras until they were removed April 13, 2022

Hot Water Issues (both T2s)

16. The Tenant, Leslie Marshall, testified that the hot water would intermittently turn off or not be as effective. The Tenant alleged that on December 3, 2020, the water was only warm, but not hot. The Tenant claims that the hot water was turned off for a short period of time on January 5, 2021, December 2, 2021, and January 5, 2022.
17. The Tenant, in her testimony, claimed that the Landlords were playing games with the Tenants.
18. Under cross-examination, the Tenant admitted that whenever the Tenant would contact the Landlords about the loss of hot water, the Landlords would restore it shortly afterwards.
19. The Landlord, Carol Brady (CB), testified that the chimney/air vent to the gas hot water tank was installed in a way where a strong gust of wind coming from a certain direction could be strong enough to blow out the pilot light in the hot water tank.
20. CB stated that whenever the Tenants contacted her, she went and relit the pilot lamp right away.
21. CB denied ever having turned off the hot water tank on purpose.

Analysis

22. The two applications before me regarding the hot water supply are T2 applications. Therefore, to be successful, the Tenants are required to prove to the Board that the Landlords' failure to maintain the hot water heater substantially interfered with the Tenants' reasonable enjoyment of the rental unit.
23. Based on the evidence before me, I am not satisfied that this issue substantially interfered with the Tenants' reasonable enjoyment of the rental unit. There was no evidence presented by the Tenants showing how the lack of hot water for the relatively short periods of time interfered with the Tenants in any way.
24. Furthermore, I find that the Tenants' explanation that the Landlords were intentionally turning off the hot water tank to be speculative. no evidence was presented to prove that the hot water tank was turned off intentionally.
25. Therefore, the claim for loss of hot water is dismissed.

Security Cameras (both T2s)

26. In September 2020, the Landlords installed security cameras. This is a list of the cameras installed:
 - a) Camera 1: below a second-floor window on the Landlords' side of the building facing the Tenants' front door entrance.

- b) Camera 2: mounted on a shed with a deer rack also mounted on it. The camera was pointed at the Tenants' backyard patio area.
 - c) Camera 3: mounted on the side of another of the Landlords' sheds (this one with multiple antlers and deer skulls) with a security camera which appears to be pointed at the Tenants' bedroom.
 - d) Camera 4: mounted on a shed that had another set of deer/moose/elk antlers and two birdhouses, with a camera pointing towards the Tenants' backyard.
 - e) Camera 5: mounted inside the laundry room.
27. The Tenant testified that the only ones to use the laundry room was the Tenants, and that the Landlord had their own laundry facilities on their side of the house.
28. The Tenants testified that for most of the time, the door to the laundry room was left unlocked, even when the security camera was installed.
29. The Tenants did not get a key to the laundry room despite there being a lock on the door.
30. The Tenant testified that the cameras on the outside of the rental complex were pointed in a way that they were not pointing at the Landlords' own side of the house, including their own entrances or the garage entrances.
31. The Tenant testified that the cameras were removed mid-April 2022, shortly after the Tenants' Divisional Court appeal was dismissed on order SOL-20854-21.
32. The Tenant testified that the cameras made the Tenants feel uncomfortable and uneasy about using the rental unit or complex. The Tenants had constructed a curtain system in their backyard to preserve some privacy and prevent the Landlords' cameras from seeing them.
33. CB testified that the Tenants did not ask the Landlords to remove the cameras. CB also stated that she was only aware of three cameras on the property.
34. CB testified that the cameras were still on the property, however no evidence showing that they were still operational was presented at the hearing, even though the allegation that the cameras were removed just before the tenancy ended was clearly stated on the Tenants' application.
35. The Landlord, Kevin Brady (KB) stated that the cameras were not pointed at the Tenants' property or rental unit, but at entry points of the rental property and complex. KB stated that there had been a rash of break-ins occurring in the area and since KB had a significant amount of valuable property that could be stolen, the Landlords wanted to ensure that the property had proper surveillance in case anything was stolen.

36. The Landlords did not give evidence of any other cameras that they had installed on the property that may have been pointing at their own entrances, such as their own front or rear door, or their garage access points.

Analysis

37. Section 23 of the Act states that a “landlord shall not harass, obstruct, coerce, threaten, or interfere with a tenant.”

38. While the term “harassment” is not defined in the Act, it is generally held that harassment is conduct that the Landlord knew or ought to have known would be unwelcome by the Tenant.

39. Based on the evidence before me, I am satisfied, on a balance of probabilities, that the Landlords installed cameras throughout the rental complex for the purpose of the surveillance and intimidation of the Tenants, and not as a genuine security measure.

40. The cameras located on all of the sheds appear to be aimed at the Tenants’ property. If the cameras were installed for the purpose of securing the Landlords’ property, then it would be reasonable to expect that some cameras would be pointed at the Landlord’s storage sheds rather than pointing them at their neighbouring tenants.

41. Furthermore, I would think that if security in the laundry room was of such a concern, the Landlords could have given the Tenants a key to the laundry room and kept it locked instead of continuing to leave the door unlocked and installing a security camera in the room.

42. The cameras used for surveillance appear to be large, and easily identifiable, which gives credence to the fact that the Landlords wanted to send a message to others that they are being watched.

43. I find that configuring surveillance equipment to observe the Tenants to be a form of conduct that should be known to be unwelcome, regardless of whether the Tenants informed the Landlords that the cameras facing them made them feel uncomfortable. The fact that the Tenants installed a privacy curtain in their backyard may have been an obvious clue that the Tenants were not happy with having cameras pointing into their backyard.

44. Any form of intimidation is an act to be known to be unwelcome. In this case, I am satisfied that the cameras were installed, at least in part, to make the Tenants feel uneasy, and intimidated. Furthermore, it would be reasonable to believe that any person who has a camera pointed at them as soon as they exited any building would feel uncomfortable.

45. I find that the Landlords both harassed and substantially interfered with the Tenants’ reasonable enjoyment of the rental unit by establishing their surveillance system of the Tenants’ rental unit in such a manner.

46. Since the older T2 application was filed in November 2021, section 29(2) prevents the Board from issuing an order for any damages beyond one year from when the application was filed. Even though the cameras were installed in September 2020, damages can only be considered from November 2020.
47. A rent abatement is a contractual remedy, which is based on the idea that if you pay 100% of the rent you, should get 100% of the goods and services you are paying for, and if not then you should be granted an abatement which represents the difference between what you are receiving and what you are paying for.
48. The Tenants are asking for a total of a 25% rent abatement for all issues brought before the Board in their application. In this case, I find that a 20% rent abatement would be appropriate.
49. The Landlords' actions caused the Tenants to have to think twice before exiting their unit or utilizing any of the yard space that they were entitled to use under their lease. Judging by the Tenants' evidence, being able to use the outside space was an integral part of the Tenants' use of the rental unit and the complex. Therefore, since I find that the Landlords have harassed the Tenants and in effect, substantially interfered with the Tenants' use of 20% of the rental unit/complex, I find that a 20% rent abatement is reasonable.
50. Therefore, the Landlords shall pay the Tenants a 20% rent abatement from November 2020 until April 2022, or \$ 2,565.00.
51. The Tenant provided evidence that the stress of being observed and scrutinized constantly was upsetting to deal with and caused excess stress to both Tenants.
52. Therefore, I also find that an additional \$1,000.00 in general damages are appropriate as I am satisfied that the Tenants endured pain and suffering due to this violation of their privacy.

Allegations of Intimidation (both T2s)

53. The Tenant testified that the Landlord, KB, harassed the Tenants, and their guests.
54. The Tenant testified that on multiple occasions, KB would stand outside, and glare at the Tenants.
55. The Tenant presented a photo of the Tenants' son and two daughters taken in August 2021. The Tenant pointed out that the photo showed KB sitting out in the backyard for the purpose of observing the Tenants.
56. The Tenant also testified that on numerous occasions, KB would approach guests of the Tenants and yell at them to move their cars from the parking area. The Tenant testified that most of these people were medical professionals such as PSWs, and nurses, who attended the rental unit to care for PM.

57. The Tenant testified that the parking in front of the Tenants' door was part of a roundabout with enough space for the Landlords to use if they needed to access the roundabout.
58. The Tenant testified that KB would often walk by the cars of the PSWs and the nurses and take videos or photos of the cars, as though gathering evidence.
59. The Tenant presented several videos. The following videos were recorded from the Tenants' own security camera mounted at their front entrance facing the driveway directly in front of their entrance.
60. The video from May 14, 2021, shows KB walking into the field of the TT's security camera after having looked into a PSW's car, and then "shot the finger" at the camera.
61. A video from July 21, 2021, shows KB actively taking pictures or videos of a PSW or nurse's car. Another video taken July 27, 2021, showed similar footage.
62. On November 12, 2021, KB confronted a PSW in an aggressive manner because the PSW's wheels were "on the front lawn". The Tenant submitted video footage of the video.
63. The Tenant testified that because of KB's aggression, many of the PSWs did not want to attend the unit. The Tenant did not present any evidence to substantiate this statement, nor did the Tenants have any of the PSWs come testify at the hearing.
64. Regarding the November 12, 2021, incident, KB testified that the reason he confronted the PSW was because the PSW was parked on the front lawn. He asked the PSW to move her car, and the PSW complied.
65. KB testified that he took pictures of the cars because they were parked on the lawn and not in the driveway or designated parking spots.

Analysis

66. Pursuant to section 23 of the Act, a landlord is to not substantially interfere with the Tenants' reasonable enjoyment of the rental unit or rental complex. Based on the evidence before me, the only issue that might constitute substantial interference would be if the Tenants had proven that the PSWs were not attending the unit because of KB's actions.
67. However, I find that the Tenants have not provided enough evidence to satisfy me that this resulted from KB's confrontations.
68. Furthermore, I find that KB's actions were not unreasonable. If a landlord believes they need to gather evidence to prove that a tenant is damaging their property, they are allowed to gather evidence if it is reasonable to do so, and it occurs where there is no reasonable expectation of privacy.
69. If the Landlords believe a person is parking on their lawn, they have the right to ask them to park off the lawn. When the PSW was asked to park somewhere else on November 12,

2021, the PSW was just asked to move her car. The PSW was not asked to leave the property. The PSW moved her car and was not impeded from entering the Tenants' unit.

70. The other issues regarding KB's shooting the finger at the camera, although unpleasant, does not rise to the level of substantial interference.
71. Regarding the photo taken in August 2021 showing KB sitting in his backyard, I find that this does not establish that the Landlords were attempting to intimidate the Tenants in any way.
72. I am not satisfied, based on the evidence before me, that the Landlords have harassed the Tenants or substantially interfered with the Tenant's reasonable enjoyment of the rental unit. Therefore, these claims are dismissed.

Laundry Room Access Issues (LTB-T-053035-22)

73. The Tenant testified that their tenancy included use of a laundry room that was for their exclusive use. The laundry room required the Tenant to leave the rental unit to access it from a door from the backyard. Throughout the tenancy, the Tenants were able to use the laundry room.
74. The Tenant testified that they had been locked out of the laundry room on January 14, 2021. The Tenant also testified that the laundry room was also locked once in February 2022, however a specific date was not given.
75. The Tenant's Witness, Nicole Viccica (NV), testified that she was living at the rental unit at the time. NV's testimony corroborated the Tenant's testimony regarding the laundry room door being locked on January 14, 2021.
76. Under cross-examination, NV stated that when she discovered that the door was locked, she had contacted the Landlord who came and unlocked the door within 30 minutes.
77. KB had testified that the door was being locked in the same security reasons that the cameras were installed, which was due to thefts that had occurred recently in the area.
78. The Landlords stated that they had not supplied the Tenants with a key to the laundry room.

Analysis

79. Based on the evidence before me, I am satisfied that the laundry room was available for the Tenants' use.
80. The two times the door was locked by Landlord appear to be isolated events. If locking the laundry room door on the Tenants was a form of harassment, I would believe that locking the door would occur significantly more often than once a year.

81. Furthermore, I find that having to wait 30 minutes or less to access the laundry room is more of an inconvenience than a substantial interference. Within 30 minutes, the Tenants had access. Had the locking out of the Tenants from the laundry room occurred more frequently than once a year, I might view the Landlords' conduct differently.

82. Therefore, I find that the Tenants' claim regarding the issues with access to the laundry room are denied.

Loss of Cable (LTB-T-067277-22)

83. The Tenant testified that at the beginning of the tenancy, the Landlords supplied a cable TV service to the Tenants.

84. The Tenant testified that in December 2020, the Landlords demanded the return of the cable converter box because they were no longer going to supply cable to the Tenants.

85. NV testified that she returned the cable converter box directly to KB on December 6, 2020.

86. The Tenants paid for their own cable television service as of December 2020.

87. The Tenants did not present any evidence, either oral or written, of the amount the Tenants had to pay to supply their own cable television services.

88. The Landlords did not contest the Tenants evidence on this matter.

Analysis

89. Based on the evidence before me, I am satisfied that the Landlords did substantially interfere with the reasonable enjoyment of the rental unit by removing the cable service supplied to the Tenants in December 2020.

90. The Tenants have not provided any evidence regarding any costs that they incurred due to the loss of the service, however this claim is part of the overall rent abatement that the Tenants are seeking.

91. Therefore, I find that a lump sum rent abatement of \$150.00 is appropriate.

T5 Application (LTB-T-006351-23)

92. The Tenants claim that the Landlords served an N12 Notice to Terminate the Tenancy in bad faith to the Tenants.

93. The Tenants vacated the rental unit on May 1, 2022, after the Divisional Court dismissed the Tenants' appeal against the order from the Board that granted the Landlords' application to evict the Tenants for the purpose of having the Landlord's mother move into the rental unit (SOL-20854-21).

94. The Tenants presented a substantial amount of evidence, both video and social media screenshots, of the Landlord's mother living in Florida or at a small trailer park nearby the rental complex.
95. The Tenants did not submit any evidence of the Landlord's mother's social media accounts or any video footage that was recorded after May 1, 2022, the date the Tenant's vacated the rental unit.
96. CB testified that her mother could not attend the hearing to testify because of an illness that had occurred a few days prior to the hearing, however, CB's mother's driver's licence was supplied as evidence. The driver's licence indicated that CB's mother's address as the rental complex.
97. CB testified that her mother moved into the rental unit one month after the Tenants vacated the unit. This was to allow contractors to alter the unit as to better accommodate CB's mother's needs.
98. As of today, CB's mother resides in the rental unit.

Analysis

99. Section 57(1) of the Act states:

57 (1) The Board may make an order described in subsection (3) if, on application by a former tenant of a rental unit, the Board determines that,

(a) the landlord gave a notice of termination under section 48 in bad faith, the former tenant vacated the rental unit as a result of the notice or as a result of an application to or order made by the Board based on the notice, and no person referred to in clause 48 (1) (a), (b), (c) or (d) occupied the rental unit within a reasonable time after the former tenant vacated the rental unit;

100. It is not disputed that the Tenants vacated the unit pursuant to section 48.

101. However, based on the evidence before me, I am satisfied that the person intended to move into the rental unit pursuant to the notice did move into the rental unit in a reasonable amount of time.


102. I find that the Landlords did not serve the notice of termination in bad faith, therefore, the Tenants' T5 application is dismissed.

It is ordered that:

1. The total amount the Landlords shall pay the Tenants is \$ 3,816.00. This amount represents:

- \$2,715.00 for the total rent abatement.
 - \$1,000.00 for general damages.
 - \$48.00 for the filing of LTB-T-067277-22, and
 - \$53.00 for the cost of filing LTB-T-053035-22
2. The Landlord shall pay the Tenant the full amount owing by October 23, 2023.
 3. If the Landlord does not pay the Tenant the full amount owing by October 24, 2023, the Landlord will owe interest. This will be simple interest calculated from October 25, 2023 at 7.00% annually on the balance outstanding.
 4. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.
 5. The Tenants T5 application, LTB-T-006351-23 is dismissed.

October 12, 2023
Date Issued



Robert Brown
Member, Landlord and Tenant Board

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