



## Order under Section 31 Residential Tenancies Act, 2006

**Citation:** BROWN v RAJA, 2023 ONLTB 60101

**Date:** 2023-09-28

**File Number:** LTB-T-001998-23

**In the matter of:** BASEMENT APT, 637 ALBERT STREET  
OSHAWA ON L1H4T4

**Between:** PAMELA BROWN

**And**

Muhammad Ejaz Raja  
Shabana Raja

I hereby certify this is a  
true copy of an Order dated  
**OCT 05 2023**  
Landlord and Tenant Board

Tenant

Landlord

PAMELA BROWN (the 'Tenant') applied for an order determining that and Muhammad Ejaz Raja and Shabana Raja (the 'Landlord') :

- entered the rental unit illegally.
- altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys.
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.

This application was heard by videoconference on August 9, 2023 and August 25, 2023.

The Landlord, Shabana Raja and the Tenant's Legal Representative's, Ashley Somerville and Austin Campbell and the Tenant's Litigation Guardian, Kelsey Ginman attended the hearing on both days.

R. O'Connor attended as witness for the Tenant.

Sohail Raja attended as witness for the Landlord.

### Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities.
2. The Tenant moved into the unit in approximately 2009. Her monthly rent was \$800.00 and she resided in the unit alone. The Tenant vacated the unit on November 21, 2022.

3. The Tenant filed this application alleging that she was illegally evicted from the unit, and as a result of that, the Landlord seriously interfered with her reasonable enjoyment of the unit and harassed her.
4. The Tenant participated in this hearing through her litigation guardian, K. Ginman. The Tenant signed on to the second day of hearings, but it was apparent that the Tenant did not have the capacity to provide meaningful insight and did not remain on the hearing.
5. There is no dispute between the parties that on November 21, 2022, the Tenant was brought to the Muslim Welfare House by an Agent of the Landlord. It is also not in dispute that the Landlord emptied out the unit on November 21, 2022 and threw away the contents. The unit was then renovated over an 8-week period and put on the market for sale.
6. Tenant's Evidence
7. Ms. Ginman is the Tenant's Litigation Guardian. She testified that the Tenant has an intellectual disability. Part of the challenges faced by the Tenant are her ability to independently make decisions and personal choices.
8. An Assessor Summary Report by Developmental Services Ontario dated March 23, 2018 was submitted into evidence. This report details the challenges faced by the Tenant and the supports required in order to assist the Tenant.
9. Ms. Ginman testified that the Tenant does not see herself as someone who has developmental issues so she is very reluctant to set up supports and will often shut down supports if she feels people are being too pushy towards her. The Tenant may become aggressive if she feels she is being pushed to do something. She testified that the Tenant is not capable of making her own decisions.
10. Ms. Ginman testified that the Tenant did not have a phone and her interactions with the Tenant would be in person on a drop-in basis.
11. On November 14, 2022, she testified that she saw the Tenant in person, and all appeared to be normal. The Tenant did not indicate that she wanted to leave the unit and there was nothing abnormal about her visit with the Tenant on that day.
12. On November 22, 2022, she received a phone call from the Tenant's outreach worker, Rachel O'Connor who attended the unit for a weekly check in. She reported that all of the Tenant's belongings were being removed from her unit and the Tenant was not present. Rachel advised Ms. Ginman that she was told that the Tenant had been taken to another location and was removed from the unit due to the inhumane conditions of the unit.
13. Ms. Ginman called the Tenant's Landlord and the Landlord's son. She left them both voice mails asking where the Tenant was so that she could preform a wellness check. She attended the unit so she could speak to the Landlord's son, Sohail.

14. When she arrived at the unit on November 22, 2022, she observed the Tenant's belongings on the grass. Pictures that show a large pile of belongings were submitted into evidence.
15. She testified that Sohail told her that the Tenant had become increasingly agitated over the weekend and was asked to leave. He told Ms. Ginman that he attempted to call her over the weekend. Sohail told Ms. Ginman that the Tenant was brought to the Muslim Welfare House on November 21, 2022, but that she was turned away and was subsequently brought to the Kingsway Motel and the Muslim Welfare House would pay for her stay until November 26, 2022.
16. Ms. Ginman asked Sohail if the Tenant could come back to her apartment after that and he told her that she was not welcome back to the apartment as they plan to renovate it.
17. Ms. Ginman testified that the Landlord's son told her that the Tenant threw her keys to the unit on the floor when she became agitated and said that she would leave the unit.
18. Ms. Ginman attended the Kingsway Motel on November 23, 2022 to bring the Tenant some toiletries and the Tenant expressed to Ms. Ginman her anger towards the Landlord's son for not allowing her to bring more of her belongings with her. The Tenant expressed to Ms. Ginman that she did think it was fair that the landlord's son left her there to do renovations in the unit.
19. Ms. Ginman testified she checked in with the Tenant's support team on November 24, 2022. She was advised that the motel was contacted and told not to discharge the Tenant on November 26, 2022 and the Landlord's son would be paying for ongoing motel fees if the Tenant was to stay there.
20. Ms. Ginman testified that the Landlord's son attended at the motel prior to November 26, 2022 and picked the Tenant up and brought her to a shelter in Ajax. The shelter was for abused women and children, so the Tenant was not allowed to stay there. The shelter allowed the Tenant to make a phone call, so the Tenant called a cab and proceeded to travel to Peterborough. There, the Tenant stayed in a Motel until she ran out of money.
21. Ms. Ginman did not become aware of this until after the fact. Ms. Ginman testified that the Landlord's son would not disclose where he took the Tenant after picking her up from the Kingsway Motel. As a result, the Tenant's support team filed a missing person's report.
22. The Tenant's location was eventually discovered by looking at the Tenant's bank statement and discovering charges to a motel in Peterborough. The Tenant was subsequently brought to Peterborough Regional Hospital and was released. The hospital paid for a cab to bring the Tenant back to the Kingsway Motel in Oshawa.
23. The Tenant stayed in the motel from December 1, 2022 until January 18, 2023, and then moved into a unit that requires her to share her space. Ms. Ginman testified that it is not ideal for the Tenant to share space with other tenants due to the difficulties presented by her developmental issues.

24. R. O'Connor testified on behalf of the Tenant. She testified that she has been the Tenant's mental health worker since July 2021. She attended the unit on November 22, 2022 for her check in and the Tenant was not there. She was told by the Landlord's son that the Tenant became angry and was asked to leave. She observed the Tenant's property being removed from the unit and placed on the lawn and driveway. She testified that she was told that the unit was being renovated.

#### Landlord's Evidence

25. Ms. Raja is the Landlord's wife. She testified that the Tenant has lived in the unit since approximately 2013. She is aware of the Tenant's developmental delays, and she testified that she was the one who coordinated the Tenant's assessment with Developmental Services Ontario.
26. She testified that the relationship with the Tenant has always been good, and they have a good understanding of the Tenant's limitations.
27. Ms. Raja testified that she was out of the country for the time period relating to this application and her son was the person dealing with the Tenant.
28. Ms. Raja testified that her son attempted to contact the Tenant's developmental services worker on November 18, 2022, when the Tenant was becoming increasingly agitated. A call was also placed by the Landlord's son to the Muslim Welfare House on that day to attempt to secure a spot for the Tenant to go. Ms. Raja testified that her son explained to Muslim Welfare House that the reason for the call was that the Tenant was becoming increasingly agitated and expressed her desire to leave, and not because the Landlord was doing renovations and needed a place for the Tenant to go.
29. Ms. Raja testified that she did not have a notice in writing from the Tenant that she was vacating the unit and she did not obtain an order from the Board terminating the tenancy.
30. Mr. Raja testified on behalf of the Landlord. He is the Landlord's son and was acting on behalf of the Landlord while the Landlord was out of the country.
31. Mr. Raja testified that in the weeks leading up to November 21, 2022, the Tenant had become increasingly agitated and had been expressing her desire to no longer live in the rental unit. He testified he attended the unit on November 18, 2022 and observed the Tenant outside with her stuff. He asked her if she was ok and she told him that she can't live in the unit anymore. He testified that it took him a while to soothe her, and she ended up going back into the unit. He testified that he called the Muslim Welfare House on November 18, 2022 to see if they had any room for the Tenant. He testified that he told the Muslim Welfare House everything about the situation and the Tenant was agitated and they told him that he could bring the Tenant there. He testified that he decided to wait out the weekend in order to give the Tenant's support worker an opportunity to call him back and assist him with the situation and that is why he did not bring the Tenant to the shelter on November 18, 2022.

32. Mr. Raja testified that on November 19, 2022, he attended the unit, and the Tenant was sitting outside again with her stuff, she became agitated and threw her keys to the unit on the ground and stated she wanted to leave. He testified that he gave the keys back to the Tenant.
33. He testified on November 21, 2022, he attended the unit and confirmed with the Tenant that she did not want to stay in the unit, and she stated that she didn't. He then called the Muslim Welfare House to confirm they still had space for the Tenant, and they did so the Tenant was brought there.
34. He testified that he started removing the Tenant's belongings from the unit on November 21, 2022.

### Analysis

35. Section 37 of the *Residential Tenancies Act, 2006* says that a Tenancy can only be terminated in accordance with the Act.
36. Section 39 of the Act says:
  - 39** A landlord shall not recover possession of a rental unit subject to a tenancy unless,
    - (a) the tenant has vacated or abandoned the unit; or
    - (b) an order of the Board evicting the tenant has authorized the possession.
37. The Landlord submits that the Tenant gave notice to terminate the tenancy when she expressed her desire to vacate the unit and when she threw her keys on the floor in front of the Landlord's son.
38. This interpretation by the Landlord is problematic for a number of reasons.
39. The Tenant in this circumstance suffers from documented developmental disabilities and is unable to independently make decisions or personal choices as set out in the Assessor Summary Report. The Tenant is assisted by a team of support workers to assist her in her ability to live independently. The Landlord testified to being well aware of the limitations of the Tenant.
40. I do not find that the Tenant expressing her desire to vacate the unit verbally constitutes a valid notice under the Act. Subsection 43 (1) of the Act says:

### **Notice of termination**

- 43** (1) Where this Act permits a landlord or tenant to give a notice of termination, the notice shall be in a form approved by the Board and shall,

- (a) identify the rental unit for which the notice is given;
- (b) state the date on which the tenancy is to terminate; and
- (c) be signed by the person giving the notice, or the person's agent. 2006, c. 17, s. 43 (1).

41. I do not accept that the Tenant throwing her keys to the unit on the ground while agitated constitutes a notice to terminate the tenancy for the same reasons detailed above.
42. Given what is outlined in the Assessor Summary Report, I do not find that the Tenant had the capacity to give notice to terminate her tenancy or agree to terminate her tenancy and would not understand the consequences of doing so.
43. This application is brought under the following sections:

**Landlord not to interfere with reasonable enjoyment**

**22** A landlord shall not at any time during a tenant's occupancy of a rental unit and before the day on which an order evicting the tenant is executed substantially interfere with the reasonable enjoyment of the rental unit or the residential complex in which it is located for all usual purposes by a tenant or members of his or her household. 2006, c. 17, s. 22.

**Landlord not to harass, etc.**

**23** A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant. 2006, c. 17, s. 23.

**Changing locks**

**24** 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. 2006, c. 17, s. 24.

**Privacy**

**25** A landlord may enter a rental unit only in accordance with section 26 or 27

44. Based on the evidence before me, I find on a balance of probabilities that on November 21, 2022, the Landlord substantially interfered with the Tenant's reasonable enjoyment of the unit, entered the Tenant's unit without notice in accordance with the Act and changed the locks and did not give the Tenant replacement keys.
45. The Landlord's son testified that the Tenant was agitated and "having a breakdown" and that is what lead him to call a local shelter to enquire if they had space for the Tenant.

This was not an appropriate course of action to follow. The Landlord had no right to make any decisions for the Tenant and was not in a position to do so. If the Landlord had concerns about the Tenant's wellbeing than the appropriate authorities should have been contacted. Bringing the Tenant to a local shelter and emptying her unit of her possessions was not appropriate.

### Remedies

46. The Tenant requested a rent abate in the amount of \$800.00 representing the rent she paid for November. I find that the Tenant is entitled to an abatement from November 21, 2022, when she was illegally evicted from the unit until November 30, 2022 in the amount of \$263.00.
47. The Tenant requested that the Board terminate her tenancy as of the date that she was illegally evicted from the rental unit. I find that this is reasonable in the circumstances and shall be ordered.
48. The Tenant requested an order for the costs related to replacing property that was disposed of by the Landlord in the amount of \$5,000.00. The Landlord submits that when the Tenant moved into the unit, it was partially furnished and some of the furniture in the unit did not belong to the Tenant. There was not evidence before me to suggest otherwise. I am unable to make a determination about replacement costs because I cannot determine what actually belonged to the Tenant. There is also no evidence before me to tell me how the Tenant came to the amount she is requesting, such as comparable items and what they cost. I decline to award costs related to replacing the property that was disposed of.
49. The Tenant requested an order for out-of-pocket expenses relating to hotel and food costs. The Tenant stayed in a motel after she was evicted, however, there was no evidence submitted in the form of receipts for either hotel or food costs.
50. The Tenant requested an order for general damages in the amount of \$25,000.00.
51. Generally, the usual award for general damages when a Tenant has been illegally locked out of their unit rests around \$2,500.00. In my view, the circumstances in this application are set apart from the normal course. I say this because of the Tenant's vulnerability and the underlying intentions of the Landlord, in that it appears that the motivation behind evicting the Tenant was driven by the desire to renovate and sell the unit.
52. In these circumstances, I find that an award for general damages is warranted. The Tenant is a vulnerable person who has documented developmental delays. She was dropped off at a shelter, then a motel, then another shelter and subsequently took a cab to another town and did not have the social supports in place to assist her. The Tenant was displaced for over a month and now in a living situation that is not ideal for her special needs, as she is living with other Tenants. I accept that as a result of being illegally evicted, the Tenant suffered great emotional stress and significant inconvenience. I find that general damages in the amount of \$10,000.00 is warranted in these circumstances.

53. The Tenant requested that the Landlord be ordered to pay a fine to the Board. The Board's interpretation guideline 16 on Administrative Fines states:


An administrative fine is a remedy to be used by the Board to encourage compliance with the Residential Tenancies Act, 2006 (the "RTA"), and to deter landlords from engaging in similar activity in the future. This remedy is not normally imposed unless a landlord has shown a blatant disregard for the RTA and other remedies will not provide adequate deterrence and compliance.

54. Based on the evidence before me, I find that the actions of the Landlord were particularly egregious. The Landlord testified that they were well aware of the Tenant's limitations yet went ahead with taking her to a shelter and emptying out her unit the same day. The Landlord then renovated the unit and put it on the market. I am not satisfied that the remedies awarded to the Tenant are sufficient to deter the Landlord from behaving the same way in the future. As a result, I believe an administrative fine in the amount of \$2,000.00 is appropriate in the circumstances.

**It is ordered that:**

1. The total amount the Landlord shall pay the Tenant is \$12,263.00. This amount represents:
  - \$263.00 for a rent abatement.
  - \$10,000.00 for general damages
2. The Landlord shall pay the Tenant the full amount owing by October 16, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by October 16, 2023, the Landlord will owe interest. This will be simple interest calculated from October 17, 2023 at 7.00% annually on the balance outstanding.
4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.
5. The Landlord shall pay to the Landlord and Tenant Board an administrative fine in the amount of \$2,000.00 by October 16, 2023.
6. The tenancy between the Landlord and the Tenant is terminated as of November 21, 2022.

**October 5, 2023**  
**Date Issued**

  
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Emily Robb  
Member, Landlord and Tenant Board

15 Grosvenor Street, 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.