Order under the Residential Tenancies Act, 2006

Citation: Aldairi v Tova Anderson, 2023 ONLTB 64401
Date: 2023-10-19
File Number: LTB-T-073924-22
and LTB-L-022169-22

In the matter of: 311 THIRTIETH STREET
ETOBICOKE ONTARIO M8W3E4

Tenant

Between: Saeed Aldairi

And

Landlord

Marissa Tova Anderson

This order relates to two applications: (a) a T2 application—LTB-T-073924-22; and (b) an L1/L2 application—LTB-L-022169-22, both involving Saeed Aldari (the 'Tenant') and Marissa Tova Anderson (the 'Landlord').

I heard these applications on July 11, 2022 , August 17, 2022 , December 13, 2022 , May 23, 2023 and July 3, 2023. The Tenant and the Landlord attended before me on all of the hearing dates. The Landlord was initially represented by Anna Vinberg and then by Dan Schofield.

These applications were initially being heard together with three applications concerning 296 Thirtieth St—LTB-L-022138-22, LTB-T-073500-22 and LTB-T-028622-22. The landlord on those applications was also represented by Ms Vinberg. The tenant on those applications is the former partner of the Tenant and the factual assertions on those applications are similar to the factual allegations on these applications. At some point, however, the Landlord retained Mr. Schofield to represent her and LTB-L-022138-22, LTB-T-073500-22 and LTB-T-028622-22 and were not before me on May 23, 2023 and July 3, 2020.

I heard evidence from the Tenant and the Landlord. I also considered the documents and video evidence filed by the Landlord and the Tenant.

On July 20, 2023, I exercised my jurisdiction under paragraph 201(1(e) of the *Residential Tenancies Act, 2006* (the 'RTA') and conducted a site visit to the rental unit. I did that because I was not satisfied with the quality of the evidence that I had before me on the L2 application with respect to the damage the Landlord asserted the Tenant had caused to the rental unit and whether the Tenant had addressed that damage. The information gathered by me at that site visit is no longer relevant because the Landlord withdrew the L2 application.

Determinations:

I. The Applications

A. T2 Application—Tenant Rights

1. The T2 application was filed on November 9, 2021. On the T2, the Tenant asserted that the Landlord: (a) illegally entered the rental unit; (b) substantially interfered with his reasonable enjoyment of the unit; (c) harassed him; and (d) withheld vital services.

B. L1 Application—Unpaid Rent

2. The L1 application is based on the assertion that the Tenant has not paid rent.

3. The Tenant agreed that he owed rent when the hearing of these applications started on August 17, 2022. The only issues remaining to be determined on the L1 are: (a) how much rent the Tenant owes to the Landlord; and (b) whether an order should made terminating the tenancy and evicting the Tenant.

C. L2 Application—Substantial Interference and Illegal Act

4. The L2 application was based on the assertion that the Tenant: (a) altered the rental unit and in doing so caused damage to the unit; and (b) operated an unlicensed rooming house. The Landlord requested permission to withdraw that application. The Tenant did not oppose and I consented to the Landlord withdrawing the L2.

II. Background

5. The rental unit is a single-family home. It has four bedrooms and a finished basement.

6. The Landlord rented the unit to the Tenant under a written tenancy agreement dated July 27, 2021.

7. At the root of these applications is the Tenant's decision to take on paying roommates. The Tenant concedes that he advertised for and took on foreign students as roommates and those roommates paid him to reside in the rental unit.

8. There is no prohibition on a tenant taking in roommates, even paying roommates, provided that the tenant continues to occupy the unit such that that situation does not become a sublet or assignment. **[See, for example, *Gold* v *Nead*, 2020 CanLII 117246 (ON LTB)]** In the course of taking in roommates a tenant cannot, however: (a) substantially interfere with the landlord's lawful rights, privileges or interests; (b) wilfully or negligently damage the unit; or (c) commit an illegal act or carry on an illegal business.

9. Where a landlord asserts that, in the course of taking in roommates, a tenant: (a) substantially interfered with the landlord's lawful rights, privileges or interests; (b) wilfully or negligently damaged the unit; or (c) committed an illegal act or carried on an illegal business, the landlord's remedy is to deliver a notice of notices of termination under the RTA

and, if appropriate, bring an L2 application under section 69 seeking an order terminating the tenancy and evicting the tenant.

10. In this case, the Tenant installed a temporary wall in the basement of the unit to create two additional bedrooms for his roommates, which the Landlord asserted caused damage to the unit. The Landlord also asserted that the number of roommates that the Tenant took in resulted in a contravention of a municipal by-law that required that the operator of a rooming house obtain a municipal license, which the Tenant did not have.

11. On November 29, 2021, the Landlord delivered:

    (a) a first (voidable) N5 notice **[DOC-118779]** asserting that the Tenant had: (i) substantially interfered with her lawful rights, privileges or interests; and (ii) wilfully or negligently damaged the unit, and asserting that it would cost $13,849.232 to repair the damage caused by the Tenant;

    (b) an N6 notice **[DOC-118783]** asserting the Tenant had committed an illegal act or carried on an illegal business; and

    (c) an N7 notice **[DOC-118786]** asserting that: (i) the Tenant seriously impaired the safety of another person; (ii) wilfully damaged the unit; and (iii) used the rental unit in a way inconsistent with its use as residential premises.

12. The actions of the Tenant upon which the N5, N6 and N7 were based were described in a schedule attached to each notice. The schedules for each of the N5, N6 and N7 notices were identical.

13. On December 7, 2021, the Landlord filed an L2 application based on the N5, N6 and N7 notices.

14. Had the Landlord only delivered notices of termination and filed an L2 application, the Tenant would have had no cause to dispute the Landlord's actions or to assert that the Landlord harassed him or interfered with his reasonable enjoyment of the rental unit. However, the Landlord went further. The Landlord took it upon herself to interact directly with the Tenant's roommates under the pretense of looking out for their well-being and instigated the neighbours to put pressure on the Tenant. Then, when she became frustrated with how long it was taking for the LTB to schedule her applications for a hearing, the Landlord went to the media and facilitated an online story by the CBC.

15. The CBC article was published on July 18, 2022. **[DOC-285255]** That article was 'picked up' by a number of online news sources and was widely circulated. **[See DOC-285257]**

III. Amendment of the Tenant Application

16. The CBC article was published after the T2 application was filed, but the Landlord did not object to me considering the issues arising as a result of the article being published and its impact on the Tenant. To the extent necessary, I exercise my jurisdiction to amend the T2 application as necessary to include the CBC article. **[*Rules of Procedure*, Rule 15.4]**

17. I also exercise my jurisdiction to amend the Tenant's application as necessary to reflect that the actions and conduct of the Landlord referred to in the T2 applications continued after the applications were filed. It is common practice for the LTB to address actions and conduct that occurred in the interim between the filing and hearing of applications rather than requiring that the applicant file a new application. **[See *Alexandre* v *Jones*, 2022 CanLII 82028 (ON LTB)]** This approach is consistent with the obligation to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter. **[RTA, s. 183]**

IV. Preliminary Issue—Reasonable Apprehension of Bias

18. At the beginning of the hearing on July 3, 2023, the Landlord requested that I recuse myself because she asserted there was a reasonable apprehension that I was biased against her.

19. An adjudicator's impartiality is presumed and a party seeking disqualification must establish that the circumstances justify a finding that the adjudicator must be disqualified.

20. The criterion of disqualification is the reasonable apprehension of bias. The test for reasonable apprehension of bias objective: whether a reasonable, informed person, viewing the circumstances realistically and practically, would conclude that the decision-maker may not be impartial or fair. **[See *Wewaykum Indian Band* v *Canada*, 2003 SCC 45 (CanLII), [2003] 2 S.C.R. 259 (CanLII), *Yukon Francophone School Board, Education Area #23* v *Yukon* (Attorney General), 2015 SCC 25 (CanLII) and *Bailey* v *Barbour*, 2012 ONCA 325 (CanLII)]**

21. The threshold for a finding of real or perceived bias on the part of an adjudicator is high. An allegation of reasonable apprehension of bias calls into question not only the personal integrity of the adjudicator, but the integrity of the entire administration of justice as it relates to the matters that are determined by the LTB. **[See *Bailey* v *Barbour*, 2012 ONCA 325 (CanLII), paras 17-19]**

22. The Landlord asked that I recuse myself based only on Mr. Schofield's hearsay evidence of what I said and what took place at previous attendances and my on-site visit on July 20, 2022.

23. Mr. Schofield indicated that his factual assertions were based on what he had been told. The Landlord did not provide evidence in support of her request that I recuse myself, although she was in attendance on July 3, 2023, and Ms Vinberg was not summoned to provide evidence. There were no transcripts of the previous attendances, notwithstanding that, based on information on TOP, the Landlord requested the recordings on June 4, 2023.

24. In preparing for the attendance on July 3, 2023, I had reviewed my personal notes and gone over the recordings from the previous attendances to refresh my memory. I was, as a result, prepared to consider and address Mr. Schofield's assertions as to what was said by me and what had taken place before me without having to adjourn the applications.

25. I am not satisfied that the Landlord has established that a reasonable, informed person, viewing the circumstances realistically and practically would conclude that I may be partial or unfair based on the allegations made by Mr. Schofield. I will address each of Mr. Schofield's allegations separately.

26. Mr. Schofield asserted the fact that during the site visit on July 20, 2022, in response to the Landlord identifying what she asserted was 'damage', I indicated that I did not consider what she pointed out as being 'damage' to the unit was evidence of bias.

27. I do not think that an informed person observing an adjudicator making a factual finding could possibly conclude that the adjudicator may by partial or unfair. The fact of the matter was that what the Landlord identified as being 'damage' to the unit could not, in my view, possibly be considered 'undue damage' that could ground an application based under section 62 or section 63 of the RTA. What the Landlord identified as 'undue damage' were small nail holes.

28. Mr. Schofield asserted that the fact that I cautioned the Landlord on July 20, 2022 that nothing about my site visit that day should be reported in the media was evidence of bias.

29. I do not think that an informed person observing an adjudicator cautioning a party who had previously co-operated with the media to publish a story concerning an application pending before the LTB against reporting in the media the details of a site visit could possibly conclude that the adjudicator may be partial or unfair.

30. Mr Schofield asserted that by my words I implied that a substantial rent abatement would be granted to the Tenant based on the CBC article. Once the Tenant brought the CBC article to my attention, I raised the Landlord's participation in the article, as an issue that would factor into any remedy granted to the Tenant. **[17 Aug 22 Recording 1:26:04]** However, I made no comment(s) that could be interpreted as deciding that an abatement would be granted based on the article. I was careful in terms of describing to the parties the basis upon which an abatement is determined by the LTB. **[17 Aug 22 Recording 1:27:47]**

31. I do not think that an informed person observing an adjudicator identifying to the parties the significance of an issue could possibly conclude that the adjudicator may be partial or unfair.

32. Mr. Schofield raised that an attendance in May of 2023 that I indicated would be scheduled for an entire day ended up being scheduled for only an hour as being evidence of bias.

33. I do not think that an informed person would conclude that the adjudicator may be partial or unfair based on a scheduling issue. I note that scheduling is an administrative function performed by LTB staff.

34. Mr. Schofield asserted that during my site visit on July 20, 2022, I had a private conversation with the Tenant. That is simply not true. At all times during my site visit on July 20, 2022, the Landlord and/or Ms Vinberg were present.

35. Mr. Schofield raised the fact that during my site visit on July 20, 2022, I asked the Landlord at one point to leave the rental unit.

36. I asked the Landlord to leave the unit because, despite my cautioning her, she became verbally aggressive with the Tenant and I felt it was necessary to de-escalate the situation by separating the Landlord and the Tenant to avoid the possibility of a physical interaction. The Tenant was not represented and it was not, in my view, appropriate for me to ask him to leave his own home in circumstances where it was the Landlord who was being aggressive. Ms Vinberg remained in the unit and the Landlord re-joined after we exited the unit.

37. I do not think that an informed person observing an adjudicator taking steps to de-escalate a situation could possibly conclude that the adjudicator may be partial or unfair.

38. Mr. Schofield raised my engagement with a person whom I observed recording my site visit on July 20, 2022.

39. On July 20, 2022, I engaged with a person whom I observed recording the site visit and informed him that recording was not permitted. The individual, who refused to identify himself, apologized and deleted the video. There was no one else present when I engaged with this person.

40. I do not think that an informed person observing an adjudicator interacting with a person recording what amounts to a hearing of the LTB to advise that person that recording is not permitted could possibly conclude that the adjudicator may be partial or unfair.

41. Mr. Schofield asserted that during my site visit on July 20, 2022, I requested that the neighbours who came to observe 'leave'. What in fact happened is that I asked the neighbours who had come to observe the site visit to move back from an engagement between myself, the Landlord and the Tenant.

42. At the conclusion of my site visit on July 20, 2022, while I was speaking to the Landlord and the Tenant as to the next steps, neighbours congregated around us. I was not comfortable with how the situation was developing and I asked them to move back.

43. I do not think that an informed person observing an adjudicator asking observers to move back from an interaction could possibly conclude that the adjudicator may be partial or unfair.

44. Mr. Schofield asserted the fact that at an attendance on August 17, 2022, I asked the Landlord to affirm that she had not, as the Tenant implied, been involved in inappropriate social media engagements introduced into evidence by the Tenant **[DOC-299472]** was evidence of bias.

45. I do not think that an informed person observing an adjudicator taking evidence out of sequence to address an immediate issue could possibly conclude that the adjudicator may not be impartial or fair. I also note that I was clear that I was not attributing the engagements to anyone. **[See 17 Aug 22 Recording, 1:06:30 and 1:07:26]**

46. Mr. Schofield raised the fact that I decided not to issue an eviction order based on the failure of the Tenant to comply with an agreement he had made with the Landlord to pay rent. This related: (a) the Landlord and the Tenant reached an agreement that the Tenant would pay

rent; and (b) the Landlord asserted that the Tenant had not complied with that agreement and I requested that I make an order terminating the tenancy and evicting the Tenant. I did not make the order requested by the Tenant and, on May 23, 2023, I made an oral direction that the Tenant would be able to set off against rent owing any compensation awarded on the T2 application. **[DOC-1469991]**

47. I fail to see how the fact that an adjudicator refused to make an order requested by a party can be evidence of bias.

48. I wish to make a final comment about the Landlord's request that I recuse myself.

49. It is the right of any party before the LTB who believes that an adjudicator has demonstrated bias to request that the adjudicator recuse themself. However, asserting that an adjudicator has demonstrated bias is a serious matter and where, in this case, there are assertions that the adjudicator acted in an inappropriate manner, the party making the assertion should, in my view, either provide transcripts or have someone who has personal knowledge of the facts testify. In this case, the only evidence before me was the hearsay evidence of Mr. Schofield While I accepted and considered Mr. Schofield's evidence **[*Rules of Procedure*, Rule 6.1]**, it might have been better had Mr. Schofield not put himself into the position of being a witness, particularly without, it would appear, himself having reviewed the recordings to verify that the factual assertions he was making as a witness were accurate. I note that the Paralegal Rules of Conduct say:

4.01 *(5) When acting as an advocate, the paralegal shall not,…*

(f) knowingly assert as true, a fact when its truth cannot reasonably be supported by the evidence or as a matter of which notice may be taken by the tribunal;

50. I also wish to comment on the fact that the Landlord submitted no cases or other authority in support of the request that I recuse myself. While I appreciate that proceedings before the LTB are intended to be summary, the general practice adopted by legal representatives of not submitting cases or authorities to support remedies requested by their clients that go beyond the ‘standard’ remedies the LTB deals with on a daily basis puts the adjudicator in the position of having to conduct legal research. While not required by the LTB's *Rules of Procedure*, the better practice is, in my view, for legal representatives to conduct their own research and submit relevant authorities in advance of the hearing.

V. Merits of the Tenant Application

A. Illegal Entry

51. The relevant sections of the RTA say:

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

26 *(1) A landlord may enter a rental unit at any time without written notice,*

(a) in cases of emergency; or

(b) if the tenant consents to the entry at the time of entry.

***27** (1) A landlord may enter a rental unit in accordance with written notice given to the tenant at least 24 hours before the time of entry under the following circumstances:*

1. To carry out a repair or replacement or do work in the rental unit.

…

4. To carry out an inspection of the rental unit, if,

i. the inspection is for the purpose of determining whether or not the rental unit is in a good state of repair and fit for habitation and complies with health, safety, housing and maintenance standards, consistent with the landlord's obligations under subsection 20 (1) or section 161, and

ii. it is reasonable to carry out the inspection.

5. For any other reasonable reason for entry specified in the tenancy agreement.

52. The Tenant asserted that: (a) the Landlord entered the rental unit on one occasion without delivering a notice of entry; (b) the Landlord delivered notices of entry that misrepresented the purpose for the entry; (c) the Landlord attended at the unit with her husband; and (d) there were an excessive number of notices of entry given.

53. There is no dispute that the Landlord entered the unit on November 1, 3, 5, 11 and 19, and December 6, 2021.

54. According to the Landlord:

(a) she entered the unit on November 1, 2021 because of information she had received from a neighbour to the effect that the Tenant was operating an illegal rooming house

(b) she entered the unit on November 3, 2021 with the consent of the Tenant;

(c) she entered the unit on November 5, 2021 because she was invited or permitted to do so by the police;

(d) she entered the unit on November 11, 2021 with the Tenant's consent to inspect the repairs being undertaken by the Tenant in accordance with the first (voidable) N5 notice; and

(e) he entered on December 6, 2021 to conduct an inspection of the unit.

55. I am satisfied that the Landlord posted notice as required by the RTA or had the Tenant's consent to enter the unit on November 1, 3, 11 and 19, and December 6, 2021. The Landlord posted notices of entry for other dates in November and December of 2021, but was denied entry by the Tenant.

56. There is nothing in the RTA that prohibits a landlord from bringing someone with them when they enter a unit. I find that the fact that the landlord brought her husband to the unit with her does not render the Landlord's entry illegal.

57. With respect to the entry on November 1, 2021, the Tenant asserts the Landlord delivered a notice of entry asserting that she wanted to change the furnace filter, but when she attended the unit she undertook an inspection of the unit. The notice of entry given for November 1, 2021 indicated the landlord wanted to change the furnace filter. **[DOC-285243]** The Landlord testified, however, that she actually attended the unit on November 1, 2021 to conduct an inspection of the unit based on information she had received from a neighbour and not to change the furnace filters.

58. In my view, it is improper for a landlord to deliver a notice of entry that misrepresents the purpose for which the landlord is making entry.

59. The Landlord does not dispute that no notice of entry was given for November 5, 2021. According to the Landlord:

    (a) on November 5, 2021, she and her husband were passing the property after returning from groceries when she observed a police car in front of the unit and the occupants so she stopped, identified herself to the police;

    (b) she was advised by the police that the Tenant had: (i) opened all the windows and turned on the air conditioning in the unit; (ii) forbade the basement occupants from entering the upstairs; and (iii) left the unit; and

    (c) the police told her that she, as the landlord, needed to ‘fix’ the situation.

60. I do not accept the Landlord's assertion that she was permitted to enter the unit on November 5, 2021 because she was invited to do so by the police.

61. At the root of what happened on November 5, 2021—indeed much of what has happened between the Landlord and the Tenant—appears to be that the Landlord does not understand that in entering into a tenancy agreement the landlord gives the tenant the right to possession of the unit to the exclusion of all others, including the landlord. The Landlord's only right to enter a rental unit were those specified in the RTA—while the Landlord remained the legal owner of the unit, her rights to the unit became subject to the RTA. The police have no jurisdiction to invite a landlord who has not provided notice as required by the RTA to enter a rental unit.

62. The burden was on the Landlord to establish that, on November 5, 2021, there was an emergency**.** The Landlord has not done that. I do not accept the Landlord's assertion that the weather on November 5, 2021 constituted an emergency based on there being a risk that the pipes in the unit would freeze. I note that the video evidence filed by the Landlord showed the police officers present that evening not wearing jackets and the Tenant filed weather reports that showed that the temperature on November 5, 2021 was well above freezing.

63. The Tenant filed a video in which a police officer clearly indicated that he did not 'permit' the Landlord to enter the unit. **[DOC-1581667]** The officer suggests that the Tenant's roommates—the officer described them as sub-tenants—invited the Landlord into the unit, but that is not what the Landlord asserted happened.

64. There is no limit in the RTA on the number of times a landlord may enter a unit and I address the number of notices of entry given by the Landlord below when I address whether the Landlord has substantially interfered with he Tenant.

65. In summary, I find that the Landlord entered the unit without proper notice on two occasions- November 1 and 5, 2021. The issue with the entry on November 1, 2023 was, however, what I would describe as technical rather than substantive.

B. Substantial Interference

66. Section 22 of the RTA says:

> ***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.*

67. The Tenant asserts that the Landlord substantially interfered with his reasonable enjoyment of the unit by: (a) interfering with the relationship between him and his roommates; (b) delivering an excessive number of notices of entry; (c) instigating the neighbours to surveil him; and (d) causing a negative story about him to be published by CBC; and

68. The assertions concerning the Landlord interfering with the Tenant's roommates and delivering an excessive number of notices of entry involve the direct conduct of the Landlord. The other two assertions involve what I would characterize as the indirect conduct of the Landlord. However, a landlord can, in my view, substantially interfere with the reasonable enjoyment of a rental unit or residential complex indirectly or directly. This issue the LTB must determine under section 22 is whether the conduct of the landlord resulted in substantial interference.

i. Interference with Relationship with Roommates

69. I have no hesitation in finding that the Landlord interfered in the relationship between the Tenant and his roommates and that this substantially interfered with the Tenant's reasonable enjoyment of the unit for all usual purposes.

70. There is, as noted above, no prohibition on a tenant taking in roommates, even paying roommates, provided that the tenant continues to occupy the unit such that the situation does not become a sublet or assignment. This means that in circumstances where a tenant decides to have roommates, a landlord cannot engage in actions or conduct that substantially interferes in the relationship between the tenant and the tenant's roommates.

71. The interactions between the Landlord and the Tenant's roommates are reported in the CBC article and the Landlord did not deny that she interacted with the roommates.

72. There was evidence of the Landlord interacting directly with one of the Tenant's roommates and asserting that the Tenant had defrauded him. **[DOC-234815]** By her own admission, the Landlord went so far as to advise one of the Landlord's roommates—Ankit Godara—on how to file a T2 application against the Tenant.

73. The Landlord's interactions with the Tenant's roommates resulted in the roommates severing their relationship with the Tenant and vacating the unit. This, in my view, constituted substantial interference with the Tenant's enjoyment of the unit for all usual purposes.

74. While she attempted to justify her engagement with the Tenant's roommates on the basis that she was assisting them, the roommates were all adults and there was, in my view, no justification for the Landlord to interfere in the relationship between the Tenants and his roommates.

ii. Notices of Entry

75. The delivery by a landlord of multiple notices of entry can constitute substantial interference. I am unable to find, however, that the notices of entry provided to the Tenant by the Landlord in this case constituted substantial interference.

iii. Neighbours

76. I have no hesitation in finding that the Tenant's neighbours have been surveilling him. The Tenant testified as to the actions of some of his neighbours and there was video evidence of a masked neighbour coming up to the Tenant's door and taking a picture. **[DOC299387]** I also note that during my site visit on July 20, 2023, a large group of neighbours, all of whom seemed to know and to be quite friendly with the Landlord, were gathered waiting for my arrival.

77. I also have no hesitation in finding that the Landlord instigated and even encouraged the neighbours to interfere with the Tenant. I find that it is more likely than not that the Landlord sought to use the neighbours to make the Tenant uncomfortable in an effort to force him to vacate the unit.

78. While the Landlord may not be directly responsible for the actions of the neighbours, she is responsible for having instigated them and I find that her instigating the neighbours substantially interfered with the Tenant's reasonable enjoyment of the unit.

iv. CBC Article

79. On July 18, 2022. the CBC published a story titled 'Landlords struggle to evict tenants who turned Toronto homes into rooming houses, owe rent' written by Angelina King and Griffin Jaeger. The story focussed on these applications and the applications involving the Tenant's former partner and her landlord that are referenced above.

80. The CBC article appears to have been widely circulated **[DOC-285257]** and resulted in at least one what I would consider racially motivated attack on the Tenant, three threats of physical violence and one post asserting the Tenant was linked to 'organized crime' **[See, for example, DOC-285253]** There were also links published to the social media account of the Tenant's business.

81. The Landlord, in my view, provided the CBC was misleading information.

82. The caption under a picture of the Landlord and Oksana Kravchuk-the landlord of 296 Thirtieth St-reads:

    Marissa Andersson (L) and Oksana Kravchuk (R) say they're owed a combined nearly $120,000 in rent, utilities damages and legal costs after their tenants renovated their homes into rooming houses.

83. The assertion that the Landlord and Ms Kravchuk were together owed $120,000.00 was repeated in the body of the article.

84. I am not aware of the legal costs incurred by the Landlord and Ms Kravchuk, but: (a) the Landlord claimed less than $16,000.0 for the damage caused by the Tenant and was owed $26,520.00 in rent as at July 4, 2022; and (b) Ms Kravchuk claimed $35,000.00 for the damage caused to her rental unit and $23,980.70 in rent as at July 4, 2022.

85. I find it more likely than not that the Landlord exaggerated the amount owed by the Tenant to sensationalize the article in an attempt to increase the impact the article would have on public opinion.

86. The Landlord, in my view, provided the CBC with information that was intended to portray the Tenant as a 'bad person'.

87. In connection with the circumstances surrounding what I have found to be the Landlord illegally entering the unit on December 5, 2023 Andersson is quoted as saying:

    These new immigrants to Canada are being victimized and in our home - what used to be our home. The idea that's happening just made us feel sick.

88. The Landlord is also quoted as saying:

    There are no consequences….I can't even step foot on my driveway[1] *or I'm breaking the rules. The system that allows that is broken.*

89. The CBC story also includes a link to a video interview of the Landlord in which she accuses the Tenant of 'victimizing' his roommates.

[1] This reflects, in my view, the Landlord's lack of understanding that the driveway to the unit was no longer 'her' driveway in the sense that she had, subject to the RTA, given the Tenant the right to occupy the unit to the exclusion of all other, including the legal owner.

90. Based on statements made by the authors in the CBC article, it appears that the Landlord provided CBC with photographs and video of the interior of the rental unit.

91. The Landlord asserted that the CBC approached her. I do not accept that assertion. The entire article is focused on these applications and the applications concerning 296 Thirtieth St.

92. There is nothing wrong with a landlord taking their dispute with a tenant to the media, but there may be consequences to having done so where the result is interference with the tenant's reasonable enjoyment of the rental unit. In this case, I find that it is more likely than not that the Landlord went to the media because she was frustrated that her L1 and L2 applications were not being resolved as quickly as she would have liked. I further find that it is more likely than not that the Landlord went to the media in the hopes of putting pressure on the Tenant to vacate.

93. I note that, in my view, the fact the Tenant had an opportunity respond 'on the record' to the allegations made by the Landlord to the CBC does not mitigate the Landlord's conduct. The Tenant—correctly in my view—determined to not litigate this application in the media.

C. Harassment

94. Section 23 of the RTA says:

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

95. The Tenant's asserts that the Landlord harassed him based on: (a) the actions of the Landlord; (b) the actions of the neighbors; and (c) the CBC article.

96. The RTA does not include a definition of 'harass', but the term has been interpreted to mean a course of vexatious conduct that is known or ought reasonably to be known to be unwelcome. **[See, for example, *Toronto Community Housing Corporation* v *Pac*, 2021 CanLII 146690 (ON LTB)]**

97. The conduct described by the Tenant does not, in my view, constitute a course of vexatious conduct that is known or ought reasonably to be known to be unwelcome.

98. I accept that the delivery by a landlord of multiple notices of entry can, depending on the circumstances, constitute harassment. I am unable to find, however, that the notices provided to the Tenant by the Landlord in this case constituted harassment.

99. The involvement of the Landlord in the actions of the Tenant's neighbours and the CBC article are, in my view, better characterized as matters that substantially interfered with the Tenant's reasonable use and enjoyment of the unit as opposed to harassment. However, I note that, were I to consider these matters are constituting harassment as well as resulting in substantial interference, it would not impact the remedy to which I find the Tenant is entitled

D. Interference with Vital Services

100. Section 21 of the RTA says:

21 (1) 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, withhold the reasonable supply of any vital service, care service or food that it is the landlord's obligation to supply under the tenancy agreement or deliberately interfere with the reasonable supply of any vital service, care service or food.

101. The RTA defines 'vital services' to mean hot or cold water, fuel, electricity, gas or, during the part of each year prescribed by the regulations, heat. **[RTA, s. 2(2) 'vital services']**

102. There is no factual basis established by the Tenant for the claim that the Landlord withheld vital services.

E. Remedies

103. On a T2 application the LTB has jurisdiction to, among other things: (a) order a rent abatement; (b) order the landlord to pay a specified sum to the tenant for reasonable out-of-pocket expenses the tenant has incurred or will incur as a result of the landlord's breach; and (c) make any other order the LTB considers appropriate. **[RTA, s. 31(1)]**

104. The Tenant requested: (a) a rent abatement; (b) out-of-pocket expenses based on the money that he would have received from his roommates for two months; (c) an order that, essentially, the Landlord comply with her obligations under the RTA; (d) general compensation for mental distress; and (e) an order that the Landlord pay an administrative fine.

i. Rent Abatement—$6,000.00

105. As noted by the Vice Chair in *TST-56138-14 (Re)* **[2015 CanLII 3162 (ON LTB)]**, '[a]batement of rent is a contractual remedy based on the principle that if you are paying 100% of the rent then you should be getting 100% of what you are paying for and if you are not getting that, then a tenant should be entitled to abatement equal to the difference in value.'

106. An abatement may be a lump sum payment the landlord is ordered to pay the tenant which effectively orders the landlord to give back part of the rent paid. It may also be an order allowing the tenant to pay less rent by a certain amount or percentage.

107. In determining what abatement to order on a T2 application the LTB will consider, among other things:

(a) what percentage of the 'package' of shelter and services the landlord contracted or was otherwise obliged to provide was not available to the tenant as a result of the actions of the landlord;

(b) the length of time the problem existed and the severity of the problem in terms of its effect on the tenant; and

(c) whether the tenant is fully or partially responsible for the issues.

108. In *Biltmore Terrace Apartments* v. *Nazareth* **[[1997] O.J. No 1881 (Gen Div)]**, a decision rendered under the old *Landlord and Tenant Act*, the Court remarked:

109. It is always difficult to arrive at a proper amount or percentage by way of abatement. There is no magic formula. What is appropriate in each case will depend on the circumstances…

110. Similarly, in *Offredi* v. *751768 Ontario Ltd.*, the Divisional Court found: (a) there is no neat formula for determining an appropriate amount by way of abatement; and (b) the ultimate objective is to set an amount that is fair in all the circumstances. **[1994 CanLII 11006 (ON SCDC)]**

111. The illegal entry by the Landlord on December 5, 2023, constituted, in my view, a significant breach of the RTA and a violation of the Tenant's privacy. The evidence before me indicated when they entered the unit on December 5, 2023, the Landlord and her husband went into and took video recordings of every room in the unit.

112. I accept that where a landlord legally enters a rental unit for the purpose of conducting an inspection, the landlord may take pictures or video recordings of the interior for use in connection with any subsequent proceedings before the LTB. **[See *Nickoladze* v. *Bloor Street Investments*, 2015 ONSC 3893 (CanLII)]** In this case, however, the Landlord did not enter the unit legally and, in my view, the Landlord taking video recordings of every room constitutes a significant infringement of the tenant's privacy. **[See *Juhasz* v. *Hymas*, 2016 ONSC 1650 (CanLII)]**

113. In my view, the Landlord's actions in terms of engaging with the neighbours and participating in the CBC story resulted in what I consider serious impairments in the Tenant's use and enjoyment of the rental unit over an extended period of time that warrant a significant rent abatement.

114. There was evidence before me that the neighbours were surveilling the Tenant. I find that it is more likely than not that the actions of the neighbours resulted from the engagement with the neighbours by the Landlord. I further find that the Landlord was aware or ought to have been aware that the neighbours would disrupt the Tenant's use and enjoyment of the unit and that it is more likely than not that the Landlord intended this to happen to put pressure on him to vacate.

115. While she might not have intended the CBC article to have the effect it did in terms of the racialized online attacks on the Tenant, I am also satisfied that the Landlord anticipated-even intended—that the CBC article would result in pressure being put on the Tenant to vacate the unit.

116. In the circumstances, I find that a lump-sum abatement of $6,000.00 is appropriate. This amount may be set off against the rent owed by the Tenant. In my view, the actions of the

Landlord have not deprived the Tenant of the entire benefit of the use and enjoyment of the rental unit, but have had a substantial impact on the Tenant's use and enjoyment of the unit over an extended period of time.

117. I note that the Tenant asserted that the CBC article had an impact on his business. I do not doubt that is the case, but, as I advised the Tenant during the hearing, there is no remedy available under the RTA for any impact the actions of the Landlord might have had on the Tenant's business. I have not considered any impact the CBA article might have had on the Tenant's business in determining the abatement to award.

118. The Landlord's interference with the relationship between the Tenant and his roommates had the effect of depriving the Tenant of the benefit of having (paying) roommates. Having paying roommates is something the Tenant was permitted to do and the Tenant is entitled, in my view, to an abatement based on the fact that the Landlord having interfered injected herself into the relationship between the Tenant and his roommates. However, an abatement must reflect the fact that the tenant is not receiving the full benefit of the rent being paid and the ability to generate revenue from paying roommates is not, in my view, included in the package for which the Tenant was paying rent. The relevant tenancy agreement contemplates that only the Tenant and other individuals approved by the Landlord will live in the unit.

119. In my view, a global abatement of $6,000.00 reflects the impact of the actions and conduct of the Landlord on the Tenant’s use and enjoyment of the unit. In coming to this conclusion, I have considered that the differing length of time that the matters I have identified impact the Tenant.

ii. Out-of-Pocket Expenses—$0

120. The loss of revenue from roommates is not, in my view, an out-of-pocket expense that the Tenant will incur or has incurred. The Landlord’s interference with the Tenant's relationship with his roommates is reflected in the abatement that I have awarded to the Tenant.

iii. Other Remedies—None

121. The other remedies requested by the Tenant amount to the LTB ordering the Landlord to comply with the RTA. I am not prepared to do that. If the Landlord does not comply with the RTA, the Tenant may bring an application to the LTB seeking a remedy.

iv. Filing Fee—$48.00

122. The Tenant was successful on his applications and is entitled to recover the $48.00 filing fee from the Landlord.

v. General Compensation—$0

123. In my view, the award of a rent abatement fully compensated the Tenant. I do not accept the Tenant’s assertions concerning the impact of the Landlord’s actions and conduct on his

mental health and there was no third-party evidence to establish the Tenant suffered from any health-related issues that were connected to the actions and conduct of the Landlord.

vi. Administrative Fine—None

124. An administrative fine is a remedy to be used by the LTB to encourage compliance with 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.

125. I do not think an administrative fine is warranted in these circumstances. While the Landlord did breach the RTA, she is a small landlord and I find that she did so because she lacked a proper understanding of what it means when the owner of a property decides to rent that property to a tenant.

VI. L1 Application

126. There is no dispute that, unless he had paid the arrears down to below $6,000.00, the Tenant owes rent to the Landlord. It is my understanding from his submissions that the Tenant wishes to preserve the tenancy. The Tenant asserted that he will be able to pay the rent owed to the Landlord, although he may, depending on what is owed, require time to do so.

127. I am hopeful that the parties can put their differences behind them and reach an agreement: (a) on the rent ow; and (b) to a payment plan that will be subject to section 78 of the RTA, without the need for another attendance before the LTB.

128. I will make a few observations for the benefit of the parties in the hopes of perhaps assisting them in reaching a resolution.

129. The Tenant conceded that he has failed to pay the lawful rent, which means that an order under section 69 of the RTA terminating the tenancy and evicting the Tenant based on section 59 is possible. That does not mean, however, that I will make an order terminating the tenancy and evicting the Tenant.

130. Subsection 83(2) requires that on an L1 application the adjudicator review the circumstances and consider whether to exercise their jurisdiction under subsection 83(1) to refuse the grant application; or (b) grant the application, but delay enforcement of the eviction. The LTB also has jurisdiction under the RTA to make a conditional order. It is not uncommon for the LTB to make an order imposing a payment plan on a landlord, where the LTB finds that the payment plan is reasonable in the circumstances.

131. Subsection 83(3) requires that the LTB dismiss an L1 application where it is satisfied that the landlord is in serious breach of the landlord's responsibilities under this RTA or of any material covenant in the tenancy agreement.

132. I also noted that on an L1 application, the tenant has the right to: (a) discontinue the application by paying the rent owed before the LTB makes an order under section 69 **[RTA,**

s. 74(2)]; (b) void an eviction order made under section 69 by paying the amount owed before the order becomes enforceable **[RTA, s. 74(4)]**; and (c) in some circumstances set aside an eviction order after it becomes enforceable, but before it is executed **[RTA, s. 74(11)]**.

VII. Order to Pay Rent

133. The Tenant may set off against the rent that he owes the $6,000.00 abatement that I am ordering. The Tenant must, however, pay rent going forward. I am making an order that the Tenant pay the lawful rent as and when due beginning on November 1, 2023, and making that order subject to section 78.

It is ordered that:

1. The Landlord's L2 application is withdrawn and the LTB's file is closed.

2. The Landlord shall pay to the Tenant $6,000.00 plus the $48.00 filing fee for a total of $6,048.00. This amount may be set off against the rent the Tenant owes to the Landlord.

3. If by November 15, 2023, the Landlord and the Tenant cannot agree: (a) on the net amount of rent owed by the Tenant to the Landlord; and, if necessary (b) a payment plan then, on or before November 30, 2023: (a) the Tenant may make a written submission with respect to (i) the amount owed; and (ii) how he proposes to pay that amount to the Landlord. That submission should include information with respect to the Tenant's monthly income and expenses. Within 15 days of receiving the Tenant's submission, the Landlord may file a responding submission. In their written submissions, the parties should include their available dates in December of 2023 and January of 2024, including dates between December 27 and 30, 2023.

4. Beginning on November 1, 2023, the Tenant shall pay the lawful monthly rent as and when due.

5. If the Tenant fails to comply with the conditions set out in paragraph 4 of this order, the Landlord may apply under section 78 of the RTA for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.

October 19, 2023
Date Issued

E. Patrick Shea
Vice Chair, 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.