



**Order under Section 22
Residential Tenancies Act, 2006**

Citation: Clark v Meijaard, 2023 ONLTB 26618

Date: 2023-03-24

File Number: LTB-T-000570-21

In the matter of: 234 CONCESSION 10
WATERFORD ON N0E1Y0

Between: Brittany Clark Tenants
Kris Grigsby

And

Cornelius Meijaard Landlords
Hendrika Meijaard

Brittany Clark and Kris Grigsby (the 'Tenants') applied for an order to determine Cornelius Meijaard and Hendrika Meijaard (the 'Landlords') harassed, obstructed, coerced, threatened or interfered with the Tenants.

This application was heard by videoconference on January 23, 2023 at 11:22 a.m.

The Tenants Brittany Clark and Kris Grigsby as well as the Landlords Hendrika Meijaard, and her representative Madaline Douglas, student-at-law, attended the hearing.

Determinations:

1. The rental unit is single family detached home on a rural residential property surrounded by 280 acres of agricultural land owned and operated by the Landlords with a shared gravel laneway which provides access to both the residential unit and the agricultural areas.
2. The Tenants moved into the unit on March 1, 2017 and are still in possession of the unit.

3. The lawful monthly rent is \$1,480.00.
4. The T2 application was filed November 14, 2021, alleging the following:
 - The Landlords harassed, obstructed, coerced, threatened or interfered with the Tenants over a series of arguments concerning disputed common area and sending regular N11 agreements and emails.
5. The Application requested the following remedies:
 - a rent abatement of \$6,600.00, representing a 50% abatement for 9 months from April 2021 to December 2021.
 - Other remedies the Board deems appropriate which was clarified at the hearing to mean an order for the Landlords to stop sending N11s to the Tenants.
6. For the reasons that follow, the Tenants' application is granted as the Landlords harassed the Tenants.

N11 Notices, Emails and September Incident

7. It is undisputed that the Landlords sent the Tenants multiple N11 agreements between March 2020 and December 31, 2021.
8. The Tenants testified these N11's were sent monthly and referred to three examples listed in evidence between October 2020 and December 2020. The Tenants characterized these N11's as harassing and unwelcome behaviour. The Tenants further testified they told the Landlords to stop sending the N11's, the first occasion being October 2020.
9. The Tenants further testified the Landlords would send weekly emails instructing the Tenants to secure his dogs for twelve-hour time periods, each day, as the emails specified that maintenance and repairs or farm operations were being completed on or around the property. The Tenants submitted copies the emails as evidence. The Tenants further testified he has asked the Landlords to stop multiple times during this process including but not limited to in August 2021 and October 2021; however, the emails continued.
10. The Landlords disputed the total amount of N11's and whether the Tenants specifically asked the Landlords to stop sending the N11's and emails; however, the Landlords did not deny the Landlords sent several N11's and did not provide any specific evidence substantiating fewer N11's were sent.

11. The Landlords characterized the N11's as part of an ongoing negotiation to end the tenancy relating to a detailed conversation between the Tenants and Landlords in September 2021 where they discussed compensation; however, could not agree on a mutually acceptable amount.
12. The Landlords further testified the emails were justified as the Tenants' dogs were allegedly big and aggressive and it was necessary to send these emails to ensure safety as the dogs have allegedly displayed aggression in the past.
13. On or about September 2021 the Landlords attended the property to do an inspection of the corn fields. An argument ensued that was caught on video where both parties are engaged in a verbal altercation. The Tenants' claim this is part of a pattern of unwelcome and aggressive behaviour. The Landlords' claim they were rightfully upset over damage to the corn and about the woodstove.

Analysis

14. Subsection 23 of the Act states that a Landlords shall not interfere with or harass a Tenants.
15. The Act does not provide a definition of harassment. The Ontario Human Rights Code, R.S.O. 1990, c. H.19, defines harassment as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome".
16. Therefore, although the word harass is not defined in the Act, harassment has been found by this Board to generally be a course of conduct or behaviour that the reasonable person knows or ought to know would be unwelcome.
17. I find the Tenants' testimony persuasive insofar they found the N11's unwelcome and harassing and instructed the Landlords to stop sending the N11's. A reasonable Landlords knows or ought to know that serving a Tenants with several N11's over the course of a short period of time is inappropriate and harassing, especially after the Tenants has asked to the Landlords to stop. This is clearly unwelcome behaviour.
18. A reasonable Landlords also knows or ought to know that sending emails each week instructing the Tenants to supervise and secure their dogs for 12-hours at a time is inappropriate and harassing. This is clearly unwelcome behaviour. Moreover, there was no specific evidence provided by the Landlords that the dogs were aggressive or dangerous.

In fact, I am convinced by the Tenants' testimony that neither by-law officials nor the police had been at his property as a result of the dogs and the Landlords provided no specific evidence to the contrary.

19. I find the onsite altercation captured on video in September 2021 is further evidence of a pattern of ongoing unwelcome and harassing behaviour from the Landlords.
20. On the balance of probabilities, I accept the evidence of the Tenants that the behaviour of the Landlords in relation to the numerous N11 notices, emails and other behaviour to the Tenants constituted harassment.

Dispute over land and Harassment

21. There is a rectangular parcel of land adjacent to the gravel driveway and the parties do not agree as to whether it was part of the tenancy agreement.
22. The Landlords submitted an arial diagram of the property into evidence showing the parcel of land in question which is located to the left of the gravel road, and alleged the Tenants were only permitted to use the land to the right of the gravel road as well as having access to a detached garage in the rear of the property.
23. It is undisputed that in April 2021, the Landlords converted this parcel of land that was previously grassland used for recreational purposes into agricultural land for farming purposes.
24. The Tenants testified that they had been maintaining this piece of land by cutting the grass since they took possession of the unit in 2017. The Tenants further testified he and his family would use the land for recreation. The Tenants submitted pictures of the Tenants mowing the lawn into evidence.
25. The Landlords testified that in November 2020 they advised the Tenants that they intended to convert the land into agricultural use. They submitted this parcel of land was not part of the tenancy agreement, and thus, since it was their property, the Landlords had the right to plant corn on the land or use it however they see fit.

Analysis

26. In my analysis I consider two questions: First, was this piece of land part of the tenancy agreement? If yes, did the Landlords harass the Tenants by using the land for agricultural use starting in April 2021?

Was this parcel of land part of the tenancy agreement?

27. The lease does not make specific reference to whether the parcel of land in question is part of the tenancy agreement; however, it does reference the Tenant's responsibilities with respect to the lawn under point 7 which states "lawns on [premises] need to be cut by the Tenants."
28. The lease agreement reads lawn's', plural. Therefore, I further question the Landlords' assertion that that the Tenants was only permitted to use the part of the lawn directly surrounding their unit.
29. Since the lease it not specific and only alludes to lawns being part of the tenancy agreement, I must also consider the historical pattern of activity with respect to this parcel of land. It is undisputed that the parcel was maintained and used for recreational purposes by the Tenants for several years prior to the Landlords converting it to agricultural use. There was no evidence submitted by the Landlords that they used the land prior to unilaterally converting it to agricultural use.
30. Therefore, after an analysis of the pattern of activity and the language in the lease agreement, I find that the act of the Tenants mowing the lawn for several years supports the proposition that this parcel of the property was part of the tenancy agreement.

Would it be reasonable that the Landlords would know converting the land from recreational to agricultural use was harassing behaviour?

31. As stated above, the Act does not provide a definition of harassment. The Ontario Human Rights Code, R.S.O. 1990, c. H.19, defines harassment as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome".
32. The Landlords knew the parcel of land was being used by the Tenants and by converting it to agricultural use, the Landlords knew the Tenants would no longer be able to use the land for recreational purposes, as these land uses are mutually exclusive
33. I find that a reasonable Landlords ought to know that converting a parcel of land that was being used by the Tenants as part of their tenancy would be unwelcome behaviour.

34. I find this behaviour to be inappropriate and harassing and part of the overall pattern of harassing behaviour.

Remedies

35. I find the Tenants are entitled to a rent abatement.

36. Rent abatements are a contractual remedy based on the principle that rent is charged in exchange for a bundle of goods and services and if a Tenants is not receiving those goods and services then the rent should be abated in a sum proportional to the difference between what is being charged and what is being received.

37. The Tenants requested a 50% rent abatement for 9 months.

38. To determine the appropriate abatement, I must consider impact. With regards to impact, the Tenant's testified that the N11's were unwelcome; however, would just throw them out each time they received them. Based on the Tenants' own testimony I am not persuaded the N11's, albeit harassing behaviour, had more than a minimal impact on the Tenants. I come to a similar conclusion with regards to the emails and other behaviour, albeit harassing behaviour, had a minimal impact on the Tenants as no specific evidence was provided by the Tenants that demonstrated any significant or ongoing impact.

39. With respect to the harassment that arose from converting the lawn into agricultural use, I find, albeit harassing behaviour, that this again resulted in only a moderate impact to the Tenants. I find the parcel of land consisted a small portion (~25%) of the total outdoor space available to the Tenants and would be used by the Tenants approximately 6 months per year.

40. On the evidence before me, I find that it would be reasonable to grant a 2% abatement of rent for the months in which there was harassing communications and behaviour from the Landlords to the Tenants, April 2021 to December 2021. In addition, I find that it would be reasonable to grant a further 3% abatement of rent for May 2021 – October 2021, the months the parcel of land would be in use by the Tenants.

41. The Tenants will be entitled to a 5% abatement for six months and a 2% abatement for two months.

42. The Tenants are entitled to a rent abatement in the amount of \$503.20 (5% x \$1,480.00 x 6) + (2% x \$1,480.00 x 2)

It is ordered that:

1. The Landlords must refrain from harassing the Tenants by sending them N11's.
2. The Landlords shall pay to the Tenants a rent abatement in the amount of \$503.20 for harassment.
3. The Landlords shall also pay to the Tenants \$48.00 for the cost of filing the application.
4. The total amount the Landlords owes is \$551.20.
5. The Landlords shall pay the Tenants the full amount owing by April 5, 2023.
6. If the Landlords do not pay the Tenants the full amount owing by April 5, 2023, the Landlords will owe interest. This will be simple interest calculated from April 6, 2023 at 5.00% annually on the balance outstanding.
7. If the Landlords do not pay the Tenants the full amount owing by April 6, 2020, the Tenants may recover this amount by deducting \$551.20 from the lawful monthly rent due in May 2023.
8. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**March 24, 2023 Date
Issued**

Greg Witt
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.