



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

**File Number:** TET-19666-21

**In the matter of:** BASEMENT, 10 MILHAM DRIVE  
AJAX ON L1S7S1

**Between:** Paige Toye  
Rhonda Toye Tenants

**and**

Hina Setia  
Sagar Setia Landlords

Paige Toye and Rhonda Toye (the 'Tenants') applied for an order determining that Hina Setia and Sagar Setia (the 'Landlords') altered the locking system on a door giving entry to the rental unit or residential complex without giving them replacement keys.

This application was heard in Passcode: 994 6973 8312# on November 16, 2021. the Tenants, represented by Wendy Burgess, and The Landlord Sagar Setia, represented by Shikha Kapoor, attended the hearing. Also in attendance and witness for the Tenants was Karen Maouant, Rhonda Toye's sister.

**Determinations:**

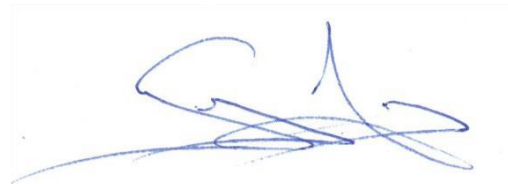
1. The Tenants claim that they were locked out of the rental unit and have not been able to return to the unit since September 7, 2021.
2. The Landlords claim that the applicants are not tenants and have no right to occupy the rental unit.
3. The tenancy agreement was signed between Karen Mourant and the Landlords. The signatures of the applicants are also on the tenancy agreement.
4. A letter from the Landlords, after the tenancy agreement was signed, is addressed to Karen and Rhonda and states as follows: "We welcome Rhonda Toye (Mother) and Paige Toye (Son) to new residence, 10 Milharn Drive, (Basement Apartment) Ajax, L1S7S1. It is a pleasure to have them here as our tenants.
5. The Landlords have also served an N6 notice to terminate the tenancy naming Rhonda Toye as a tenant.

6. Karen Mourant is the sister of Rhonda Toye. She testified that she entered to the tenancy as a guarantor for her sister. She had met with the Landlord and discussed the fact that the unit was not for her but for her sister and her sister's son. This conversation was confirmed by Mr. Setia.
7. In addition, Ms. Mourant is married, lives in Pickering with her husband, and has never resided in the rental unit.
8. Section 202 of the *Residential Tenancies Act* requires the Board to ascertain the real substance of all transactions and activities.
9. The evidence and the testimony show that the unit was rented for the occupancy of the applicants. As such, they are the tenants that have the right to occupy the rental unit. They were welcomed as tenants in the letter from the Landlords and resided in the unit. Karen Mourant never resided in the unit and never intended to reside in the unit. This was understood by the parties.
10. Therefore, I find that the Landlords altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenants replacement keys.
11. The rental unit is vacant.
12. At the hearing the Landlords were directed to provide possession of the rental unit to the Tenants effective immediately.
13. The Tenants' representative requested the Board fine the Landlords for the actions that gave rise to this application. As stated at the hearing, I find that a fine is inappropriate in this case. I believe the Landlords believed that these were not tenants. The police were called and told the Landlords that they were not tenants, despite the limited information to make that determination.
14. After the Tenants were locked out of the rental unit they resided in a motel. Based on the evidence before me, and due to the Landlords' actions, I find the Tenants incurred costs of \$866.69.
15. The Tenants are also seeking out of pocket expenses related to eating out as they had no kitchen in the motel room. The Tenants were locked out for 70 days. As Rhonda's sister was involved in this transaction and lives in the area, I do not accept that the Tenants ate every meal in restaurants. As such, I find an average cost of \$20.00 per day to be reasonable without proof of these costs. Therefore, I find the Tenants incurred additional costs of \$1,400.00.
16. The Landlords' representative argues that the Board's interim order permitted the Tenants to move back into the unit. As a result, these costs should not be awarded. I disagree with this submission. The order permitted the Tenants to recover their belongings and ordered the Landlord not to re-rent the unit until this matter was resolved.

**It is ordered that:**

1. The Landlords shall pay to the Tenants \$2,266.69 which is the actual and estimated reasonable out of pocket expenses the Tenants have incurred.
2. The Landlords shall also pay to the Tenants \$53.00 for the cost of filing the application.
3. The total amount the Landlords owe is \$2,319.89.
4. The Landlords shall pay the Tenants the full amount owing by December 5, 2021.
5. If the Landlords do not pay the Tenants the full amount owing by December 5, 2021, they will owe interest. This will be simple interest calculated from December 6, 2021 at 2.00% annually on the balance outstanding.
6. The Landlords shall immediately allow the Tenants to recover possession of the rental unit and provide the Tenants with keys to the doors of the rental unit and the residential complex.
7. If the Landlords does not allow the Tenants to recover possession of the unit, the Tenants may file this order with the Court Enforcement Office (Sheriff) so that the order may be enforced.
8. Upon receipt of this order, the Enforcement Office is directed to give possession of the unit to the Tenants.
9. If the Landlords does not pay the Tenants the full amount owing by November 30, 2021, the Tenants may recover this amount by deducting the entire rent until the full amount has been paid including any arrears that may have accumulated.
10. The Tenants do not owe rent for the period September 7, 2021 through November 16, 2021 inclusive.
11. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**November 24, 2021**  
**Date Issued**



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Greg Joy  
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.