



Order under Section 31
Residential Tenancies Act, 2006

File Number: EAT-93577-21

In the matter of: 806 TARADALE DRIVE
NAPEAN ON K2J0H8

Between: S Alvee Abir Tenant

and

Arun Sobti Landlord

S Alvee Abir (the 'Tenant') applied for an order determining that Arun Sobti (AS) and Santosh Sobti (the 'Landlords') or the Landlords' superintendent or the Landlords' agent harassed, obstructed, coerced, threatened or interfered with the Tenant, entered the rental unit illegally and substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household.

This application was heard by teleconference on April 20, 2021 and June 25, 2021.

The Tenant, the Landlord AS, and the Landlord's legal representatives O. Daouk and D. Khalaf attended the hearing on April 20, 2021. The Tenant, the Landlords, and the Landlords' legal representative A. Alzamel attended the hearing on June 25, 2021.

Procedural:

1. On consent the application is amended to add a claim for \$200.00 in out-of-pocket expenses for internet access.
2. The Tenant also filed a proposed amended application and served it on the Landlord well in advance of the hearing. The amended application adds some allegations and adds a requested remedy of \$700.00 rent abatement. The Landlord opposed the amendment. The proposed amendments do not prejudice the Landlord. At the hearing on April 20, 2021 I granted the Tenant's request for these amendments and the application is amended accordingly.
3. The Landlord requested that the Board accept an affidavit from SS as SS's evidence in chief to reduce stress to him as he has a medical condition. I granted this request.
4. At the hearing on June 25, 2021, the Landlord AS asked that SS be added to the application as a Landlord because he co-owns the residential complex. The Tenant did

not oppose the request. I granted the request and the application is amended accordingly.

Determinations:

1. The rental unit is a room in a house with a shared kitchen. The Tenant moved into the rental unit in October 2020.

Illegal entries

2. In his application the Tenant alleges that the Landlord SS illegally entered the rental unit “approximately 45 days into the tenancy.” This is too vague as to the date of the alleged entry and so, at the hearing, I refused to accept any evidence or submissions with respect to this allegation. There is insufficient detail for the Landlords to know how to defend the allegation.
3. At the hearing the Tenant testified that when he came home from work on January 14, 2021 he noticed that there was hair in the toilet. The Tenant testified that he always locks his door when he leaves his room. The parties agree that SS had access to a key to the Tenant’s room (the key is kept in an envelope in SS’s room in AS’s house, which is located close to the residential complex).
4. In support of the Tenant’s testimony he filed a video and a photograph showing the toilet with hair in it.
5. In his affidavit SS stated that he did not enter the rental unit on January 14, 2021 and that he did not have any reason to do so.
6. The Tenant’s evidence that SS entered his unit is not very strong. The video and photograph of hair in the toilet do not establish that someone entered his unit; at best they establish that at some point there was hair in the toilet.
7. Given SS’s denial that he entered the unit that day and the Tenant’s weak evidence of entry, I cannot find, on a balance of probabilities, that SS entered the rental unit on January 14, 2021.

SS takes up too much space in the kitchen

8. SS moved into the residential complex on February 28, 2021.
9. The Tenant testified that SS uses 80% of the space in the kitchen.
10. In chief the Tenant did not give any evidence about notifying AS or SS that he objects to how much space SS uses in the kitchen. Under cross the Tenant testified that he notified AS about his issues with SS but he was not specific about which issues he mentioned and when. The Tenant filed copies of email correspondence with AS showing that he raised issues with AS on December 28, 2020 and on January 1, 2021. None of these messages complain about how much space SS takes up in the kitchen.

11. AS testified that the Tenant did complain about how much space SS was taking up in the fridge in the kitchen and that he responded immediately by meeting with all of the residents of the house in the kitchen and sorting out the contents of the fridge and also he brought a second fridge into the kitchen. The Tenant did not dispute this testimony.
12. AS testified that the Tenant did not complain about SS taking up too much space in the kitchen in general. The Tenant did not ask SS about this in cross-examination.
13. Based on the Tenant's lack of evidence that he notified AS or SS about this issue and AS's testimony that he was not notified, I cannot find, on a balance of probabilities, that the Tenant notified the AS or SS about this issue.
14. As the Landlords were not notified about this issue, they would not have known that they should address it. It would therefore be inappropriate to order a remedy for this issue.

SS makes it cold upstairs

15. The Tenant testified that SS opens the curtains in the shared living room/dining room area and this causes the house to get cold. AS did not contest that SS opens the curtains; he testified that SS has a medical condition that necessitates that he have the curtains open.
16. The Tenant's only evidence that his rental unit is cold is a photograph of the thermostat, located on the first floor, showing the temperature to be 23 degrees Celsius. The Tenant did not give any evidence of temperature readings upstairs (where, because heat rises, it is likely it was warmer than downstairs).
17. Based on the Tenant's lack of evidence, I cannot find, on a balance of probabilities, that SS makes or made it cold upstairs.

AS cancelled snow removal service

18. In his application, the Tenant alleges that for the winter of 2020-21, AS cancelled the contract that he previously had for the removal of snow outside the residential complex.
19. The Tenant gave no evidence to support that AS had cancelled this service. Instead, the Tenant filed a copy of a video shot on February 22, 2021, showing a lot of snow on the driveway of the residential complex. The Tenant testified that the snow had been there for a week or more. The Tenant had not included an allegation in his application that the Landlord failed to have snow removed on or around February 22, 2021 and so I cannot make any determination about this specific allegation. The presence of snow on the driveway on one day in the winter is not evidence that the snow removal contract was cancelled.
20. AS testified that he has a contract each year for snow removal at the residential complex and that he did not cancel this contract.

21. Based on the Tenant's lack of evidence and AS's denial, I cannot find, on a balance of probabilities, that AS cancelled the snow removal contract.

Landlord cancelled Tenant's access to internet

22. The written lease does not include internet service. However, the parties agree that the Tenant had access to internet service provided by AS until AS changed the password on or about January 18, 2021. The Tenant testified that he was affected by this because he needs access to the internet to find employment. The Tenant requested an amendment to include a claim for \$200.00 in out-of-pocket expenses for internet services that he had to arrange for himself. The Tenant did not submit any documentary evidence to support that he paid this amount (or any amount) for internet services and so I cannot find that he incurred this expense. Documentary evidence for this expense would have been very easy to obtain.

Gathering at the residential complex on December 25, 2020

23. It is uncontested that at least the following people gathered at the residential complex on December 25, 2020: AS, AS's son, AS's wife, the AS's aunt, AS's uncle, and SS. At the time none of these people lived in the residential complex and none of them were invited to the residential complex by anyone living in it.
24. The Tenant testified that there were 10 to 12 people at the gathering. SS testified that there were seven people at the gathering, including himself. AS testified that there were six people at the gathering (listed at paragraph 23, above). AS also testified that he, his wife, and his son were there for 10 minutes and that the participants of the gathering were watching television, chatting, sharing videos through a social media application, and cooking. It makes no sense that he would know about all of these activities if he had been there for only 10 minutes (because it is very difficult to imagine doing these things for a total of only 10 minutes). It is more likely that he and his family were there for a lot more than 10 minutes or he does not actually know what people were doing at the gathering. In any event, this self-contradictory testimony damages AS's credibility respecting this gathering.
25. The Tenant testified that one of his concerns was that the gathering violated COVID-19 restrictions at the time. In the hottest spots of Ontario's various regions, indoor gatherings were restricted to 10 people at the time. The Tenant's evidence was not specific enough as to the amount of people (it might have been 10) and so I cannot find, on a balance of probabilities, that the gathering violated COVID-19 restrictions at the time. (I note that the whole province was put into a stricter lockdown at midnight on December 26, 2020.)
26. COVID-19 concerns aside, it was not reasonable for AS and SS to have a gathering in the residential complex on December 25, 2020. When asked why the gathering took place at the residential complex, AS testified that on SS's birthday it is family tradition to gather at the residential complex, where SS had lived for several years. That is an insufficient reason to have six or seven people gather at the residential complex, which was shared by three inhabitants (including the Tenant). Effectively the gathering deprived the Tenant and other residents of the house use of the common areas of the house for

the duration of the gathering. Further, it was invasive for six or seven uninvited people to be at the residential complex (none were invited by any resident of the house) where they were presumably making some level of noise talking to each other. Even just their presence would have been invasive. The Tenant and the other residents of the house had a reasonable expectation not to have their living room, dining room, and kitchen occupied by half a dozen people who were not invited over.

27. For the reasons above, I find that AS and SS substantially interfered with the Tenant's reasonable enjoyment of the property by having a family gathering there on December 25, 2021.

Gatherings at the residential complex on January 1, 2021 and afterward

28. The Tenant testified that on January 1, 2021 there were seven or eight people over at the house visiting SS.
29. The Tenant filed copies of emails he exchanged with AS on December 28, 2020 and on January 1, 2021. In the December 28 exchange, the Tenant expressed concern with the number of visitors SS was having over at the house. (The Tenant had agreed at the beginning of the tenancy that SS could come over to the house for short visits as SS has an emotional connection to the house.) AS responded that he had just spoken with SS about new lockdown restrictions and that he cannot have any visitors except his brother and his best friend, who are in his bubble. AS encouraged the Tenant to let him know if there are any other people visiting the house.
30. In his email to AS on January 1, 2021, the Tenant complained about SS having at least eight random people in the house.
31. The AS testified that in response to the January 1 email, he attended at the house and he agreed that SS would have no more social gatherings at the house.
32. SS had no gatherings at the house from January 18, 2021 to February 28, 2021 (when he moved into the house). The Tenant testified that on January 18, 2021 he contacted the by-law enforcement department of the local municipality about SS having people over at the house during the provincial stay at home order, because SS continued to have visitors over after January 1. The Tenant did not file any documentation from the by-law enforcement department, but AS acknowledged that the by-law enforcement department had been in contact with him around this time. It appears more likely than not that SS refrained from entertaining at the house because the by-law enforcement department contacted AS.
33. SS testified that he did not invite anyone over on January 1, 2021 but that people just came over to check on him. Whether he invited these people is not relevant; he could have turned them away at the door due to the province-wide stay at home order. SS gave no evidence that any of these people were doing anything essential for him such as bringing food or medicine. It was not necessary to allow any of these people into the house.

34. The Tenant was very disturbed by the presence of at least half a dozen strangers in the house on January 1, 2021. His agitation is understandable. There was no legitimate reason for SS to violate province-wide COVID-19 restrictions in this way. Further, SS and AS ought to have known that this conduct would disturb the Tenant, after the Tenant sent AS the email of December 28, 2020. Whether AS was aware that SS was allowing several people into the house on January 1, 2021 is immaterial. As a Landlord, SS ought to have refrained from having visitors inside the house on January 1, 2021 and as Landlords, he and AS must be held accountable for this conduct.
35. Based on the above, I find that AS and SS substantially interfered with the Tenant's reasonable enjoyment of the property on January 1, 2021.

Remedies

36. In his application the Tenant requested that the Board order the Landlords to pay an administrative fine. While the Tenant did establish that the Landlords substantially interfered with his reasonable enjoyment, the incidents are not such egregious breaches of the *Residential Tenancies Act, 2006* to warrant a fine.
37. The Tenant has also requested an order that AS not visit the residential complex without a valid reason, and to order that SS have a limit on the number of visitors that he can have at the house.
38. I do not believe that it is necessary to make any order governing AS's or SS's conduct in this case. Their breaches of the Act were not so serious or persistent that they can be expected to conduct themselves the same way in the future. This order, and the monetary remedy granted, should be sufficient deterrence against such conduct.
39. The Tenant has requested that the Landlords be ordered to pay a rent differential if the Tenant is forced to move, he has requested that the Board "nullify" an eviction notice served by the Landlords, and that the Landlords not occupy one of the rooms (having SS live there). The Board cannot order any of these things. The Tenant has not moved out so there is no rent differential. The Board cannot, in an order for a tenant's application, "nullify" or otherwise do anything with respect to a notice of termination. The Tenant may challenge this notice in any eviction application filed by the Landlords. The Board cannot order that SS be evicted from the house that he co-owns.
40. For the two occasions during which the Landlords interfered with the Tenant's reasonable enjoyment of the premises, the Tenant is entitled to a total lump sum rent abatement of \$500.00. He was subjected to an invasion of the space that he rents by half a dozen people on two occasions, one time during a province-wide lockdown, and there was no legitimate reason for these gatherings to take place at the residential complex.

It is ordered that:

1. The Landlords shall pay to the Tenant \$500.00 as a rent abatement for their substantial interference with his reasonable enjoyment of the property.

2. The Landlords shall also pay to the Tenant \$48.00 for the cost of filing the application.
3. The total amount the Landlords owe is \$548.00.
4. The Landlords shall pay the Tenant the full amount owing by September 30, 2021.
5. If the Landlords do not pay the Tenant the full amount owing by September 30, 2021, the Landlords will owe interest. This will be simple interest calculated from October 1, 2021 at 2.00% annually on the balance outstanding.
6. If the Landlords do not pay the Tenant the full amount owing by September 30, 2021, the Tenant may recover this amount by deducting it from future rent.
7. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

2021 CanLII 123833 (ON LTB)



September 7, 2021
Date Issued

Renée Lang
Member, Landlord and Tenant Board

Eastern-RO
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This order contains all reasons for the determinations and order made. No further reasons will be issued.

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