Order under Section 31
Residential Tenancies Act, 2006

File Number: EAT-91289-20

In the matter of: A, 124 CALDERWOOD DRIVE
KINGSTON ON K7M6M3

Between: Deepak Kini Mattar — Tenant

and

Terry Mau — Landlord

Deepak Kini Mattar (the 'Tenant') applied for an order determining that Terry Mau (the 'Landlord')

a) withheld or deliberately interfered with the reasonable supply of a vital service, care service, or food that the Landlord is obligated to supply under the tenancy agreement;
b) 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; and
c) harassed, obstructed, coerced, threatened or interfered with the Tenant.

At the hearing the Tenant also requested an order determining that the Landlord retained his rent deposit and interest illegally. A hearing on this matter requires the Tenant to file a T1 application (T1) pursuant to s. 135 of the *Residential Tenancies Act, 2006* (the 'Act'); consequently, this request was not considered during this hearing of the Tenant's T2 application.

This application was heard by videoconference on October 20, 2021. The Tenant and the Landlord were present at the hearing.

Determinations:

T2 Application

1. On August 18, 2020 the Tenant filed a T2 application (T2) pursuant to s. 29(1) of the *Residential Tenancies Act, 2006* (the 'Act') seeking a termination of his tenancy, a fine for the Landlord, and compensation for moving expenses and rent difference.

Background

2. The Tenant moved into the rental unit on May 1, 2020 and vacated the unit on August 30, 2020. The tenancy agreement was a fixed short-term lease from May 1, 2020 to August 31, 2020. The residential complex included a kitchen and a living room that were common areas shared by all tenants of the residential complex.

3. The Tenant alleges that the Landlord:

    a) interfered with Tenant's access to heat from May 1, 2020 to June 15, 2020 by remotely controlling the thermostat and preventing Tenant access to the thermostat by installing a lock box on it;
    b) substantially interfered with the Tenant's enjoyment of the rental unit by scheduling a viewing of the rental unit on August 10, 2020;
    c) substantially interfered with the Tenant's enjoyment of the rental unit by threatening to move the Tenant's personal belongings on August 3, 2020 if the Tenant did not comply with the Landlord's wishes to stock dishware in the Landlord's desired cabinet;
    d) harassed the Tenant throughout the tenancy to move the Tenant's road bike from the common area of the residential complex;
    e) coerced the Tenant on June 30, 2020 to sign an N11 Agreement to End the Tenancy;
    f) obstructed the Tenant's rights through serving the Tenant a defective N5 Notice of Termination on July 2, 2020; and
    g) threatened the Tenant's future housing security in an email dated July 2, 2020.

4. I am satisfied that the allegations in paragraph 3 above can be considered as they occurred less than one year before the application was filed.

Interference with the reasonable supply of a vital service

Access to the Thermostat

5. The Tenant testified that the Landlord installed a lock box around the heat controls of the rental unit preventing the Tenant from access to control the temperature when he felt uncomfortably hot or cold during the period of May 1, 2020 to June 15, 2020.

6. The Landlord testified that the lock box over the thermostat was installed prior to the start of the Tenant's tenancy, and that he routinely changed the temperature setting remotely at the request of the Tenant.

7. Section 21(1) of the Act states:

> 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.

8. No evidence was provided by the Tenant that there was insufficient heat or cool air during the period of May 1, 2020 to June 15, 2020, or that the Landlord was not responsive to requests by the Tenant for a change in rental unit temperature. I am therefore satisfied that the Landlord did not withhold a reasonable supply of heat or cool air to the Tenant. I therefore find that the Landlord did not breach his responsibilities pursuant to s. 21(1) of the Act.

Substantial Interference – Unit Viewing and Personal Belongings

Unit Viewing

9. The Tenant testified that the Landlord scheduled a viewing of the rental unit for August 10, 2020 without the Tenant's agreement to vacate the rental unit.

10. The Landlord testified that he received email correspondence from the Tenant that August 2020 would be the Tenant's last month in the rental unit. The Landlord stated that on the basis of that information, he sent an email to the Tenant at 1:56 pm on August 9, 2020, advising the Tenant of a showing of the rental unit at 4:30 pm on August 10, 2020. The Tenant did not dispute his correspondence with the Landlord that August 2020 would be his last month of the tenancy.

11. Section 26(3) of the Act states:

> (3) A landlord may enter the rental unit without written notice to show the unit to prospective tenants if,
>
> a) the landlord and tenant have agreed that the tenancy will be terminated or one of them has given notice of termination to the other;
> b) the landlord enters the unit between the hours of 8 a.m. and 8 p.m.; and
> c) before entering, the landlord informs or makes a reasonable effort to inform the tenant of the intention to do so.

12. The Landlord's actions with respect to the requested viewing of the rental unit by a prospective tenant comply with the requirements of s. 26(3) of the Act as the tenant had effectively given notice to the landlord of his intention to terminate the tenancy.

13. Section 22 of the Act states:

> 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.

14. Given that the Landlord complied with s. 26(3) of the Act regarding the requested viewing of the Tenant's rental unit, I am satisfied that the Landlord did not substantially interfere with the Tenant's enjoyment of the rental unit with respect to this incident. I therefore find that that the Landlord did not breach his responsibilities pursuant to s. 22 of the Act.

Personal Belongings

15. The Tenant testified that on August 3, 2020 he and other tenants received a note from the Landlord stating that the Landlord wanted to store the residential complex dishes above the dishwasher in the kitchen of the residential complex. The Tenant stated that on August 13, 2020, the Landlord advised all the tenants of the residential complex that if the dishes were not moved to his desired location in the kitchen, then the Landlord would

move them himself. The Tenant stated further that the Landlord relented on this request after input from all the tenants; however, he believed that the Landlord's attempted action interfered with his peaceful living in the residential complex.

16. The Landlord testified that the residential complex is predominantly used by students, and as a result, the complex is furnished with Landlord supplied kitchen ware for the benefit of all tenants. He stated that with multiple changing tenants, the Landlord supplied kitchen ware over time gets distributed throughout the kitchen and mixed with the private kitchen possessions of the tenants. The Landlord testified further that the intent of his correspondence to the tenants on August 3 and 13, 2020, was not to interfere in their reasonable enjoyment of the residential complex, but rather, was to bring some order and accountability of the Landlord supplied kitchen ware - to the benefit of all tenants. He added that when the tenants approached him regarding their use of the Landlord supplied kitchen ware, he relented in his request to have the items stored in a specific location.

17. I am satisfied that the Landlord's request to the Tenant to have Landlord supplied dishes located in a specific area of the kitchen, for accountability and common use by all tenants, was a reasonable request that did not substantially interfere with the Tenant's reasonable enjoyment of the residential complex. I therefore find that that the Landlord did not breach his responsibilities pursuant to s. 22 of the Act.

Harassment – Bicycle, N11 Agreement, N5 Notice of Termination, Housing Security

Bicycle

18. The Tenant testified that on May 1, 2020 he and the Landlord came to a mutual verbal agreement that the Tenant's bike could be stored in the common area living room of the residential complex. The Tenant stated that this was not an issue for the Landlord until May 20, 2020, when the Landlord asked the Tenant to store his bike elsewhere. The Tenant refused to remove the bike from the living room stating to the Landlord that he would only do so if and when another tenant objected to its location in the living room, and that there currently were no objections from the other tenants. The Tenant testified further that on June 29, 2020 when he inquired with the Landlord about renewing his lease, the Landlord stated that the Tenant's removal of his bike would be a condition of any new lease. The Tenant noted that the Landlord handed him a letter on June 30, 2020 advising him that the Landlord would not sign another lease agreement with him as a result of his behaviour. On July 2, 2020, that Tenant received an email with an N5 Notice of Termination (N5) from the Landlord. On July 20, 2020 when the Landlord asked the Tenant to remove the bike from the living room to make room for social distancing, the Tenant complied, and the bike was removed that day.

19. The Landlord testified that he allowed the Tenant on May 1, 2020 to temporarily store the Tenant's bike in the living room, but he stressed that this was never meant to be a permanent solution. The Landlord stated that the Tenant was aware that the proper storage location for the bike was in the common residential complex closet, but that this closet was full, and therefore there was no indoor common area storage. The Landlord testified further that when he repeatedly requested the Tenant to remove his bike, the Tenant was condescending and rude. He stated that the Tenant's failure to abide by their May 1, 2020 verbal agreement, and to remove his bike from the living room, resulted in

him serving the Tenant with an N5 on July 2, 2020 with a termination date of August 31, 2020.

20. Section 23 of the Act states: A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant. While there is no definition of "harassment" in the Act, it is generally held that "harassment" is a course of conduct that a reasonable person knows or ought to know would be unwelcome.

21. I am satisfied that there was a verbal agreement between the Tenant and the Landlord to store the Tenant's bicycle in the living room of the residential complex. On the basis of the Tenant's and Landlord's evidence, I am also satisfied that this agreement was for the temporary storage of the bicycle in the living room. I find that it was reasonable for the Landlord to request the Tenant to remove his bike from the common living room of the residential complex – an item not normally stored in a living room. The Landlord also had a responsibility to maintain the living room fit for habitation for the other tenants of the residential complex, pursuant to s. 20(1) of the Act. I find that the Tenant's conduct was unreasonable in not moving the bicycle until July 20, 2020 and initially refusing to move it unless another tenant complained. I am satisfied that a reasonable person would not consider the Landlord's conduct unwelcome. I therefore find that the Landlord did not harass the Tenant, and he did not breach his obligations with respect to s. 23 of the Act.

N11 Agreement

22. The Tenant testified that on June 30, 2020 he received a letter from the Landlord stating that the Landlord will not sign another fixed term lease agreement, and that the Landlord expects the Tenant to vacate the rental unit on August 31, 2021. The Tenant noted that the Landlord also handed him an N11 Agreement to End the Tenancy (N11) with the letter. On July 1, 2020 the Tenant advised the Landlord of his desire to stay in the rental unit. The Tenant contends that the Landlord attempted to coerce him into signing the N11 by misleading him that he did not have the option of a month to month tenancy at the end of his fixed term. The Tenant submitted an email from the Landlord dated July 2, 2020. In it the Landlord states: "I am now, however, forwarding you the N5 form along with this reply as notice to end tenancy and have entered it in our files. I am willing to remove it and replace it with the signed N11 form you were provided with."

23. The Landlord testified that during his meeting with the Tenant on June 30, 2020, he advised the Tenant that he would not sign another lease agreement with him as a result of his behaviour. The Landlord stated that during this meeting the Tenant advised him: "it would not be a big deal to find another place. I have two months to do so. Its no problem if we cannot work things out". The Landlord testified further that as a result of this meeting he believed that the Tenant wanted to terminate the tenancy, and he offered the Tenant the option of signing an N11, but it was never his intention to mislead, pressure, or force the Tenant to sign it. He added that it was his intent to serve the Tenant the N5 on June 30, 2020 with the letter requesting the Tenant vacate on August 31, 2021, but on the basis of his June 30, 2020 conversation with the Tenant, he believed that the N11 was more appropriate. The Landlord stated that when the Tenant advised him on July 1, 2020, of his desire to retain the tenancy and not sign the N11, he responded to the Tenant on July 2, 2020 with an email and N5 requesting a termination of the tenancy on August 31, 2020. The Landlord noted that his letter to the Tenant on June 30, 2020 stating that he expected

the Tenant to vacate the rental unit on August 31, 2021 was based on the N5 that he served the Tenant July 2, 2020. The Landlord testified that the Tenant's fluctuating desire between moving and staying caused confusion regarding the status of his tenancy.

24. Section 23 of the Act states: A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant. While there is no definition of "coercion" in the Act, it is generally held that "coercion" is the practice of persuading someone to do something by using force or threats.

25. By June 30, 2020 the Landlord wanted to terminate the tenancy due to the Tenant's conduct – either through an agreement with the Tenant using an N11 – or through serving the Tenant with an N5. It is agreed by both the Tenant and the Landlord that the Landlord offered the Tenant the option to sign an N11 or the Landlord would proceed with an N5. The Tenant perceived this action as coercion, and the Landlord perceived it as being transparent regarding his course of action and providing the Tenant a choice – not an ultimatum.

26. I am satisfied that it was not unreasonable in the circumstances for the Landlord to set out his intentions with respect to the tenancy, as both signing an N11 agreement or serving an N5 notice are permissible under the Act. The Tenant was aware of his tenancy options and acted accordingly without duress or coercion. I am also satisfied that the Landlord's conduct was reasonable and not misleading, threatening, or coercive. I therefore find that that the Landlord did not breach his responsibilities pursuant to s. 23 of the Act.

N5 Notice of Termination

27. The Tenant testified that the Landlord obstructed the Tenant's rights through serving the Tenant a defective N5 Notice of Termination on July 2, 2020 that misled the Tenant into believing that he could be evicted without recourse. The Tenant submitted the Landlord's N5 as evidence. The N5 seeks termination of the tenancy as a result of the Tenant's substantial interference of other tenants' reasonable enjoyment of the residential complex by keeping his bike stored in the living room. As this was an N5 notice served pursuant to section 64 of the Act, the Tenant had the right to void the notice during the 7-day period following its service. The N5 Form given to the Tenant had "Reason 1" selected, but instead of indicating that the Tenant had seven days to void the termination, the item is checked advising the Tenant that the Landlord can apply to the Board for an immediate eviction. The Tenant contends that as a result of the N5 he believed he could be evicted without an option to void the N5. The Tenant stated that he vacated the rental unit of his own free will to comply with the N5.

28. The Landlord testified that he had never previously issued a notice of termination to any of his tenants during the 20 years he has been a landlord. He acknowledged that he was not familiar with the N5 and that he filled it out incorrectly. He later realized that the N5 was not valid, and as a result, did not submit an L2 Application to the Board. The Landlord testified further that it was not his intent to mislead the Tenant or to obstruct any of the Tenant's rights.

29. Section 64(2)c of the Act states that a notice of termination for cause, reasonable enjoyment, shall:

> require the tenant, within seven days, to stop the conduct or activity or correct the omission set out in the notice.

30. The N5 that the Landlord served the Tenant on July 2, 2020 did not provide the Tenant with seven days to remove his bicycle from the living room of the residential complex, and therefore, does not comply with s. 64(2)c of the Act. The Landlord's N5 is defective and therefore not valid. I accept that the N5 could have misled the Tenant; however, on the basis of the Tenant's testimony, and detailed documentary evidence identifying the errors in the Landlord's N5, I am satisfied that the Tenant was not misled when he was served the N5, and did not vacate the rental unit as a result of the N5. I am also satisfied, on a balance of probabilities, that the Tenant was aware that a Board hearing was required to evict him, as stated in the N5, and without having received a Notice of Hearing, the Tenant's tenancy was not threatened by a potential eviction. I therefore find that the Tenant vacated the rental unit of his own free will on August 30, 2020.

31. Section 23 of the Act states: A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant. While there is no definition of "obstruction" in the Act, it is generally held that "obstruction" is the state of having something or someone that blocks or hinders.

32. On the basis of the Landlord's testimony, I am satisfied that he did not intend to use the N5 as an instrument to mislead the Tenant, or to hinder the Tenant in exercising his rights as a tenant. I accept that the Landlord simply made a mistake when completing the N5 notice, and I also note that it is, in my experience, common for landlords to make such mistakes. I therefore find that the Landlord did not obstruct the Tenant's rights and did not breach his responsibilities pursuant to s. 23 of the Act.

Housing Security

33. The Tenant testified that in the email the Landlord sent to him on July 2, 2020 with the N5, the Landlord stated:

> "I don't like issuing notices as they go in our files and can cause hardship when the tenant is securing other accommodations and other Landlords contact us for reference purposes. I am now, however, forwarding you the N5 form along with this reply as notice to end tenancy and have entered it in our files. I am willing to remove it and replace it with the signed N11 form you were provided with".

34. The Tenant asserted that this email establishes that the Landlord was threatening the Tenant's ability to secure another rental unit in the future if the Tenant did not comply with the N5.

35. The Landlord did not dispute the contents of the email. He testified that it was not his intention to be threatening, but rather to outline the options available to the Tenant, as well as the potential impact of any reference the Tenant may seek from him for future rental accommodations.

36. Section 23 of the Act states: A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant. While there is no definition of "threaten" in the Act, it is generally

held that "to threaten" is to state one's intention to take hostile action against someone in retribution for something done or not done.

37. As stated in paragraph 25 above, both parties agree that the Landlord offered the Tenant the option to sign an N11 or the Landlord would proceed with an N5. As determined in paragraph 25 above, I find that the Landlord was providing the Tenant with an option, and it cannot be reasonably interpreted as an ultimatum. This choice is restated in the Landlord's email on July 2, 2020, along with the Landlord's direct and frank explanation of the impact of notices on any references that the Tenant may seek from the Landlord for future rental units. I do not find that this language jeopardizes the Tenant's ability to secure housing in the future. The Tenant retains the option to seek a reference from the Landlord or not to seek a reference from the Landlord. Given the turbulent nature of the tenancy relationship, regardless of the Tenant's choice to sign an N11 or not, it is unlikely that any reference from the Landlord would assist in securing any of the Tenant's future rental units. I am satisfied that the Landlord's email does not pose a threat to the Tenant's ability to secure another rental unit. I therefore find that the Landlord did not breach his responsibilities pursuant to s. 23 of the Act.

Summary

38. As noted in the preceding paragraphs, I find that the Landlord did not breach his responsibilities with respect to not withholding a vital service pursuant to s. 21(1) of the Act. Furthermore, the Landlord did not breach his responsibilities with respect to not interfering with the Tenant's reasonable enjoyment, pursuant to s. 22 of the Act, nor did he breach his responsibilities with respect to not harassing the Tenant, pursuant to s. 23 of the Act. Accordingly, the Tenant's application must be denied.

It is ordered that:

1. The tenancy terminated on August 30, 2020.

2. The Tenant's application is dismissed.

November 9, 2021
Date Issued

Frank Ebner
Member, Landlord and Tenant Board

Eastern-RO
255 Albert Street, 4th Floor
Ottawa ON K1P6A9

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