



Order under Section 16.1 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: Parsons v Ieraci, 2023 ONLTB 79206

Date: 2024-01-02

File Number: LTB-T-073063-22-IN3

In the matter of: BASEMENT, 28 LINDNER STREET
TORONTO ON M6N2Z8

Between:

Misty Parsons

I hereby certify this is a true copy of an Order dated

Tenant

JAN 02 2024

AND

Frank Ieraci

Landlord and Tenant Board

INTERIM ORDER

Misty Parsons (the 'Tenant') applied for an order determining that Frank Ieraci (the 'Landlord'):

- altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys.
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.
- withheld or interfered with their vital services or care services and meals in a care home.

This application was heard by videoconference on February 3, 2023.

The Landlord and the Tenant attended the hearing. The Landlord was represented by Nicole Fazzari. The Tenant was represented by Zara Magalhaes.

Determinations:

1. For the reasons that follow, I find that the Tenant was illegally locked out of her rental unit on July 5, 2021. Therefore an order shall issue requiring the Landlord to provide alternative pet-friendly accommodation to the Tenant on or before January 3, 2024 and for the duration of the repairs, after which the unit will be surrendered to the Tenant at the same rent and on the same terms prior to the Tenant's displacement.

PROCEDURAL HISTORY

2. By way of background, the parties first appeared before the Board on March 1, 2022 where I heard the preliminary requests to amend before adjourning the matter due to

insufficient time. At this hearing, the Landlord, the Tenant and her representative were present.

3. The next time the parties appeared before the Board was on September 16, 2022; at that hearing, the Landlord retained a representative who was present. I proceeded to hear the Tenant's evidence with respect to the issue of the lockout only, before adjourning the matter due to insufficient time in the hearing block.
4. The next time the parties appeared before me was on February 3, 2023. At this hearing, I heard the Landlord's response to the issue of the lock out and provided the parties with deadlines for written submissions.
5. On February 14, 2023, interim order LTB-T-073063-22 was issue outlining the deadlines for the written submissions. As of the date of this order, I confirm receipt of these submissions from the parties and have considered them in this order.

WAS THERE AN ILLEGAL LOCKOUT?

6. By way of background, this tenancy began in July 2018. The Tenant resided in the basement unit with her pets until July 5, 2021 when all of her items were removed from the rental unit by the Landlord and she lost access to her unit.

Tenant's Evidence

7. The Tenant testified that on July 1, 2021, to cooperate with the Landlord's efforts to fix the flooding damage in the rental unit, she agreed to move some of her items into a locker so that the contractors would have space to perform work in her unit. The Tenant testified that this locker was to be arranged and paid for by the Landlord until the repairs were completed.
8. The Tenant testified that the Landlord and his friend also agreed to help the Tenant move some of her belongings into the locker and this process began on July 1, 2021.
9. On July 5, 2021, when she attended the rental unit, she discovered that all of her items had been removed from the unit, into the locker, without her consent, and that she lost access to the rental unit. The same day, she had asked the Landlord for a timeline on when the repairs would be complete but did not receive a response.
10. The Tenant testified that at no point did she tell the Landlord she was moving out of the rental unit, or agreed to terminate her tenancy, nor was a Board order issued terminating her tenancy and evicting her. Further, she did not receive a N13 notice of termination, like her neighbour.
11. The Tenant confirms that prior to the lockout, in June 2021, the Landlord offered her another unit which was to be shared with another tenant, on the condition that her dog would live elsewhere, while repairs were done to her unit; however, the Tenant declined this offer because it would mean having to share a space with a stranger and it would render her dog homeless.

12. The Tenant submits that she had agreed with the Landlord, that she would still live at the unit while these repairs were being performed. At no point did the Landlord object to this arrangement, prior to unilaterally emptying her unit, and gutting it, making it impossible for her to continue to stay there.
13. On cross-examination, the Tenant confirmed that she did not rent a hotel room for the period she was locked out, rather, she stayed at a friend's place because she did not have the money to do so.
14. The Tenant clarified that on July 5, 2021, the rental unit still had its walls, kitchen, bathroom and the Landlord removed the door as well as these structures afterwards. Photographs were submitted into evidence showing the structures present on July 5, 2021 and the unit gutted three days later.
15. The Tenant seeks that the Landlord pay \$500.00 towards temporary accommodations or provide the Tenant with an alternative unit; the Tenant also seeks reimbursement for the storage locker fees which she has had to pay for since February 2022 and repossession of the rental unit and an order for the Landlord to conduct the repairs by a specific timeline.

Landlord's Response

16. The Landlord testified that the rental unit endured two floods as a result of the city work that was being performed outside, adjacent to the residential complex. The first flood impacted only the kitchen whereas the second flood had a more catastrophic effect on the entire rental unit.
17. The Landlord testified that the Tenant knew she could no longer live there and texted the Landlord about it; the Landlord believes he was not responsible to find her a new home. The Landlord also testified that he did not tell the Tenant she had to leave, it was just "common sense."
18. The Landlord testified that there was an altercation on July 5, 2021 where the Tenant locked herself inside the unit and pushed the workers out; eventually they were able to return to the unit with the assistance of police officers.
19. On cross-examination, the Landlord confirmed that there were no orders deeming the unit inhabitable, terminating this tenancy or ordering a demolition of the property. The Landlord also confirmed that he gutted the unit and removed all the items because that's what the insurance company told him to do. The Landlord confirmed that another basement unit at the complex was also impacted, was served an N13 and the application was dismissed; as such, that tenant continued to reside in the basement.
20. The Landlord confirmed that while he determined she was no longer a tenant, he did not have an order to confirm that; further, the Tenant was not paying rent so he assumed she had found another place.

21. The Landlord submits that the tenancy agreement between the parties had become frustrated as a result of the floods, on July 5, 2021 since it rendered the unit inhabitable and destroyed in June 2021. As such, there was no tenancy agreement between the parties.
22. The Landlord seeks that the Tenant's application be dismissed and that costs in the amount of \$700.00 are awarded to the Landlord for the Tenant's "egregious" behaviour since she was the author of her own misfortune.

ANALYSIS

Frustration Argument

23. Section 19 of the Act says:

19. The doctrine of frustration of contract and the Frustrated Contracts Act apply with respect to tenancy agreements.

24. Subsection 3(1) of the *Frustrated Contracts Act*, R.S.O. 1990, c. F.34 says:

3. (1) The sums paid or payable to a party in pursuance of a contract before the parties were discharged,

(a) in the case of sums paid, are recoverable from the party as money received for the use of the party by whom the sums were paid; and

(b) in the case of sums payable, cease to be payable.

25. What this means is that where a tenancy agreement is frustrated the agreement to pay rent in return for the right to occupy the rental unit is over. Any money paid for rent for the period after frustration occurs is refundable to the tenant and no further rent is owed.

26. There are two types of frustration articulated in law and case precedence:

i. where the rental unit has been utterly destroyed or so seriously damaged that restoration will be very protracted, and resumption of the tenancy is not reasonably foreseeable; or

ii. where an unforeseeable intervening event occurs that is not the fault of either party but so significantly changes the rights and obligations of the parties that it would be unjust to hold them to their contractual bargain.

27. With respect to the first definition of frustration, the flood did not render the unit in its present state; in actual fact, that was the Landlord's conduct of gutting the unit. Further, it cannot be said that the rental unit was utterly destroyed. It was not. It was seriously damaged but there is no question that the unit was capable of being renovated and restored. This is confirmed by the Landlord's own evidence that he is in the process of renovating the unit himself, which is taking a longer time to do.

28. With respect to the second definition of frustration it cannot be said that the flood was unforeseeable. Parties have flood insurance and structure coverage for just such an eventuality. While it is unclear whether the Landlord had flood insurance for this property, I cannot find flooding in a basement unit to be unforeseeable, particularly where there has been one in the past, just a few months prior.
29. So, the evidence simply does not support the conclusion that the tenancy agreement was frustrated as a result of the floods. This is aligned with *Guest v. Groleau* [2002] O.R.H.T.D. No. 104, where the court held that a basement flood requiring repairs estimated at one month did not frustrate the tenancy contract and stated:

Catastrophic events such as fires and floods, that might render a housing unit unfit for occupancy for a period of time, while thankfully rare, are not so infrequent or unusual as to be able to be considered unforeseeable. The fact that many tenants and most landlords obtain insurance against exactly such risks suggests that these kinds of catastrophic events ARE reasonably foreseeable and that many people have considered those very risks and made some provision for them.

30. While the above case refers to repairs that took one month, in this case, as of the hearing date in February 2023, the Landlord's evidence was, he was still under the process of renovating since July 2021, since it was financially difficult for him to do so, all it once. I find that the delay in the repair work has more to do with the Landlord's choice of performing it himself, than the actual nature of the repair work that is required to be completed.
31. Given the above, I do not find the doctrine of frustration applies.

Lockout

32. Subsection 37(1) of the Act says a tenancy may be terminated only in accordance with this Act either by notice or by an agreement. Section 39 of the Act provides that landlord shall not recover possession of a rental unit unless the tenant has vacated or abandoned the unit, or an order of the Board has authorized the possession.
33. In the absence of an order issued by the Board terminating the tenancy and evicting the Tenant or evidence that she either abandoned or vacated the rental unit, I find that the Landlord was in breach of section 24 of the Act on July 5, 2021 when they unlawfully evicted the Tenant. This section states:

24 A landlord shall not alter the locking system on a door giving entry to a rental unit or residential complex or cause the locking system to be altered during the tenant's occupancy of the rental unit **without giving the tenant replacement keys.**

[Emphasis added.]

34. While the Landlord states the Tenant knew she could no longer live there and that it was “common sense,” I find that the Landlord improperly regained possession of the rental unit, without complying with the statutory process and obtaining the requisite order.
35. With respect to the remedies sought by the Tenant, since the Landlord displaced the Tenant, I find it only fair that the Landlord give back what they took away. As such, I find it appropriate to require the Landlord to find pet-friendly accommodation for the Tenant while the repairs to the Tenant’s unit are being performed. This can be a hotel room or a rental unit that is identical to the Tenant’s rental unit.
36. I also find it appropriate to require the Landlord to return the rental unit to the Tenant once the repairs have been complete and the rental unit is restored to a habitable state, at the same rent and on the same terms as before the Tenant’s displacement.
37. With respect to the remedy sought by the Tenant regarding compensation for pain and suffering, this will be considered with the balance of her applications after they have been heard.
38. Finally, with respect to the Landlord’s request for costs, I find the evidence is insufficient to establish that the Tenant’s conduct was egregious – failing to acquire insurance, removing the Landlord’s credit card from the method of payment for the storage unit and being in arrears of rent – cannot be reasons to order costs against a party. As such, this request is denied and dismissed.
39. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The Landlord shall forthwith complete the repairs to the rental unit.
2. The Landlord shall return vacant possession to the Tenant as soon as the unit is habitable and continue the tenancy at the same monthly rent charged had the tenancy not been interrupted.
3. On or before January 3, 2024, and until the repairs to the rental unit are completed, the Landlord shall ensure that the Tenant is provided with a hotel room or another rental unit that is pet-friendly at no expense to the Tenant.
4. If the Landlord fails to comply with paragraph 2 of this order, the Tenant may file this order with the Court Enforcement Office (Sheriff) so that the order directing the Landlord to return possession to the Tenant may be enforced. The Tenant is entitled to deduct from the rent any fee charged by the Court Enforcement Office (Sheriff) for this service.
5. Upon receipt of this order the Court Enforcement Office (Sheriff) is directed to give possession of the rental unit to the Tenant on an **expedited basis**.

6. If the Landlord fails to comply with paragraph 3 of this order, the Board may consider levying a \$1,000.00 fine per day, up to \$35,000.00 maximum (LTB jurisdiction), or until the Landlord complies.
7. The hearing of the balance of the Tenant's T2 application is adjourned to a date to be scheduled by the LTB. This application shall be scheduled with the Tenant's T6 application LTB-T-036939-22.
8. Should the Tenant wish to amend their applications, they must do so on or before January 31, 2024 and ensure a copy of the amended application is served to the Landlord and the Board in compliance with Rule 15 of the LTB's Rules of Procedure.
9. As soon as possible and no later than **TEN** days prior to the hearing, the Tenant and the Landlord shall give to the other and file with the Board a copy of any undisclosed document, photograph, receipt, recording or like thing upon which they intend to rely at the hearing. Filing with the Board may be done by uploading onto the Board's TOP portal or by e-mail to LTB.evidence@ontario.ca.
10. Pursuant to Rule 19.7 of the Board's Rules, a party who does not comply with an order for disclosure may not be permitted to rely on any evidence not properly disclosed.

January 2, 2024
Date Issued



Sonia Anwar-Ali
Member, 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.

The Part of this order allowing the Tenant to recover possession of the unit and prohibiting the Landlord from re-renting the unit to anyone else expires and cannot be enforced if:

- a) The Tenant does not file this order on or before July 31, 2024 with the Court Enforcement Office (Sheriff) which has territorial jurisdiction where the rental unit is located, or
- b) The Tenant files this order with the Court Enforcement Office but the order has not been enforced on or before August 30, 2024