Order under Sections 31, 69, 88.1, 88.2, 89 and 130
Residential Tenancies Act, 2006

Citation: D'Angelo v Dahmer, 2023 ONLTB 76473
Date: 2023-11-21
File Numbers: LTB-T-073440-22 (TNT-36962-22)/LTB-L-024786-22/LTB-T-028667-22/LTB-L-032754-22-HR

In the matter of: BASEMENT, 38 CASA NOVA DR VAUGHAN ON L4H2Z9

I hereby certify this is a true copy of an Order dated
DEC 22, 2023
Landlord and Tenant Board

Between: Bryan Dahmer — Tenant

And

Annette D'Angelo — Landlord

On April 25, 2022, in Board file LTB-T-073440-22 (formerly TNT-36962-22), Bryan Dahmer (the 'Tenant') applied for a reduction of the rent charged for the rental unit due to a reduction or discontinuance in services or facilities provided in respect of the rental unit or the residential complex (**the 'T3 application'**).

Then on May 1, 2022, in Board file LTB-L-024786-22, the Landlord applied for an order to terminate the tenancy and evict the Tenant because they, another occupant of the rental unit or a person the Tenant permitted in the residential complex has:

- seriously impaired the safety of any person;
- wilfully caused undue damage to the premises; and
- substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord in a building that has three or fewer residential units and the Landlord resides in the building (**the 'first L2 application'**).

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket costs:

- the Landlord has incurred or will incur to repair or replace undue damage to property wilfully or negligently caused by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex (**the 'first Damage Claim'**);
- that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex that substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest **(the 'first Section 88.1 Claim'**); and
- that are the result of the Tenant's failure to pay utility costs that they were required to pay under the terms of the tenancy agreement (**the 'Section 88.2 Claim'**).

Then on May 23, 2022, in Board file LTB-T-028667-22, the Tenant applied for an order determining that the Landlord:

- entered the rental unit illegally;
- 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
- harassed, obstructed, coerced, threatened or interfered with the Tenant (**the 'T2 application'**).

Finally, on June 7, 2022, in Board file LTB-L-032754-22, the Landlord applied for an order to terminate the tenancy and evict the Tenant because they, another occupant of the rental unit or a person the Tenant permitted in the residential complex has:

- seriously impaired the safety of any person;
- wilfully caused undue damage to the premises; and
- substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord in a building that has three or fewer residential units and the Landlord resides in the building (**the 'second L2 application'**).

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket costs:

- the Landlord has incurred or will incur to repair or replace undue damage to property wilfully or negligently caused by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex (**the 'second Damage Claim'**); and
- that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex that substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest **(the 'second Section 88.1 Claim'**).

Both of the Landlord's L2 applications also included a request for daily compensation for each day the Tenant remains in the rental unit after the termination date.

These applications were heard together by videoconference on August 11, 2022, November 10, 2022, April 13, 2023, July 13, 2023, and October 12, 2023.

The Tenant and the Landlord attended the hearing, testified on their own behalf and represented themselves throughout. The Landlord called as witnesses: Nadia Kouzoub and Kelsey Santerre.

Determinations:

Preliminary Issues and Objections Addressed at the Hearing

1. This matter took five days of hearing time because much of that time was spent addressing various preliminary issues and repeated objections. Some of the preliminary objections are addressed in Directions issued September 21, 2022, and December 6, 2022, and in the interim order issued on April 26, 2023.

2. A list of preliminary issues that were addressed at the hearing is outlined below. This list is intended to avoid any confusion for the parties going forward as they have either already filed more applications against each other, or they plan to in the near future. Detailed oral rulings and reasons were given throughout the hearing regarding this list of issues.

3. The following issues were addressed during the hearing:

Raised by the Landlord

- The Landlord was provided with information regarding requests for a closed hearing, a publication ban and a redacted order. The Landlord then withdrew those requests;
- The Landlord requested and was granted accommodation during the hearing in the form of spotlighting to minimize the Tenant's face;
- The Landlord alleged a "conflict of interest" between the Board and the Human Rights Tribunal of Ontario which was addressed by way of an explanation as to their respective jurisdictions and the purpose of each tribunal;
- After the Board's monetary jurisdiction was explained to the Landlord, she amended her requested remedies accordingly;
- The Landlord's repeated requests for an "emergency eviction order" were denied on the basis that all parties have a right to a full and fair hearing process before the Board will issue an order evicting a tenant;
- The allegation in the Landlord's applications related to damage in the bathroom were dismissed because the issue was already decided in Board order TNL-35993-21 issued on May 27, 2022;
- The Landlord's repeated objections regarding the alleged delay she experienced at the Board, were addressed with the explanation of the right to procedural fairness, which includes the right to a fulsome hearing of all the evidence in support of all of the allegations being brought forward by both parties.

Raised by the Tenant

- The Tenant's objection that the Landlord had recorded the hearing process and then used that recording in another proceeding was dismissed due to insufficiency of evidence;
- The Tenant's request to amend the T2 application to include a request for abatement of $3,300.00 for 33 illegal entries was granted as there was no prejudice to the Landlord.

Raised by Both Parties

- As both parties repeatedly loaded numerous additional allegations, hundreds of pages of documents as well as numerous videos onto the Board's Portal after each hearing date, the parties were informed that their allegations could not extend past May 2022 and any allegations or evidence subsequent to that date would need to be the subject of new applications which would be heard separately on a date to be set by the Board;

- The parties jointly requested that the hearing end after five days despite the fact that neither side exercised their right to cross-examine the other or provide testimony by way of re-direct. The parties agreed that the decision should be based on the testimony and evidence that had already been submitted during the course of the five days of hearing as well as the written material and videos already submitted to the file. I am satisfied that the parties understood the implications of their request and confirmed that understanding for the record.

Additional Preliminary Issues

4. At the hearing I reserved a decision regarding two additional preliminary issues raised by the Tenant. The Tenant seeks to amend the T2 application further to include a request for $1,854.40 in out-of-pocket expenses related to the parking space issue and to request an administrative fine. For the following reasons, both requests are granted.

The Out-of-Pocket Expenses

5. First, although the Landlord says she was unaware that the Tenant would be requesting additional remedies related to the parking space dispute, the fact is that the Tenant alluded to these additional expenses numerous times throughout his testimony.

6. Also, at the hearing, the Landlord repeatedly told me that she expected the Tenant to obtain a municipal parking pass for himself so he could park on the street. As the Landlord lives in the unit directly above the Tenant, the Landlord knew or ought to have known that the municipality would charge the Tenant for the very parking passes she was suggesting.

7. For these reasons, I find that the Landlord knew or ought to have known that the Tenant suffered additional out-of-pocket expenses and there is therefore little prejudice to the Landlord of allowing the Tenant to amendment requested.

The Administrative Fine

8. Next, regarding the Tenant's request to amend the T2 application to include a request for an administrative fine, having considered the criteria outlined in Rule 15 of the Board's *Rules of Procedure,* I find that the Tenant's request should be granted.

9. Throughout the hearing, the Tenant repeatedly said that he did not understand what remedies he could ask for and he had no idea whether his requested remedies were justified but specifically said that he hoped his requested remedies would operate as a "deterrent" to the Landlord for her alleged violations of the Act. I informed the Tenant about the purpose of administrative fines and the Tenant said he was unaware of this possible remedy. At that point he requested an amendment to his application to include a request for an administrative fine. So, I am satisfied the request was made as soon as the need for it was known.

10. I also find that this amendment was requested in good faith, as required by Rule 15. For these reasons, I find that any resulting prejudice to the Landlord is balanced by the

Tenant's adherence to Rule 15 and the overall purpose of an administrative fine. The Tenant's request to amend is therefore granted.

The Landlord's First L2 Application

11. For the following reasons, the Landlord's first L2 application must be dismissed.

12. First, I would note that there is no evidence in the file how or when the N7 notice of termination was served on the Tenant. This issue was not raised at the hearing and it is very possible that the parties were confused about this because the Landlord has served the Tenant with so many notices and filed so many duplicate applications.

13. Regardless of whether the N7 was properly served, it has a date of termination of November 22, 2021. The Landlord then filed the first L2 application on May 1, 2022. Subsection 69(2) says that an application may not be filed more than 30 days after the termination date specified in a notice of termination. As the Landlord filed the first L2 application more than 30 days after the termination date in the N7, the application is late and must be dismissed.

14. The Landlord actually loaded 3 different L2 applications into the Board's file LTB-L-024786-22 in an attempt to amend the various remedies she is seeking. For the reasons outlined above, the eviction portion of all 3 of those L2 applications must be dismissed. The remaining claims for damage, unpaid utilities and expenses related to substantial interference will all be discussed later in this order.

The Landlord's Second L2 Application

15. Pursuant to s. 83(3)(c) the Landlord's second L2 application must also be dismissed.

16. Subparagraph 83(3)(c) says that "…the Board shall refuse to grant the application [for eviction] where satisfied that…the reasons for the application being brought is that the tenant has attempted to secure or enforce his or her legal rights…". This section means that the Board is mandatorily required to deny eviction if the evidence establishes it is more likely than not that the applications were filed in response to the Tenant's attempts to exercise his rights under the Act.

17. Based on the evidence before the Board I am satisfied that the Landlord filed the second L2 application because the Tenant refused to pay an illegal rent increase and insisted that the Landlord serve proper notices of termination in order to comply with the law.

18. The Tenant says that he has lived in the unit since November 1, 2017, and had a good relationship with the Landlord for the first few years. The Tenant submitted emails from throughout 2018 which show that the parties had a friendly and cordial relationship at that point.

19. However, the Tenant says the relationship deteriorated suddenly when he refused to agree to the Landlord's proposed rent increase in October 2021 which was above the provincial guideline amount and when he refused to vacate the rental unit when the

Landlord told him to move out. The Tenant says that, within minutes after his refusal to agree to the illegal rent increase, the Landlord told him to move out and then began a pattern of behaviour which included threats, intimidation and harassment which ultimately led to the Landlord filing the L2 application before me. That evidence is supported by the documentary evidence before the Board. For example, the following is a description of the email exchange which the Tenant says began the deterioration of the relationship:

- **October 28, 2021, 5:15pm** – From the Landlord - "Please be advised that effective January 1, 2021, the rent for the basement will be $1,550. It will increase $25.00 for the basic annual increase, an $50 to cover the cost of an annual cleaning service."
- **October 28, 2021, 5:31pm** – From the Tenant - "Again, I must inform you that you are not allowed to increase my rent beyond the province maximum which is 2022 is 1.2%. Based on my current $1475 rent, that increase is $17.7. Secondly, it is against the Residential Tenancies Act to charge a Tennant (*sic*) for cleaning services under normal circumstances. The state of the appartment (*sic*) would be considered well within normal circumstances."
- **October 28, 2021, 6:14pm** – From the Landlord – "You are free to complain to the Board. I have every right to charge for a necessary service. You are free to find alternate accommodations. This is not an apartment building. This is my home and I expect a standard of cleanliness which is not being met. Since your sock broke my central vac system, I will claim those damages of $1,527 today from the Board and fees to clean the apartment if you choose to go the legal route. Hopefully you can find a comparable apartment like mine for $1,550. Further, I have every right to raise the rent to $1,550 based on the large increase in the price of utilities and property taxes, etc. Your rent is still very cheap and I only raised it $25. But complaining about the difference between $17 or whatever versus $25 is unbelievable. Since you do not clean, dust or vacuum, I need to pay to keep your apartment clean as it is affecting my living space."[Emphasis added]
- **October 28, 2021, 6:16pm** – From the Tenant – "Thank you for the response."
- **October 28, 2021, 6:20pm** – From the Landlord – "I am very disappointed and hurt regarding your email. While you complain to the Board, please advise them when I did not raise the rent at all for one year. I did not receive any complaints about that."
- **October 28, 2021, 6:21pm** – From the Tenant – "There is currently a rent freeze in effect, so you couldn't have. Secondly, property taxes and utilities have no bearing on rent increases. These are provincial mandated legal requirements."
- **October 28, 2021, 6:33pm** – From the Landlord – "Please be advised that I was thinking of taking over the apartment space for my own personal use. I am providing you with 60 days notice to vacate. Thank you."[Emphasis added]
- **October 28, 2021, 6:50pm** – From the Tenant – "If this is the direction you want to go in then you will need to apply for an eviction notice and serve me properly. With that, clearly this relationship has dissolved beyond civility. I kindly ask that all further communications you wish to have be only pertinent to our lease agreement."
- **October 28, 2021, 6:52pm** – From the Landlord – "Please vacate the apartment by December 31, 2021." [Emphasis added]
- **October 28, 2021, 6:54pm** – From the Tenant - "As per my legal rights, you must follow the law on this matter."

- **October 28, 2021, 7:35pm** – From the Landlord - "You have been notified by me providing you with 60 days' notice to vacate my property by December 31, 2021. It would be best for both of us that you simply look for another apartment and leave on an amicable basis. On January 1, 2021, this will no longer be your residence. You have been provided with plenty of time to look for another apartment. If you wish, I will waive your required 60 day notice period, and you are free to move out within 30 days. Thank you." [Emphasis added]
- **October 28, 2021, 7:37pm** – From the Tenant - "I respectfully decline your offer. If you want me out of this space then you will need to follow the proper procedures and file with the LTB."
- **October 28, 2021, 7:41pm** – From the Landlord – "I respectfully request for you vacate my property by December 31, 2021, and to stop threatening me and damaging my property."

20. This email exchange supports the Tenant's testimony that, within minutes of him enforcing his legal right not to pay an illegal rent increase, the Landlord told the Tenant to move out of the rental unit. In addition, these emails establish that the Tenant attempted to enforce his legal rights again by requiring the Landlord to serve a proper notice of termination and file an application with the Board. However, the Landlord responds within minutes with repeated attempts to have the Tenant vacate the unit by December 31, 2021.

21. Within a few days after this email exchange, the Tenant says that the Landlord began a campaign against him in an attempt to have him vacate the rental unit. This campaign began with an email on October 31, 2021, in which the Landlord gave notice to enter the unit to conduct an inspection for cleanliness. This email, which the Tenant submitted into evidence, is two pages long and includes various allegations of uncleanliness, several personal insults, threats to charge the Tenant for cleaning services and renewed calls for the Tenant to vacate the rental unit.

22. After this, the Landlord then reiterated her instructions to the Tenant to vacate the rental unit in approximately 17 lengthy emails over the next several months. In addition to these 17 emails, the Landlord sent dozens of additional emails to the Tenant which included threats, personal insults, aggressive language and numerous allegations related to cleanliness, garbage and numerous other relatively minor issues.

23. The Landlord also repeatedly threatened to call the police to the rental unit to accompany her during inspections. The Landlord ultimately did call the police to the rental unit several times:

    - to report that the Tenant was using his BBQ in the backyard;
    - to report that the Tenant was parking his car in the driveway;
    - to report that the Tenant's sister was parking her car in the driveway; and
    - to report that the Tenant's girlfriend was parking her car in the driveway.

24. The Landlord also sent numerous notices of entry to the Tenant over the next several months and entered the rental unit without his consent approximately 33 times. The Landlord also served the Tenant with 7 notices of termination beginning on November 9,

2021, which had dozens of pages of allegations attached. Finally, the Landlord filed the first L2 application on May 1, 2022, and the second L2 application on June 9, 2022.

25. At the hearing, and as outlined above, the Landlord elected to end the hearing after 5 days and elected not to lead evidence regarding whether she filed the L2 application in response to the Tenant attempting to secure or enforce his legal rights. However, throughout the Landlord's testimony, she admitted to taking away his parking spaces, entering the rental unit frequently, calling the police, calling a tow company to have the Tenant's car towed from the driveway, yelling at the Tenant, and telling him to move out. There were also several videos submitted at the hearing which clearly show the Landlord engaging in these behaviours. Throughout her testimony, the Landlord justified her actions and she appeared to believe her behaviour was justified as the Tenant was renting a unit in her personal residence and she wanted him to leave.

26. Based on the Tenant's testimony, the supporting documentary evidence and the Landlord's own description of her behaviour, I am satisfied that the Landlord filed the L2 application in response to the Tenant refusing to agree to an illegal increase and then refusing to vacate the rental unit simply because the Landlord told him to leave. The email exchange between the parties on October 28, 2021, is the most compelling documentary evidence in this instance. It shows that, in just under 3 hours, the Landlord's behaviour towards the Tenant became retaliatory to the point where she insisted several times that he vacate the rental unit. The exchange began with the Landlord's request for more rent, and ended with the Landlord's demand that the Tenant move out. There is clearly a causal link in these emails between the Tenant attempting to secure his right to a rent increase that complies with the law and the Landlord's requests to have him move out.

27. I also find that the Landlord's conduct immediately following this email exchange and for the months afterwards supports the Tenant's testimony that she retaliated against him for refusing to pay an illegal rent increase and refusing to move out without due process. The sudden onset of the Landlord's actions, the insulting and aggressive tone of her emails, coupled with the relatively minor nature of the allegations she made against the Tenant suggest to me that her response was disproportionate to the Tenant's alleged behaviour. This disproportionate response supports the Tenant's position that the Landlord was acting in retaliation for him attempting to secure his legal rights.

28. The Landlord's comments throughout her testimony also lead me to conclude that her behaviour was retaliatory. The Landlord appeared to have no understanding of her responsibilities under the Act and repeatedly stated that the complex is "my house and my property". The Landlord repeatedly insisted at the hearing that the Tenant should simply leave because she wanted him to leave.

29. For all of these reasons, I find that the mandatory relief from eviction provision found in subsection 83(3)(c) of the Act is engaged here. This means that I am mandatorily required to deny eviction. The Landlord's second L2 application for eviction is therefore dismissed.

The Remaining Claims in the L2 Applications

30. On the first day of hearing, I pointed out to the Landlord that there were various inconsistencies and problems with the claims she was making pursuant to sections 89, 88.1 and 88.2 of the Act. In the Board's electronical portal, the Landlord filed the first L2 application and then attempted to amend it twice with new monetary amounts. The Landlord then filed the second L2 application, which contained entirely new monetary amounts for many of the same allegations. This meant that it was difficult to ascertain exactly what the Landlord was claiming and what monetary amount she was seeking.

31. I also pointed out to the Landlord that many of her claims exceed the Board's monetary jurisdiction of $35,000.00. At the hearing, I granted the Landlord's request to amend her L2 applications to narrow the issues and the corresponding remedies as follows:

    - $3,616.00 for damage to the garage door;
    - $5,384.10 for out-of-pocket expenses related to the Tenant's substantial interference; and
    - $100.00 for unpaid utilities because the Tenant left the ceiling fan running.

32. Each of these issues will be discussed below.

The s.89 Damage Claim

33. The Landlord's damage claim with respect to the garage door is dismissed for lack of evidence.

34. The Landlord says the Tenant wilfully or negligently damaged the garage door by causing a large dent in the door. She is claiming $3,616.00 because she says both garage doors need to be replaced so they match.

35. Although the Landlord provided pictures of the garage door at the hearing which show that the door has a large dent, I am not persuaded by the Landlord's testimony regarding who caused this damage. The Landlord admits that she did not personally witness the Tenant causing damage to the garage door and she failed to call any witnesses who personally saw the Tenant cause the damage. The Landlord assumes that the Tenant repeatedly parked too close to the door and caused the dent. The Landlord is also unsure when exactly the damage was caused, but she noticed the damage "around March of last year" which, based on the date of the hearing, means March 2022. The Landlord says that the damage is so severe that she is unable to open the garage door and yet she could not recall the last time she tried to open the garage door.

36. The Tenant denies causing any damage to the garage door and says the door was dented before he moved into the rental unit. In support of his testimony, the Tenant had us conduct a simple search on googlemaps.ca during the hearing. This website has a clear picture of the garage door which shows the dent. The time stamp of this picture is July 2018 which is approximately 9 months after the Tenant moved in, but over 3 years prior to the date the Landlord says she first noticed the damage.

37. Based on the evidence before me, I am not satisfied that the Tenant wilfully or negligently caused damage to the garage door. The Landlord has no first-hand knowledge regarding how this damage was caused and she has no idea when this damage was caused. At best, the Landlord can only make assumptions about what caused the damage, but she has failed to provide sufficient evidence to establish that the Tenant damaged the garage door. For these reasons, this portion of the Landlord's application is dismissed.

The Section 88.1 Claim

38. For the following reasons, the Landlord's claim for $5,384.10 for out-of-pocket expenses related to substantial interference must be dismissed.

39. The first difficulty with the Landlord's claim is that a portion of these expenses are actually costs she paid to her paralegal over the course of the tenancy ($2,429.50), costs she incurred to gather evidence ($25.00), costs she incurred to hire a process server ($220.35) and costs she paid to her lawyer for a previous hearing date related to another file ($1,723.25). In other words, $4,398.10 of the Landlord's claim either constitutes legal costs for this hearing or constitutes legal costs that are completely unrelated to the applications before me. In either case, I do not find that the Landlord's claim for legal costs should be granted.

40. I say this because of the principles outlined in the Board's Interpretation Guideline #3 regarding Costs and Rule 23 of the Board's Rules of Procedure. Generally speaking, it is usually only the successful party that is entitled to claim costs of the litigation. The Landlord has not been successful in her applications for eviction. Further, the guideline establishes that "the Board should not use its power to order costs in a way which would discourage landlords and tenants from exercising their statutory rights." This means that, unlike the courts, the Board does not routinely award legal costs, except "where a party's conduct in the proceeding was unreasonable."

41. Although the Landlord may feel that the Tenant's conduct towards her during the course of the tenancy has been unreasonable, that alone does not justify awarding her legal costs particularly where she has been the unsuccessful party on the applications before the Board. Instead, in order to justify an order for legal costs, the Landlord must establish that the Tenant acted unreasonably during the hearing. The Landlord has simply failed to establish this.

42. The hearing lasted 5 days and, although the Tenant routinely exercised his right to object to various issues or pieces of evidence raised by the Landlord, he did not exercise this right unreasonably or contrary to any instructions I gave him. Instead, the Tenant listened to my instructions throughout the hearing and behaved in a calm, patient, respectful and professional manner throughout the hearing. This was despite the fact that the Landlord routinely yelled at him, yelled at me, called the Tenant names and personally insulted the Tenant throughout the hearing.

43. As I am not satisfied that the Tenant behaved unreasonably during the hearing process, I do not find that the Landlord is entitled to an order for her legal costs by way of a s. 88.1 claim or otherwise.

44. One of the remaining portions of the Landlord's claim relates to $800.00 for costs she incurred during her numerous therapy sessions, which she says were caused by the Tenant. For the following reasons, I do not find that the Landlord is entitled to these costs.

45. The difficulty with the Landlord's claim is that she needs to establish that the Tenant substantially interfered with her reasonable enjoyment which then caused her to require counselling and psychological treatment. In other words, the Landlord needs to establish that she incurred these costs as a direct result of the Tenant's behaviour and not other outside factors. This is an objective analysis and is not based on the subjective feelings or perceptions of the Landlord.

46. Although the Landlord called her therapist, 'KS', as a witness at the hearing, KS admitted that the Landlord likely had some form of pre-existing trauma or pre-existing PTSD which may have been triggered by the Tenant's conduct. In my view, based on the numerous videos I watched of the Landlord, the hundreds of pages of documentary evidence showing the Landlord's correspondence and the Landlord's overall demeanour at the hearing, I would take KS's observations and conclude that the Landlord's psychological state was more likely than not negatively affected by her perception of the Tenant's conduct and not the conduct itself.

47. I say this because, although KS describes the Landlord as feeling unsafe in her own home, there is no evidence before me that the Tenant endangered the Landlord or threatened her safety in any way. On the contrary, there is ample evidence in the videos, emails and even the Landlord's conduct at the hearing to establish that she routinely yelled at the Tenant, threatened him, called him names and personally insulted him, but the Tenant did not respond negatively to the Landlord.

48. Based on the evidence before me, I am not satisfied that there is an objective causal connection between the Tenant's conduct towards the Landlord and the therapy costs that she incurred. While the Landlord's perception of the Tenant's conduct may have triggered some past trauma from her personal history, there is insufficient evidence before me that the Tenant threatened or endangered the Landlord such that she would require therapy. For these reasons, this portion of the Landlord's application is dismissed.

49. The final portion of the Landlord's request for out-of-pocket expenses is the $186.00 she incurred for filing the application. However, as no portion of the Landlord's application is granted, the Landlord is not entitled to these costs and this portion of the Landlord's application is denied.

The Section 88.2 Claim

50. The Landlord is claiming $100.00 because she says the Tenant left the ceiling fan running while he was away from the rental unit. That allegation was withdrawn at the hearing and is dismissed accordingly. However, even if the Landlord did not withdraw this claim, it would inevitably have been dismissed as the tenancy agreement between the parties says the Landlord is responsible for paying all utilities. As a result, the Landlord cannot assert a claim for unpaid utilities pursuant to s. 88.2.

51. Given the above, the Landlord's second L2 application is dismissed in its entirety.

The T2 Application

Illegal Entries

52. For the following reasons, I find that the Landlord repeatedly entered the unit illegally 33 times between November 30, 2021, and May 20, 2022.

53. The Landlord does not deny repeatedly entering the rental unit. Instead, she says the entries were justified, she usually provided proper notice and she has not breached her obligations.

54. The Tenant says that 26 of the Landlord's entries occurred in January and February 2022 while he was temporarily away from the rental unit because he was hospitalized and then staying with his sister recovering from a serious medical condition. The Tenant says the Landlord took advantage of his temporary absence and insisted on entering the unit for frivolous reasons including to check on the cleanliness of the unit, deliver mail, take photos, check the pipes, turn the taps on/off and flush the toilet.

55. During this entire time period, the Tenant says the Landlord used her home insurance policy to justify conducting daily inspections because she said the unit was unoccupied. The Landlord blamed the Tenant for temporarily leaving the rental unit "unoccupied" despite the fact that she lives in the same home on the main floor. The Tenant's testimony on these points was detailed and consistent and I have no reason to disbelieve him.

56. In support of his testimony, the Tenant provided 11 emails from the Landlord during the period in question in which she informs the Tenant that she will be entering the rental unit to inspect the pipes, flush the toilets, turn all water taps on/off and inspect for cleanliness. Several of these emails inform the Tenant that these entries will be conducted every 4 days, and often on a daily basis, in order to allegedly comply with the Landlord's home insurance policy.

57. The Tenant also provided emails in which he responds to the Landlord by informing her either that he does not consent to the Landlord's entry, and/or the Landlord's notices are improper because they failed to comply with the requirements set out in sections 25, 26 and 27 of the Act. Each time the Tenant objects in writing to the Landlord's written notices of entry, she replies and insists on entering when she wants to, regardless of whether her notices comply with the Act. On at least one occasion the Landlord insists that she have a police officer present while she conducts her inspection.

58. Finally, although the Tenant produced no video evidence of the Landlord's entries during the time period in question, he did produce several videos of the inside of the rental unit from June to August 2022 once he had installed an internal security system to monitor activities inside the rental unit. These videos show the Landlord entering the unit, usually while the Tenant is away. She repeatedly walks slowly throughout the rental unit and enters the kitchen, living room, bathroom and bedroom. In all of the videos, the Landlord appears to either be filming the rental unit and/or taking pictures throughout the unit. None

of the videos show the Landlord conducting any repairs or dealing with any emergency situations inside the rental unit.

59. While these videos do not show the time period in question, I find that they support the Tenant's testimony that the Landlord repeatedly entered the rental unit to conduct numerous inspections. The behaviour the Landlord exhibits in these videos mirrors the reasons she describes in her emails about turning the taps on/off, turning lights off and looking for cleanliness issues.

60. Pursuant to section 25 of the Act, a landlord can only enter a rental unit in accordance with section 26 or 27. Section 26 addresses permitted entries where no notice is given. Section 27 deals with entry on notice.

61. None of the reasons for entry without notice set out in section 26 of the Act apply here. Despite the few emails in which the Landlord alleges there is an "emergency" in the rental unit, there is no evidence before me that there was ever an emergency in the unit. For example, there were no floods, fires, electrical issues or other issues that could have resulted in damage to the unit. At most, it is possible that the Tenant left some food scraps on the counter during his medical absence that may have been attracting fruit flies. However, even if this is true, this does not constitute an emergency that would warrant the Landlord repeatedly entering the unit without proper notice.

62. Also, the Tenant did not consent to the Landlord's entries when they occurred and her entries were not part of a cleaning agreement that was part of the lease. Finally, there is no evidence that the Landlord's entries were for the purpose of showing the unit to a prospective tenant. This means that none of the reasons for entry without notice set out in section 26 of the Act apply here.

63. As for the entries with notice pursuant to section 27, all of the Landlord's notices fail to comply with that section because they fail to specify a particular date of entry and/or a specific time of entry. All of the notices give either a range of possible dates of entry and/or a range of possible times for entry. This means that all of the Landlord's notices of entry fail to comply with section 27 and are invalid.

64. Based on the evidence before me, I am satisfied that the Landlord entered the rental unit illegally 33 times between November 30, 2021, and May 20, 2022. This portion of the Tenant's application must be granted.

65. Regarding the Tenant's requested remedy for these illegal entries, the Tenant is requesting an abatement of **$3,300.00** which amounts to $100.00 for each illegal entry. Based on my knowledge of similar cases, and on the principles outlined in *Wrona v. Toronto Community Housing Corporation*, 2007 CanLII 3228 (ON SCDC), I find that this amount is modest under the circumstances in comparison and fully justifiable. An order will issue accordingly.

The T2 Application

Substantial Interference and Harassment

66. For the following reasons, I find that the Landlord harassed, obstructed, coerced and threatened the Tenant and substantially interfered with the reasonable enjoyment of the rental unit by the Tenant.

67. The Tenant describes the following six scenarios during which he says the Landlord either harassed him and/or substantially interfered with his reasonable enjoyment of the rental unit:

- The Landlord repeatedly attempted to increase the rent and tried to include cleaning fees in the rent;
- The Landlord repeatedly attempted to illegally evict the Tenant and/or coerce him to move out;
- The Landlord repeatedly harassed the Tenant by personally insulting him, swearing at him and sending harassing emails;
- The Landlord prevented him from using the backyard as well as his own BBQ;
- The Landlord removed access to one, and eventually both, parking spaces; and
- The Landlord engaged in a dispute regarding the Tenant's mail.

68. The bulk of the allegations regarding the first three disputes have already been discussed above. As the documentary evidence is clear and as the Landlord did not dispute the allegations made against her, but only attempted to justify her behaviour, I find that these portions of the Tenant's T2 application must be granted. A remedy for these breaches will be discussed below.

69. The details of the last three disputes listed above will be discussed below. I would note that, although the Landlord elected not to provide a response to the issue of whether the allegations engaged the mandatory relief provision found in subsection 83(3)(c), she did provide sufficient testimony regarding her perspective about these allegations and she provided reasons for why she felt her conduct was justified.

The Backyard Dispute

70. The Landlord does not dispute that she denied the Tenant the use of her backyard and prevented him from using his BBQ in the yard. In fact, both the Landlord and the Tenant provided videos of the Tenant attempting to BBQ in the backyard when the Landlord comes out, detaches the propane tank from the BBQ, brings it into her garage while also calling the police on her cell phone and yelling profanities at the Tenant and his girlfriend.

71. The Tenant also provided another video which shows the Landlord in the backyard that same evening, exploring in and around the Tenant's BBQ (which no longer has the propane tank attached), taking pictures and recording the Tenant. In this video, the Landlord eventually becomes extremely hostile, yelling, swearing and screaming at the Tenant, accusing him of using the backyard patio without her permission, attempting to kill

her dog, using his own BBQ without her permission and somehow damaging her property. The Landlord calls the Tenant a "murderer", repeatedly screams at the Tenant to "get out of my house", and calls the Tenant and his girlfriend "evil people".

72. The Landlord says she was justified in preventing the Tenant from using the backyard because it was never part of the lease agreement and she never agreed to allow the Tenant to use the backyard or BBQ in the yard. The Landlord also excuses her hostile behaviour because she says she felt "triggered" by the Tenant's refusal to obey her instructions and his refusal to move out of her house.

73. While it is true that the written lease agreement is silent regarding whether the Tenant is allowed access to the backyard, the Tenant provided emails between the parties from 2018 which confirm that the Tenant was permitted to use the backyard, the patio as well as use his own BBQ in the yard. These emails are as follows:

- April 4, 2018 – from the Landlord – "…Really looking forward to Spring and those sunny days. **Enjoy your first bbq**."
- April 4, 2018 – from the Tenant's girlfriend – "Thank you! We're looking forward to it!! **Is the bbq in an okay spot**?"
- April 4, 2018 – from the Landlord – "**I think it's in a good spot**, thanks for asking, so any leaks or spills will be on the little stones and not on the patio stones. It can be levelled with stones."
- April 26, 2018 – From the Tenant's girlfriend – "I noticed you have put the chairs out, **are we able to use the patio table in the backyard**?"
- April 26, 2018 – From the Landlord – "**Yes, enjoy.** And use the bar as well."
- April 26, 2018 – From the Tenant's girlfriend – "Great, thanks! It's a beautiful yard, looking forward to spending some time out there now that the nice weather has finally shown up." [Emphasis added]

74. These emails confirm that the Tenant had access to the yard and was encouraged to use the patio chairs and use his BBQ in the backyard. The Landlord does not dispute that she now actively discourages the Tenant from using the backyard and his own BBQ.

75. Harassment is generally considered to be a course of conduct that the reasonable person knew or ought to have known would be most unwelcome to the average and reasonable person.

76. Although the Landlord seems to attribute her hostile response to her mental health challenges, the videos do not corroborate the Landlord's testimony on this point. Throughout all of the videos regarding the backyard, the Tenant and his girlfriend remain calm towards the Landlord. Neither the Tenant nor his girlfriend yell at the Landlord, swear at her, call her names or threaten her. Although the Tenant and his girlfriend respond to the Landlord and engage in a discussion with her, there is nothing objectively harassing or threatening about their conduct. In contrast, the Landlord escalates the discussion and proceeds to yell, scream, swear and belittle the Tenant. This is conduct which the Landlord knew or ought to have known would be most unwelcome and this is conduct that is not justified by any mental health challenges the Landlord may be experiencing.

77. Based on the evidence before me, I am satisfied that the Landlord both harassed the Tenant and substantially interfered with his reasonable enjoyment when she aggressively prevented him from using the backyard and prevented the Tenant from using his own BBQ while also calling the police to the scene. The Landlord's own videos confirm that her behaviour towards the Tenant was aggressive, hostile and unpleasant. The Landlord removed the Tenant's propane tank and then called the police simply because he was using his BBQ to cook hotdogs in the backyard. This behaviour is a breach of the Landlord's legal obligations and this portion of the Tenant's application must be granted. A remedy for these breaches will be discussed below.

The Parking Dispute

78. Once again, the Landlord does not dispute the essential facts of this portion of the Tenant's application. She agrees that the Tenant was provided with 2 parking spots in the written lease agreement. However, the Landlord feels that she was justified when she removed one parking space after the Tenant's girlfriend moved out of the unit. The Landlord also feels that she was justified when she removed the Tenant's second parking space because he was allegedly causing damage to the garage door and his car was allegedly making it difficult for people to enter the house.

79. As explained above, the Landlord has provided insufficient evidence that the Tenant caused any damage to the garage door. The Landlord also provided insufficient evidence that the Tenant's car was preventing people from entering the house, particularly since the Tenant was given two parking spots and used those spots for the first few years of the tenancy without any problems.

80. Regardless of the Landlord's views on this matter, the fact remains that the Landlord is not entitled to unilaterally change the terms of the lease agreement and remove the two parking spaces that were allotted to the Tenant. Even though the Tenant's girlfriend did move out of the unit, in the absence of any new written agreement to alter the parking arrangement, the Tenant was still entitled to the two parking spaces outlined in the lease.

81. This situation was made worse because the Landlord freely admits that she repeatedly sent emails to the Tenant ordering him not to park in the driveway and then repeatedly barricaded the Tenant's side of the driveway with buckets and ladders and other large objects in order to prevent him from parking in the driveway. The pictures presented at the hearing show that the Landlord placed a large ladder in the driveway as well as milkcrates, buckets and other large items to prevent the Tenant from parking on his side of the driveway. The Landlord also freely admits that she repeatedly called the police and various towing companies over the course of several months to report that the Tenant and his guests were parking in the driveway.

82. Based on the evidence before me, I find that the Landlord's behaviour substantially interfered with the Tenant's reasonable enjoyment of the unit and her behaviour constitutes harassment and obstruction. This means that this portion of the Tenant's application must be granted. A remedy for this breach will be discussed below.

The Mail Dispute

83. Until October 2021, the parties had an amicable arrangement regarding how the Tenant's mail was delivered as the Tenant does not have a mailbox that is separate from the mailbox for the house. Historically, the Landlord would deliver letters to the Tenant by sliding the letters under the door that connects her kitchen to the top of the Tenant's indoor staircase. The Landlord would also deliver any packages by discreetly opening the connecting door, without entering the unit, and then placing the packages on the top step of the indoor staircase.

84. In October 2021, as the Landlord began entering the rental unit more frequently. As she began to insist that the Tenant move out, the Tenant became uncomfortable with the Landlord delivering packages by opening his door and placing them on the step. As a result, the Tenant requested that the Landlord continue to deliver his letters by sliding them under the door, but he asked that she deliver packages by leaving them outside the main entrance to the rental unit, which opens towards the backyard.

85. The Landlord refused to adhere to the Tenant's wishes and refused to deliver the Tenant's packages at all. The Landlord then insisted that the Tenant get his own mailbox and have his mail delivered separately to the rental unit. However, when the Tenant looked into this option, Canada Post told him that he was not allowed to have his own mailbox unless the Landlord designated the basement as a "unit B" and separate from the main floor. The Landlord refused to do this, and the Tenant provided an email at the hearing which confirms the Landlord's refusal.

86. The Tenant then looked into paying for a Post Office Box. However, the Tenant needs to have important medication delivered which is not permitted to be left in a Post Office Box. The Tenant then asked the Landlord for a key for the house mailbox, which is located in a community mailbox location. The Landlord refused to provide the Tenant with a key and instead insisted that he have his mail delivered to his place of work.

87. The Tenant provided emails at the hearing which corroborate his testimony regarding how the mail dispute unfolded. Once again, the Landlord did not dispute how the events unfolded but instead justified her behaviour because she felt the Tenant should move out of her house and she had no obligation to continue to deliver his mail to him. At the hearing, the Landlord said the Tenant's request to have her deliver his packages to the backyard entrance was equivalent to "ordering [her] like a slave to deliver his packages to him carefully at the back door." The Landlord also felt that she should no longer be responsible for the Tenant's mail, despite the fact that he had no way to access his mail at the community mailbox.

88. Based on the evidence before me, I am satisfied that the Landlord substantially interfered with the Tenant's reasonable enjoyment when she refused his request to leave his packages at the backyard entrance to the rental unit. There was nothing unreasonable about the Tenant's request and, based on the timing of when this dispute unfolded, I find that this was yet another example of the Landlord's continued attempts to make life unpleasant for the Tenant in order to force him to move out. For these reasons, this portion

of the Tenant's application must be granted and a remedy for this breach will be discussed below.

The T3 Application and Remedies

89. As outlined above, the Landlord removing the Tenant's two parking spaces is the subject of the Tenant's T2 application and the T3 application. A party is not permitted to obtain "double recovery" for the same breach of the Act. As this portion of the T2 is already granted and the remedies for this breach are sufficient, the T3 application is moot and must be dismissed.

The T2 Remedies

90. In addition to the $3,300.00 for the illegal entries as described above, the Tenant is seeking abatement of 30% of the rent for the substantial interference and harassment, an order requiring the Landlord to stop the activities which are breaching the Act, $1,854.40 for out-of-pocket expenses and an administrative fine. For the following reasons, I find that all of these remedies should be granted.

91. First, the Tenant is seeking 30% abatement of the rent for the period of October 21, 2022, to May 31, 2022. Based on the egregious nature of the Landlord's pattern of behaviour towards the Tenant during those months, I find that this amount is warranted. Since October 2022, not only did the Landlord attempt to force the Tenant to move out, but she engaged in a pattern of hostility and intimidation designed to make his life unpleasant.

92. The Landlord sent countless emails to the Tenant which were offensive and aggressive. The Tenant repeatedly attempted to illegally increase the rent and charge the Tenant for cleaning fees. The Landlord repeatedly told the Tenant to move out of the rental unit both in her emails and in person. The Landlord then arbitrarily withdrew the Tenant's right to use the backyard, removed his two parking spaces and engaged in a hostile dispute about delivering the Tenant's mail. Based on the emails and videos that were presented at the hearing, as well as the Tenant's testimony on these issues, I find that a 30% abatement represents the significant disruption he experienced because of the Landlord's conduct. An order will issue based on the following calculations:

($1,460.00 x 12 ÷ 365 days) x 30% x 21 days in October = $302.40
$1,460.00 x 30% x 7 months = $3,066.00
$302.40 + $3,066.00 = **$3,368.40** abatement

93. Next, as the Landlord has repeatedly breached her legal obligations towards the Tenant, an order requiring her to stop this conduct is warranted and granted.

94. Next, the Tenant's request for $1,854.40 for out-of-pocket expenses is granted. This amount recognizes the following expenses the Tenant has incurred as a result of the Landlord removing his two parking spots:

- $316.40 for tow truck charges when the Landlord had his car towed;
- $329.00 ($7.00 each) for parking passes from January 2022 to April 30, 2023

- $1,209.00 for 15 parking tickets (most were $50.00 each plus processing fees; some were $75.00 each plus processing fees)
- Total = $1,854.40 for out of pocket

95. At the hearing, the Tenant explained that the municipality will only allow individuals to purchase parking permits to park on the street for a very limited number of days each year. This means that, when those days ran out, the Tenant had to park on the street illegally. The Tenant provided receipts for the towing charge and the parking passes but not the parking tickets. However, based on the duration of the parking dispute and the Tenant's credible testimony on this point, I am satisfied that the Tenant incurred $1,209.00 for 15 parking tickets because he was forced to park on the street. For these reasons, an order will issue requiring the Landlord to reimburse the Tenant **$1,854.40** for the out-of-pocket expenses he incurred.

96. Lastly, I find that an administrative fine is warranted in this instance. The Board's Guideline 16 clearly sets out the purpose of an administrative fine and states:

> An administrative fine is a remedy to be used by the Board to encourage compliance with the *Residential Tenancies Act, 2006* (the "RTA"), and to deter landlords from engaging in similar activity in the future. **This remedy is not normally imposed unless a landlord has shown a blatant disregard for the RTA and other remedies will not provide adequate deterrence and compliance**. Administrative fines and rent abatements serve different purposes. Unlike a fine, a rent abatement is intended to compensate a tenant for a contravention of a tenant's rights or a breach of the landlord's obligations. [Emphasis added]

97. While I recognize that I am not strictly bound by the Board's Guidelines, they are a useful tool when determining the intent and purpose of various sections of the Act. In these circumstances, I note that an administrative fine is considered appropriate when other remedies will not provide adequate deterrence and compliance.

98. The Landlord in this instance has shown blatant disregard for the requirements of the Act. The Landlord has repeatedly ignored the legal requirements for entering a rental unit, she constantly harassed the Tenant both verbally and in writing, she brazenly attempted to illegally increase the rent and illegally evict the Tenant, she unilaterally removed the Tenant's two parking spaces and had his car towed, she unilaterally refused to allow the Tenant to use the backyard, and she repeatedly called the police on the Tenant for minor issues like cooking hotdogs outside. Not only is the Landlord's conduct unlawful, but at the hearing she clearly demonstrated that she does not understand her legal obligations as a Landlord and is adamant that her conduct was justified.

99. Based on the Landlord's own testimony and her own repeated attempts to justify her behaviour, I find that the Landlord requires an additional deterrent in the form of an administrative fine to ensure that she begins to take her legal obligations more seriously. For these reasons, I find that an administrative fine of **$1,000.00** should act as a sufficient deterrent to the Landlord and be an incentive to adhere to the requirements of the Act.

This amount recognises the egregiousness of the Landlord's behaviour and also the lengthy nature of Landlord's conduct.

100. The Tenant incurred charges of **$48.00** for filing the T2 application and **$53.00** for filing the T3 application and he is entitled to be reimbursed for those charges.

101. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is $8,623.80. This amount represents:

    - **$3,368.40** for a rent abatement for substantial interference and harassment;
    - **$3,300.00** for a rent abatement for 33 illegal entries;
    - **$1,854.40** for the reasonable costs that the Tenant has incurred as a result of the Landlord's actions.;
    - **$48.00** for the cost of filing the T2 application; and
    - **$53.00** for the cost of filing the T3 application.

2. The Landlord shall pay the Tenant the full amount owing by January 10, 2024.

3. If the Landlord fails to pay the Tenant the full amount owing by January 10, 2024, the Landlord will owe interest. This will be simple interest calculated from January 11, 2024, at 7.00% annually on the balance outstanding.

4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

5. The Landlord shall permit the Tenant and/or his guests to park in the two parking spaces he was originally given at the start of the tenancy.

6. The Landlord shall permit the Tenant and/or his guests to use his BBQ on the backyard patio.

7. The Landlord shall deliver the Tenant's letter mail by sliding it under the door which connects the main floor of the house to the rental unit.

8. The Landlord shall deliver the Tenant's packages by leaving them outside the rental unit door which faces the backyard area.

9. The Landlord shall not:

    - entering the unit in contravention of section 25 of the Act;
    - harass the Tenant either verbally or in writing; and
    - substantially interfere with the Tenant's reasonable enjoyment of the rental unit by yelling at the Tenant, calling the Tenant names, or personally insulting the Tenant.

10. The Landlord shall pay to the Landlord and Tenant Board an administrative fine in the amount of **$1,000.00** by January 10, 2024.

December 22, 2023
Date Issued

Laura Hartslief
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.

Payment of the fine must be made to the Board by the deadline set out above. The fine can be paid by certified cheque, bank draft or money order made payable to the Minister of Finance. If paying in person, the debt can also be paid by cash, credit card or debit card.