



Order under Section 31 Residential Tenancies Act, 2006

Citation: Christopher v Dairo, 2024 ONLTB 16109

Date: 2024-03-18

File Number: LTB-T-025812-22

In the matter of: 127 BAYCLIFFE CRES
BRAMPTON ON L7A3Y9

Tenant

Between: Monique Christopher

And

Landlord

Raul O. Dairo

Monique Christopher (the 'Tenant') applied for an order determining that Raul O. Dairo (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 their household.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.

This application was heard by videoconference on February 7, 2024.

The Landlord's Legal Representative, Monica Dairo, the Landlord and the Tenant attended the hearing. The Tenant declined the opportunity to speak with Tenant Duty Counsel.

Determinations:

1. At the hearing, the Landlord's Legal Representative stated that Ma Fe Dairo was not a Landlord of the residential unit. She is the sister of the Landlord and also a tenant in the residential premises. Therefore, Ma Fe Dairo is removed as a respondent to this application.
2. The Landlord's Legal Representative submitted that a previous hearing was held on April 21, 2022 regarding the same allegations in this application, and requested that this application be dismissed on the principle of *res judicata*.
3. A copy of the Board Order (HOT-11575-21) was submitted by the Landlord's Legal Representative. The Order indicates the matter was withdrawn as the Tenant's request to adjourn the matter and to amend the application was denied by the presiding Member. As the merits of that application were not heard, the principle of *res judicata* does not apply and this application will not be dismissed as requested by the Landlord's Legal Representative.

4. As explained below, the Tenant proved some of the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must compensate the Tenant in the amount of \$298.00, which includes the application filing fee.
5. The tenancy began on August 1, 2021. The Tenant vacated the rental unit on October 1, 2021.
6. The residential premises is a townhouse, where rooms are rented out individually as rental units and the tenants have separate tenancy agreements. All tenants share common spaces such as the kitchen, living room, and bathroom.

Illegal Entry

7. The Tenant submitted video footage from July 23, 2021, where the Landlord came to the Tenants room attempting to speak with her after he called her regarding issues with the other tenants. She refused to speak with him because he became hostile and threatened her.
8. Although the Landlord did not provide notice to the Tenant, he did not enter her room/rental unit and as he was speaking to her in the hallway through her unit door, which is a common area. The Landlord is permitted to be in the common areas without notice to the Tenant.
9. Therefore, I find that the Tenant has not established that the Landlord entered the rental unit illegally on July 23, 2021

Substantial Interference

10. The Tenant testified that the Landlord was attempting to force her to leave the rental unit and compelled her to do so by substantially interfering with her reasonable enjoyment of the rental unit and harassing her. More specifically the Landlord restricted guests, refused to renew the tenancy agreement, and did not address any of the concerns she brought forward to him with respect to harassment from the other tenants.

Restricting Guests

11. The Tenant testified the Landlord restricted guests and did not want her mother coming over to visit her.
12. The Tenants' testimony was undisputed that the tenancy agreement does not contain any restrictions regarding guests and the frequency or length of time guests were permitted to stay with tenants in the residential premises.
13. Although it was contested that the other tenants had issues with the Tenants mother coming to stay with the Tenant, the Tenant testified that she had approval from the other tenants on several occasions and submitted evidence of text messages from August 2, 2020-June 9, 2021 verify she had approval from the Landlord and the other tenants.

14. The text messages from June 9, 2021, indicate the Tenant asked the Landlord for permission to have her mother over for a few days and the Landlord responded that visits should be minimized as Covid was still active and that she had abused visiting times. He also indicated other tenants were inconvenienced with her mother coming over to visit and denied her request initially, but later approved the Tenants guest to stay temporarily as long as the other tenants were okay with it.
15. The Landlord's Legal Representative submitted two affidavits dated January 10, 2024, from two of the other tenants stating that they expressed discomfort with the Tenants' mother staying over. These individuals were not present to be cross examined and the Tenant provided text messages clarifying that these tenants were okay with the Tenant's mother coming to visit. I prefer the direct evidence of the Tenant, over the Landlord's affidavit evidence.
16. In my view, although the Landlord appears to have expressed the other tenants' concerns about the Tenants' mother staying in the residential premises, it does not appear that on a balance of probabilities the Landlord restricted the Tenant from having guests based on the evidence submitted by both parties.

Refusing to Renew the Tenancy Agreement

17. The Tenant submitted an email dated June 22, 2021 as evidence, where the Landlord indicates the tenancy ends on July 31, 2021 and outlines clauses of the tenancy agreement regarding the last month's rent deposit, security deposit and prospective tenants viewing the rental unit. The Tenant requested a renewal in which the Landlord denied the request.
18. The Tenant's legal counsel sent a letter to the Landlord's legal representative on June 30, 2021, advising that pursuant to s. 38 of the *Residential Tenancies Act, 2006* (the 'Act'), the tenancy is deemed to have been renewed as a monthly tenancy if the tenancy has not been terminated, and that the Landlord is required to go through the proper channels at the Board should he wish to evict her.
19. The Landlord is not required to renew the tenancy agreement, however as per s. 38(1) of the Act, the tenancy is deemed to have renewed as a monthly tenancy agreement containing the same terms and conditions that are in the expired tenancy agreement and subject to any increases in rent charged in accordance with this Act.
20. I find it reasonable that the Landlord may not have been aware of the provisions of s.38(1) of the Act. No evidence was submitted to indicate that he continued to pursue ending the tenancy due to the fixed term expiring, but rather the Landlord gave an N5 notice of termination to the Tenant in accordance with the Act on August 4, 2023 regarding complaints received from other tenants in the residential premises. Therefore, I do not find that the Landlord substantially interfered with the Tenant's reasonable enjoyment by not renewing the lease agreement.

Failure to address Tenant complaints

21. The Tenant testified that she had reached out to the Landlord multiple times regarding issues she had with the other tenants, but the Landlord did not respond to her or address any of her concerns and only addressed complaints made about her by the other tenants.
22. The Landlord testified that he attempted multiple times to have a meeting with all tenants to discuss and resolve the issues of all tenants, however, the Tenant refused.
23. The Tenant testified that she refused a meeting with all of the other tenants as she felt she would be attacked, and it was an uncomfortable situation. I find it reasonable that the Tenant did not want to have a group meeting considering the conflicts between them.
24. The Landlord testified that he did advise the other tenants of the complaints made by the Tenant but due to the number of issues between all the tenants, he attempted a meeting with all of them. The Tenant did not provide any evidence of correspondence or dates complaints were made to the Landlord to support her efforts to communicate issues with the other tenants.
25. It is clear there was contention between the Tenant and the other tenants in the residential premises, however, this application is based on the Landlord's conduct towards the Tenant, not the conduct or relationship between the Tenants. Therefore, only the Landlord's efforts to address the Tenant's complaints will be considered in this Order. I accept the Landlord's testimony that he made an effort to address the issues of all Tenants.
26. For the reasons above, I find that the Landlord did not substantially interfere with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.

Harassment

27. The Tenant testified that following the letter sent to the Landlord's legal representative on June 22, 2021, the Landlord began harassing her by sending multiple emails regarding complaints made by the other tenants. The Tenant stated that the Landlord never previously emailed her other than to send her rent receipts.
28. In the video of July 23, 2021, where the Landlord attempted to speak with the Tenant through her unit door about the issues between the tenants, the Tenant is heard telling the Landlord that he can email her as it is a form of communication. The email evidence submitted by the Tenant outlines dates after this incident. Therefore, I do not find the emails from the Landlord to be harassment, rather to be the form of communication suggested by the Tenant.
29. The video does verify that the Landlord did threaten the Tenant that she needed to be careful of her actions as he would use them against her.
30. The Tenant also submitted a video from Aug 21, 2021 that was used for audio purposes, as minimal video footage is visible. The audio is the Landlord initially having discussions

with the Tenant about storage space. The Landlord was aggressive and repeatedly used profane language towards the Tenant and told her that he wanted her out of the house.

31. The Landlord and the Tenant were also arguing over illegal entry and notices of termination given by the Landlord. Yelling between the Landlord, the Tenant, the Landlords' sister and the Tenants' mother could also be heard in the recording.
32. I do not find the Landlords' conduct of threatening the Tenant on July 23, 2021 or his profane language towards the Tenant and her mother on August 21, 2021, to be reasonable, necessary or appropriate.
33. Therefore, I find that the Landlord did harass, obstruct, coerce, threaten or interfered with the Tenant. The Landlords conduct of harassment and threats towards the Tenant were inappropriate and find this behaviour to be unacceptable and unprofessional as a Landlord running a business.
34. On September 3, 2021, the Tenant sent the Landlord an email advising him that she would be vacating for the sake of her well being as she did not feel safe due to the harassment and interference of reasonable enjoyment of the unit.

Remedies

35. I find an abatement of twenty-five percent to be appropriate in the circumstances as the Tenant vacated the rental unit partially due to the harassment of the Landlord and did not feel safe continuing the tenancy. Therefore, a rent abatement of \$250.00 is appropriate for the days in which this conduct occurred. This is calculated by $\$500.00 \times 25\% = \125.00 x two days (July 23, 2021, August 21, 2021) = \$250.00
36. The Tenant moved into a two-bedroom basement unit, signing a tenancy agreement with her mother who resides with her. The monthly rent of the basement apartment is \$1,500.00 per month. She does not share any common areas with other tenants in the residential premises. In my view, the Tenant vacated due to the conflict between her and the other Tenants as well as the harassment of the Landlord. The Landlord's conduct was addressed above and a rent abatement will be ordered as above. Therefore, I do not consider a rent differential or moving costs to be appropriate in the circumstances.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$298.00. This amount represents:
 - \$250.00 for a rent abatement.
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by April 14, 2024.

3. If the Landlord does not pay the Tenant the full amount owing by April 14, 2024, the Landlord will owe interest. This will be simple interest calculated from April 15, 2024 at 7.00% annually on the balance outstanding.

April 3, 2024
Date Issued

Christina Philp
Member, Landlord and Tenant Board

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