



Order under Subsection 135 Residential Tenancies Act, 2006

Citation: Ahmed v Maratta, 2024 ONLTB 16002

Date: 2024-02-29

File Number: LTB-T-073829-22

In the matter of: 3702, 2212 Lakeshore Boulevard West
Etobicoke Ontario M8V0C2

Tenant

Between: Heba Ahmed
Aymad Khafagy

And

Kali Maratta

Landlord

Heba Ahmed and Aymad Khafagy (the 'Tenants') applied for an order determining that Kali Maratta (the 'Landlord') collected or retained money illegally (T1 Application).

The Tenants also applied for an order determining the Landlord substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household and that the Landlord harassed, obstructed, coerced, threatened, or interfered with the Tenant (T2 Application).

This application was heard by videoconference on February 14, 2024, at 1:00 pm.

The Landlord Representative Jaclyn Soloman, the Landlord Agent Jim Maratta, the Tenant Representative Barrington Lue Sang and the Tenants attended the hearing.

Determinations:

1. The rental unit consisted of a two-bedroom condo located in a multi-unit high rise. The Tenants moved into the rental unit on November 1, 2015, and moved out on March 31, 2020.
2. The Tenants filed their applications on January 5, 2020.

T1 Application

3. The Tenant Heba Ahmed (AH) testified that at the commencement of the tenancy the Landlord collected a security deposit of \$500.00 by cheque and never returned it prior to or after they moved out of the rental unit despite requesting that they do so. She testified the reasons given by the Landlord were due to damage that the Landlord alleged they caused. In support of this a receipt issued by the Landlord on November 1, 2015, was entered in evidence.

Order Page 1 of 9

4. In response Jim Maratta (JM) testified that he would be speaking on behalf of his wife as she was too stressed to participate in the proceedings. He then testified that on January 9, 2020, he returned the \$500.00 in person. It was testimony that at first, they did refuse owing to damage they discovered during an inspection. However, following this, he realized that they should return the deposit. He testified that he first offered a cheque, but the Tenant Aymad Khafagy (AK) insisted on cash. For this reason, he withdrew the money and went in person with a friend and returned the money. A bank statement from January 9, 20220 denoting a \$500.00 withdrawal was entered in evidence.
5. The Landlord Representative then submitted into evidence pictures of a hole in a door and damage to walls in support of the fact that there was damage to the rental unit.
6. On cross examination, he testified that he could not remember the denominations that he withdrew and handed over to the Tenant, stating it was over 3 years ago. He also testified that the Tenant AK counted the money. He further testified to not asking for a receipt.
7. The Landlord witness Aaryn Bandali (AB) testified that he was present when JM returned the \$500.00 deposit, stating he was asked to witness the transaction and there had been issues with the Tenant previously. He also testified that although he was in the hallway and could not see the transaction, he did hear AK counting the money.
8. On cross examination AB testified that he couldn't remember the denominations either and that he had known the Landlord and JM for over 6 years through work, specifically, real estate.
9. In response AK denied that the January 9, 2020, transaction ever occurred, testifying he wouldn't have requested cash when he had paid by cheque in the first place. He also denied that they ever damaged the property and stated that they were still owed the \$500.00 security deposit.
10. The Tenant Representative then submitted that it wasn't reasonable to expect that given the Landlord provide a receipt when he collected the deposit that he would not ask for one if he did in fact return the money. The Landlord Agent disagreed with this submission.
11. The remedy sought by the Tenants is the return of the \$500.00 security deposit.

Analysis

12. It is not contested that the Landlord collected a \$500.00 security deposit in addition to collecting the last month's rent deposit. This security deposit was illegal because in accordance with section 106 of the *Residential Tenancies Act, 2006* ("Act"), the Landlord is only entitled to collect a rent deposit equal to one month's rent.
13. I am satisfied that the Landlord has established that they returned the \$500.00 on January 9, 2020, meaning it is no longer being retained by the Landlord. I find the bank records, namely the withdrawal date and amount coincided with JM's testimony. Furthermore, AB's testimony was consistent with that of JM and I found the two to be more persuasive than that of the Tenants oral testimony and the Tenant's representative submissions regarding a lack of receipt. Accordingly for this reason I must dismiss the Tenants T1 Application.
- 14.

T2 Application

15. The Tenants T2 Application alleges that the Landlord harassed and coerced the Tenants and substantially interfering with their reasonable enjoyment of the rental unit, forcing them to terminate the tenancy.

Harassment and substantial interference

16. AH testified that the harassment commenced following a phone conversation on November 25, 2019. At the time she was at the hospital with her husband, AK, who was undergoing treatment when the Landlord called her to request that they begin paying \$2,700.00 a month instead of the \$2,200.00 they were currently paying. She testified that the Landlord stated that they had been approved for an above guideline increase (AGI) and should she not agree to pay the increased rent that they would be forced to sell the property. AH testified that she told the Landlord they wouldn't be able to pay the increase and that the Landlord would have to issue a N12 Notice to Terminate (N12 Notice). It was AH's contention that the Landlord lied about the AGI. A recording of the phone call was entered in evidence verifying the Tenants testimony.

Notices

17. AH then testified that the Landlord immediately began serving them with Notices of Entry (NOE), the first being by email on December 6, 2019, for December 7, 2019, for an inspection, which was followed up with an actual NOE served on them December 7, 2019, for December 9, 2019, which the Landlord cancelled at 7:33 pm the day of after they had waited all day for them to appear. Copies of the NOE were entered in evidence.
18. AH testified that she knew the Landlord was within their right and intended to sell the property, however, she did refuse to allow entry on two occasions, one because the NOE was invalid owing to the wrong date and a second time as her son was listed on the lease but was not named on the NOE. It was her submission that the Landlord would often use

the same NOE and simply amend the dates. Copies of NOE with amended dates were entered in evidence.

19. She then testified that the Landlord served a NOE on December 17, 2019, to facilitate showing the property to the real estate agent on December 19, 2019. She also testified that an unidentified party filed a false complaint about her son to her son's employer, the Toronto Stock Exchange on December 18, 2019, and that another unidentified party contacted her insurance company on December 20, 2019, making inquiries about her insurance coverage. This was supported by an email exchange between herself, and Desjardins Insurance entered in evidence. It was the Tenant's submission that the Landlord had filed the complaint and made the illegal inquiry given it was not merely coincidence that these events occurred around the same time the alleged harassment began.
20. She then testified that in 28 days the Landlord had served over eight NOE with two being no shows, two being denied and the remainder she allowed for the purposes of inspecting the property including inspecting a fan which she submitted was not required. This was all during the time her husband was recuperating from treatment. She also testified that during many of these inspections the Landlord would barge into the rental unit and while there insult her language, culture, and religion while at the same time make disparaging remarks about her and her husband's professional qualifications given, they were immigrants.

Showings

21. AH testified that the Landlord listed the property on January 14, 2020, and commenced showing the property on January 15, 2020, and had 22 showings in the course of 5 days. The property was on the market for 10 days before being taken off. She then testified that the property was re-listed for lease. It was her submission that the listing of the property was strictly meant to put pressure on them to vacate.
22. She testified that during the course of all this the Landlord served them with a N5 Notice to Terminate the Tenancy (N5 Notice) alleging that they had willfully or negligently damaged an interior door within the rental unit. She further testified, that they had engaged in negotiations, and believed they had come to a mutual resolution only to have the Landlord withdraw their offer. Due to the ongoing pressure and stress, she sent the Landlord a N9 Notice to Terminate the Tenancy (N9 Notice) on January 31, 2020, with a termination date of March 31, 2020. A copy of the N9 Notice was entered in evidence. Following this, they signed a N11 Agreement to end the tenancy. A copy of the agreement was entered in evidence.
23. On cross examination, AH testified that she called the Landlord on November 25, 2019, after she received several text messages from the Landlord. She also confirmed that they did receive proper notice prior to the showings. She also testified that she was never served with a N12 Notice to terminate the tenancy.

24. The remedies sought by the Tenant are:

- a. An abatement of two months rent totalling \$2,200.00; and
- b. General compensation \$20,000.00

Landlord testimony and evidence

25. JM testified that he did not know why his wife claimed to have gotten the approval for an above guideline increase when they had not. Similarly, he could not speak to the allegation that his wife barged into the rental unit or engage in racist behaviour as alleged, stating it was not her character to do so.

26. He then testified that leading up to November 2019, he had a financial crisis which made retaining the rental unit extremely difficult as they were losing money on a monthly basis. It was for this reason they sought to increase the rent and or sell the property.

Notices

27. JM testified that they had attempted on several occasions to come to a mutual agreement with the Tenants while at the same time assess the rental unit prior to listening to it for sale. It was during one of those assessments that they noticed the damaged interior door, which prompted the N5 Notice, which the Tenants voided. This was supported by email correspondence between JM and the Tenants previous representation entered in evidence. He then testified that he also attended the property to collect the rent as the Tenants had cancelled the previously issued post dated cheques. This was also supported by an email between JM and the Tenant's previous representation.

Showings

28. JM testified that due to their financial situation there was a concerted effort to sell the property quickly, hence the multiple showings in a short period. They received an offer to purchase the property on January 18, 2020, which prompted them taking the listening down. This was supported by a copy of the purchase and sale agreement and cancellation of the listening agreement both entered in evidence. He then testified that the purchaser failed to secure the financing and had to withdraw their offer. A mutual release dated January 23, 2020, was entered in evidence to support this. JM testified that following his they chose to list the property for lease and or sale and that eventually they found a new tenant who agreed to commence the lease on March 31, 2020, following the Tenant's vacating.

29. He further testified that he had endeavored to come to a settlement with the Tenants, attending the property only to be suspiciously recorded and have the Tenant's attempt to engage in a cash for keys scenario.

30. On cross examination JM testified that the property was re-leased for \$2,700.00 and since that time is currently being leased for \$3,000.00.

Final submissions

31. The Tenant Representative submitted that the Landlord had engaged a campaign of harassment to substantially interfere with the Tenant and force them to vacate to, essentially a constructive eviction. He further submitted this was done for profit as evident by the fact that they never sold the property and that it was currently being rented. In support of this submission, he provided the following decisions.

- a. 2258731 Ontario Ltd. v. Singh, 2023 ONSC 588;
- b. TSL-08248-19; and
- c. TST-06172-19

32. In response to the Tenant Representative's submissions the Landlord Representative submitted that 2258731 Ontario Ltd. v. Singh, 2023 ONSC 588 had no merit as the decision came from a court with no jurisdiction over the Board.

33. As to the submission that the Landlord engaged in a campaign of harassment and or constructive eviction it was her submission that the Landlord's testimony, and evidence clearly showed that the Landlord was merely exercising their rights in order to sell the property thereby alleviating the significant financial strain they were under. She further submitted, by the Tenants own testimony there were incidents where their actions interfered with that right. The fact that the Landlord re-listed the property was necessitated by the purchase and sale agreement falling through, a common occurrence in the real estate market. She further submitted that although the Landlord and her husband were inexperienced, they did provide notices prior to each visit, and attempted to negotiate in good faith only to be recorded without their permission. In support of her submissions the Landlord Representative provided the following decisions:

- a. CET-52395-15;
- b. TSL-76397-16;
- c. TNL-07605-18;
- d. CET-67347-17; and
- e. Hass v. Jetex Investments Inc., 2004 CanLII 4039 (ON SCDC).

Analysis

T2 Application

34. The following sections of the Act are relevant to this application.

Landlord not to interfere with reasonable enjoyment

22 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.

Landlord not to harass.

23 A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.

Entry with notice

27 (1) A landlord may enter a rental unit in accordance with written notice given to the tenant at least 24 hours before the time of entry under the following circumstances:

1. To carry out a repair or replacement or do work in the rental unit.
2. To allow a potential mortgagee or insurer of the residential complex to view the rental unit.
3. To allow a person who holds a certificate of authorization within the meaning of the Professional Engineers Act or a certificate of practice within the meaning of the Architects Act or another qualified person to make a physical inspection of the rental unit to satisfy a requirement imposed under subsection 9 (4) of the Condominium Act, 1998.
4. To carry out an inspection of the rental unit, if,
 - i. the inspection is for the purpose of determining whether or not the rental unit is in a good state of repair and fit for habitation and complies with health, safety, housing and maintenance standards, consistent with the landlord's obligations under subsection 20 (1) or section 161, and
 - ii. it is reasonable to carry out the inspection.

35. Based on the testimony, evidence and the reasons that follow I am not satisfied that the Tenant has proven their case.

Harassment and substantial interference

36. First, the Tenant testified, on cross examination, that they were the one to call the Landlord on November 25, 2019. Furthermore, although I acknowledge, that, according to her own testimony this was after receiving several texts from the Landlord, I cannot overlook the fact that chose to reply and had chosen to record the conversation. Accordingly, I am not satisfied that call or its purpose, the Landlord requesting a rent increase, constituted harassment. That said, I find the fact that the Landlord lied about being approved for an AGI does constitute substantial interference and was meant to pressure or coerce the Tenants into agreeing to an increase.

37. Regarding the Tenant's testimony that Kali Maratta barged into the rental unit and would use racially charged language and make disparaging remarks, the Tenant failed to provide dates and times regarding those allegations but rather made a blanket statement. Even though the Landlord was not present to respond directly to those allegations., I am not satisfied that the Tenant has proven their case, specifically given the lack of details such as dates and times.

38. Regarding the allegation that the Landlord filed a false complaint at the Tenant's place of work or attempted to illegally obtain information about her insurance, the Tenant provided no evidence to support her allegation, other than an email that stated an illegal inquiry occurred. The Landlord Agent essentially denied the allegations. Given the onus is on the applicant to prove such allegations, in the absence of collaborating testimony or a recording, I am not satisfied the Tenant has proven this allegation.
39. Regarding the NOE, The Tenant testified that they did receive NOE prior to each visit and in the two cases where they were either defective or not properly served, they refused entry as was their right under the Act. As to the purpose of the NOE, the evidence led by both parties indicate that they were served for either inspections by the Landlord or to allow a potential purchaser to view the rental unit, which are both permitted reasons for entry pursuant to section 27 of the Act. As such I cannot determine that they constituted harassment in this regard.
40. As to the frequency of the NOE, and showings, it was undisputed that the Landlord was preparing and intending to sell the rental property. The Tenant acknowledged this. It was uncontested that the Landlord was in financial crises, thus necessitating a quick sale. Although I acknowledge 22 showings in 5 days is rather high, I am not satisfied that they constituted harassment or substantial interference given they did result in receipt of an offer within 10 days, as supported by the purchase and sale agreement entered in evidence, and the cessation of further NOE and showings on or about January 18, 2020. Although the Tenant testified that the showings were a nuisance, she failed to provide any testimony as to how they interfered with her reasonable enjoyment of the rental unit. As to the two cancelled visits, I am not satisfied that the failure to appear in two instances constitutes substantial interference.
41. It was also undisputed that there was damage to an interior door. Accordingly, I am satisfied the N5 Notice and inspections were both warranted and in accordance with the Act.
42. Regarding the Tenant Representative's submission that the Landlord's behaviour was a campaign of constructed eviction for profit, I am not satisfied, for the following reasons, that he has proven his case.
43. In *2258731 Ontario Ltd. v. Singh*, 2023 ONSC 588 it was determined that the applicant did not prove that there was a constructive eviction. Specifically, in making this determination the presiding member states the legal test for such a finding is, "the degree of interference must be so substantial or intolerable as to make it reasonable for the tenant to vacate the premises."
44. When I apply this test to the matter before me, I am not satisfied that was the case here. As per the above determinations the serving of the NOE and their purpose were in accordance with the Act and did not constitute substantial interference or harassment. Likewise, the Tenant vacated the property based on a N9 served on January 31, 2020,

after the property had been taken off the market on January 18,2020 and the NOE and showings had ceased approximately two weeks.

45. Similarly, the Landlord's evidence substantiates that they had a genuine intent to sell the property, and thus the showings were for a legitimate purpose. This was evident by the aforementioned purchase and sale agreement. As to the reasons why this agreement fell through, although not germane to the matter before me, the mutual release entered again substantiates the Landlords version of events.
46. Regarding the other legal submissions made by the Tenant Representative, having reviewed TST-06172-19/ TSL-08248-19, the finding of harassment was based on a determination that the respondent followed and verbally harassed and threatened the applicant. As per the above determinations I am not satisfied that the Tenants proved the Landlord verbally harassed or intimidated them as they failed to provide specifics such as dates and time.
47. That said, given my above determination regarding lying about the AGI, I am satisfied that the Tenant did prove their case, in that instance and that the landlord substantially interfered with their reasonable enjoyment.

Remedy sought

48. Given the above determination regarding substantial interference I am satisfied that, for that one instance, the lying about the AGI, an abatement of \$1,000.00 is warranted and will serve as a deterrent of any repeat behavior on part of the Landlord.

It is ordered that:

1. The Tenants T1 Application are dismissed.
2. The Landlord shall pay to the Tenant \$1,000.00 for the substantial interference caused by lying about the AGI.
3. The total amount the Landlord shall pay the Tenant is \$1,000.00
4. If the Landlord doesn't pay the full amount owing on or before March 18, 2024, the Landlord will owe interest. This will be simple interest calculated at 7.00% commencing on March 19, 2024 on the balance owing.

March 7,2024

Date Issued

Kelly Delaney

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.