



Order under Section 31 Residential Tenancies Act, 2006

Citation: Pu v Khurram, 2024 ONLTB 11927

Date: 2024-02-15

File Number: LTB-T-069768-22

In the matter of: 1610, 258 Sunview Street
Waterloo Ontario N2L0H6

Tenant

Between: Manting Pu

And

Landlord

Murtaza Shabbir

Muhammad Khurram

Landlord's
Agent

Manting Pu (the 'Tenant') applied for an order determining that Murtaza Shabbir (the 'Landlord') and Muhammad Khurram (the 'Landlord's Agent'): • 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.
- withheld or interfered with their vital services or care services and meals in a care home.

This application was heard by videoconference on November 16, 2023.

The Landlord, the Landlord's agent M. Khurram, the Landlord's legal representative, T. Sivapatham, the Tenant, and the Tenant's legal representative, Z. Rodgers, attended the hearing.

Determinations:

1. The Tenant alleges that she was the victim of a break-in and theft in her rental unit due to the negligent actions of the Landlord and the Landlord's agent, M. Khurram (MK). She alleges that MK lost the key to her unit, and he failed to inform the Tenant. As a result of

the break-in that took place in May 2021, the Tenant alleges she lost a number of important documents, as well as valuable personal belongings.

2. The residential complex is a student housing building. Units are individually owned by private landlords. Lockboxes with keys for entry to each individual unit are regularly kept outside on the bicycle racks for real estate agents to access the units that are for sale. There is a code pad used to enter the building.
3. It is undisputed that the Tenant did not have apartment insurance.
4. The rental unit, a studio apartment in a student housing building, was leased by the Tenant for three years, commencing 2018. The Tenant was a university student. The building was managed and maintained by RentCorp. Although the terms of the lease were created, and the building maintained by RentCorp, all the parties agreed to remove RentCorp as a named Landlord in interim order HOT-10602-21 issued on December 22, 2022.
5. The Tenant said that the Landlord informed her in March 2021, that he intended to sell the unit, and there would be showings of the unit. She said that she told him she was not comfortable with strangers coming through her unit while the Covid pandemic continued. She said that she had suffered from Covid, and she did not want to get it again.
6. The Tenant said that the Landlord nevertheless scheduled showings of the unit, and she said she felt the number of viewings was excessive. She said that sometimes 3 people would come at one time, and it would occur sometimes twice or three times per week. Consequently, the Tenant said she felt she had to leave her unit so she could study for her exams. She said that she moved to a friend's place at the end of March or beginning of April 2021, when she had her mid-term exams.
7. The Tenant said that she installed a surveillance camera because she wanted to monitor who was coming into her unit. She also said that she personally attended her unit once or twice a week to do laundry and retrieve various belongings that she needed. The Tenant said that the MK, the Landlord's real estate agent, was aware that she had a camera. The Tenant said that her camera had a motion sensor, and it would notify her each time there was a motion that started the camera. However, she said that it would frequently glitch, and she would not receive notification of movement on the camera until days after it happened.
8. The Tenant said that she received an email on May 14, 2021, from MK in which he requested another copy of her key. She said that she asked him why he needed another copy, and he did not reply. She submitted into evidence a text she wrote to MK on May 14, 2021, in which she writes "As far as I know all the keys have the DO Not Copy Sign. Please let me (sic) what's the reason for making one extra key."

9. The Tenant said that she did not visit her rental unit between May 14 and May 18, 2021. She also said that she did not check her surveillance camera in this time because she did not receive a notification of movement.
10. The Tenant said that she noted her surveillance camera did not appear to be working properly, so she went to her unit to check on it on May 18, 2021. She said that when she entered, everything was thrown around in a mess, and much of her belongings were missing. She said that she immediately called MK to ask if he knew anything about it, and he replied that he did not. She said that she called the police and reported the loss of shoes, jewellery, purses, a laptop, important personal documents, a flight ticket. The Tenant submitted into evidence photos of her unit in complete disarray, with boxes, luggage, containers and shopping bags thrown all over the unit and on the bed.
11. The Tenant's last image from her camera before May 18, 2021, is an image of a person wearing a baseball cap, with their head down, entering the unit with a key. The image is date stamped May 16, 2021, at 09:59:02.
12. The Tenant said that she was very upset because of the break-in. Among her belongings that were stolen were her passport, a study permit and visa, and a flight ticket home to China. She said that she was also disturbed because every one, including MK and RentCorp, knew that the key was missing, but they failed to inform her.
13. The Tenant submitted into evidence a police report, in which the police conclude there was no forced entry. The Tenant told the police she lost cash in the amount of about \$1,000.00 USD, jewellery, accessories, passports. The Tenant submitted an amended T2 application that has a list of the stolen items, including accessories, Apple Macbook, Apple iphone, Apple ipad, Tiffany jewellery, and cosmetics, with a total value of \$16,724.15. The Tenant submitted into evidence receipts for a number of the items, including the Apple electronic items, scarf, some jewellery, accessories and some cosmetics.
14. After the break-in, the Tenant informed RentCorp that she wanted to terminate her lease agreement. She said that they permitted her to vacate the unit at the end of May 2021.
15. The Tenant said that the incident left her traumatized. She said that she had to sleep with the lights on, and she is seeing a therapist. She said that she passes her old building and she sees lockboxes still being left outside the building, and she believes that the property management company and Landlords are unconcerned about leaving students so vulnerable.
16. The Tenant said that it took her almost a year to get another passport, and she had to reapply to get a study permit for Canada. She said that it also cost her \$500.00 to replace the documents. She also said that she had to store her belongings while she was looking for alternative accommodation, and it cost her \$97.51 per month for 2 months.

17. The Landlord's witness was MK. He is a real estate broker. He said that he showed the rental unit about 9 times from the moment it was listed in March 2021.
18. MK said that he met with the Tenant by camera before he showed the rental unit. He said that when they met virtually on March 17, 2021, the unit was very messy, lots of clothes were strewn around, and he could not take photos of the unit in that condition to list on the MLS. He said that he was unaware that the Tenant was not living in the rental unit.
19. MK testified that he first became aware that the lockbox was missing in April 2021, when another agent informed him. He said that he had heard that "sometimes management removes" the lockboxes. However, he said that he did not ask them about it in April 2021. He said that he did not find the missing lock box a matter of concern because he just "assumed" RentCorp removed it. It is undisputed that MK did not discuss the first missing lockbox with RentCorp in April 2021. He said that he obtained a copy of the key from the Landlord, and he put a new lockbox outside the residential complex.
20. MK said that he learned the second lockbox was missing on May 17, 2021. He said that he informed RentCorp via email about the missing second lockbox. He said that was why he wrote to the Tenant to ask for a copy of her key, but she told him to arrange it with RentCorp. The documentation shows that the email exchange between MK and the Tenant took place on May 14, 2021, and therefore that MK knew about the second missing lockbox by May 14, 2021.
21. It is undisputed that MK did not inform the Tenant about either the first or the second missing lockbox.
22. MK submitted into evidence an email from RentCorp dated May 17, 2021, to him in which they write "Given the fact that 2 keys have now gone missing from your lockboxes, we are heavily recommending the lock be changed for security purposes, especially considering there is a tenant in the unit....If you agree, we can have maintenance quote the cost." MK replied by inquiring about the cost, and RentCorp informed him on May 17, 2021, it was \$180 plus HST.
23. MK submitted into evidence an email from him to RentCorp authorizing them to change the lock on May 18, 2021 at 9:26 a.m. It is not clear if this was before or after the Tenant called MK to inform him about the break-in.
24. MK said that the lock was not changed until after the Tenant reported the break-in on May 18, 2021. He also said that only RentCorp had the right to change the door locks.
25. MK said that all viewings are arranged through RentCorp. He said that he informs RentCorp of the date he requires a viewing, and they are supposed to inform the Tenant. He said that RentCorp only confirms a viewing after they speak to the Tenant.

26. The Tenant submits that the Landlord and his agent are responsible for the break-in and the Tenant's losses. The Tenant submits that any reasonable person would have realized that something should be done to secure the rental unit, and inform the Tenant, after the first lockbox was missing in April 2021. The Tenant submits that the lockboxes are irresponsibly stored outside in a high traffic area. Therefore, the Tenant submits that the Landlord breached their standard of care to provide the minimum amount of security of the Tenant's rental unit, the Tenant lost personal property, suffered trauma and loss, as well as was obliged to expend substantial amounts to restore her personal important documents.
27. The Tenant requests compensation of \$16,724.15 for her lost valuable items, \$5,200.00 for moving and storage expenses, \$2,000.00 out-of-pocket expenses to replace her documents, \$1,207.50 rent abatement for May 2021 (100% rent), as well as \$1,000.00 general damages for the loss of her sense of security.
28. The Landlord submits that the application should be dismissed because the Landlord was not responsible for any substantial interference with the Tenant's reasonable enjoyment of her rental unit. The Landlord submits that the Tenant was not living in the rental unit since the beginning of April 2021, and she only made occasional visits. The Landlord submits that the Tenant should not have left valuables in her unit if she was living elsewhere, and she should have checked her surveillance camera to see what was happening in the unit if she had concerns. The Landlord submits that the losses are the fault of the Tenant because she did not have contents insurance.

Reasons and Analysis:

29. The Tenant's main allegation is that the Landlord was negligent with respect to the Tenant's security in her rental unit, and that negligence led directly to the break-in to the unit, and the subsequent losses suffered by the Tenant.
30. The Landlord alleges that they did not breach any duty. The Landlord's witnesses also provided testimony that suggested that the Tenant's rental unit was always in disarray, it was messy from the beginning of the Tenant's interactions with MK in March 2021, and it had luggage and boxes laying all about the small unit, and therefore, they suggest that the Tenant fabricated her evidence about a break-in. The Landlord also suggested that the Tenant inflated or fabricated the value of the items that were in her rental unit.
31. I find that the Landlord and the Landlord's agent substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household for the reasons that follow.
32. The photographs submitted by both parties show a small, compact rental unit that contained a lot of personal belongings in luggage, boxes, bags and other containers. However, it was undisputed that the Tenant's photographs of the unit immediately after the

break-in on May 18, 2021, were significantly different than the photographs taken prior to the break-in. The photos after the break-in show everything carelessly thrown around, with open boxes and containers on the bed and floor looking as if they have been rifled through.

33. The Tenant had documentary evidence of a timed photo from May 16, 2021, that shows an unknown individual with a baseball cap covering their face entering her unit with a key. The Tenant had documentary evidence of a police report after the Tenant called the police immediately upon discovering the break-in.
34. It is undisputed that two lockboxes went missing in a short period prior to May 16, 2021.
35. The Landlord had absolutely no evidentiary basis upon which to suggest that the Tenant lied about the break-in, and in fact, all the documentary, circumstantial and testimonial evidence points to the very real possibility that the Tenant's door key was intentionally stolen and used to break in to her unit because the Tenant was staying elsewhere during April and May 2021.
36. It is before me to determine whether the break-in to the rental unit is a result of a breach of a duty by the Landlord or the Landlord's agent MK.
37. RentCorp directed all the private Landlords to leave lockboxes in an unsecure outside area when their units were for sale. There was high traffic in this outside area, and presumably every one was aware that these lockboxes contained keys to individual units. It would not be difficult to do a minimum amount of surveillance to discover which lockbox contained a key for a specific unit. MK said that he conducted a number of viewings of the rental unit from March 2021, and these viewings could have been observed by any one passing by. The thief may have been a participant in one of the viewings.
38. Despite the lack of security, the high traffic, and a transient student population coming and going all through the day, MK not only failed to inform the Tenant after the first lockbox disappearance in April 2021, but he admits that he did not even inquire about it, nor did he discuss it with RentCorp. He himself said he just assumed that RentCorp removed it. He provided no basis for that assumption except that he had heard they "sometimes" removed them.
39. After the first missing lockbox, MK told the Landlord about it because MK required another key for viewings. He said that he obtained the new key from the Landlord, and he installed another lockbox. Therefore, it is clear that both MK and the Landlord knew about a missing lockbox as of April 2021. Neither of them informed RentCorp or the Tenant.
40. The circumstances explained above might have been sufficient on their own to inculcate MK and the Landlord for their negligence. However, MK knew as of May 14, 2021, that the second lock box had gone missing. He had no choice but to ask the Tenant for a

replacement key. When she queried him about his request, and she correctly informed him that she was not permitted, by RentCorp, to copy the key, MK did not respond. It was evident by this point to MK that he would have to resort to discussing it with RentCorp.

41. The correspondence between MK and RentCorp demonstrates that, even then, after two missing lockboxes, it was RentCorp, and not MK, that suggested the Landlord should undertake to change the lock on the door. MK waited another day, until May 18, 2021, to tell RentCorp to go ahead and change the lock. This was possibly after MK had already been informed of the break-in, and it was also at least 4 days after MK had first discovered the second lockbox went missing. There is no evidence that either MK or the Landlord ever voluntarily informed the Tenant about the missing lockboxes. There is also no evidence that RentCorp ever informed the Tenant about the missing lockboxes as they might have done since they also became aware of the problem before the break-in. The evidence is that RentCorp acted as Landlord towards the Tenant, they concluded the lease with the Tenant, and they were responsible for insisting on the unsecure placing of Tenant's keys in open public spaces. However, the parties agreed to remove RentCorp as a named Landlord prior to this hearing.

42. Therefore, I find that the actions and inaction of both MK and the Landlord described above demonstrate an astonishing lack of concern for the safety of the Tenant in her rental unit, and their actions and inaction are sufficiently negligent to constitute a substantial interference with the reasonable enjoyment of the rental unit or the residential complex by the Tenant. They both had ample opportunity to either inform the Tenant about potential danger as of April 2021. The information would have made her aware to take extra precautions, or it might have inspired her to insist on changing the lock. MK and the Landlord both had ample opportunity to discuss the options with RentCorp from April 2021, when the first lockbox went missing, until May 14, 2021, when RentCorp finally became aware of the missing lockboxes. Neither MK nor the Landlord felt sufficient urgency to insist on changing the lock by May 14, 2021. The evidence suggests that MK did not authorize a lock change until after he was informed of the break-in.

43. It is now for me to determine to what remedies the Tenant is entitled.

Loss of Personal Items:

44. The Tenant produced receipts for accessories, jewellery, computer and phone equipment in the amount of \$16,724.15. This would be the value of newly purchased items. The Board does not award replacement value. It is very difficult to assess what the current value is of old items. Some of the items had been purchased many years prior to 2021. Much of the value was for computer and phone equipment. There was also a substantial amount comprised of cosmetics and designer jewelry and handbags. Bearing in mind that old cosmetics have almost no value, computer equipment quickly loses value, and the only item that retains much value after a number of years is jewelry, I find that the total value of

the Tenant's lost items as a result of the break-in is \$6,000.00. However, this amount will be reduced for the reasons that follow.

45. It is undisputed that the Tenant did not hold contents insurance. The only reason the Tenant provided for this was that she was not obliged to have contents insurance. A prudent person who possesses very valuable items like jewelry, computer equipment and designer accessories in a student residence would hold contents insurance. In addition, the Tenant was absent from her unit for long stretches of time. It is understandable that the Tenant did not want her space constantly invaded by viewings when she was studying for exams, so she went to stay with a friend for a few weeks. However, for this same reason, it was highly imprudent of her to leave valuable items on open display in her unit, for example there were designer bags all over the unit. It is almost incomprehensible that there would be expensive computer, phone and ipad equipment in her room when she was living elsewhere in order to study. This was allegedly done despite the Tenant's full knowledge that strangers were going to be constantly traipsing through the unit to view it.
46. Consequently, I find that the Tenant is one half contributorily negligent for the loss of her personal belongings, and she is therefore entitled to \$3,000.00 for these.

Moving and Storage:

47. The only moving and storage expense mentioned by the Tenant is \$97.51 for two months storage. She did not mention anything else, nor did she produce a receipt for any other expense.
48. The Landlord's and the Landlord's agent's negligence led directly to the break-in that justified the Tenant terminating the tenancy. Therefore, the Tenant's moving expenses are related to the Landlord's substantial interference, and I find that the Tenant is entitled to \$195.02 for two months storage.

Personal Documents:

49. The Tenant stated that she spent \$500.00 in out-of-pocket expenses to replace all her important personal documents. I find that she is therefore entitled to \$500.00 to replace her important personal documents. Although it might have been imprudent to leave these in her room while it was unattended for long stretches of time, I find that the Tenant did not have the papers on open display, and she was entitled to believe that she could store her documents in her own private, locked room. It is also reasonable that it cost her \$500.00 to replace passport, visas and permits.

Rent for May:

50. The Tenant requests a 100% rent abatement for the month of May 2021. RentCorp and the Landlord permitted the Tenant to terminate her tenancy early because of the break-in, i.e. at the end of May 2021, instead of August 2021.
51. Considering the outcome of the Landlord's and the Landlord's agent's negligence, and their failure to notify the Tenant about potential danger with respect to her rental unit, it was not unreasonable of the Tenant to be fearful to return to her unit, and for her to want to leave immediately. The Tenant had a camera shot of an unknown person brazenly entering her unit after 9 a.m. in the morning on May 16, 2021, and the person had their own key to enter the unit. She said she had nightmarish thoughts about it happening with her in the unit. I find her reaction is not unreasonable.
52. The Tenant may not have known that she was vulnerable prior to May 18, 2021, but she was, in fact, vulnerable as of April 2021, when the first lock box went missing. Considering the nature and value of the items that were taken, it is not unreasonable to suspect that the Tenant was personally targeted for a break-in.
53. For the reasons stated above, I find that the Tenant was entitled to feel an urgency to vacate her unit, and she would have been justified in remaining away from her unit for the whole month of May 2021. Therefore, she is also entitled to an abatement for the entire month of May 2021, or \$1,207.50.

General Damages:

54. In general, damages awarded by the Board are meant to be compensatory. General damages are an extraordinary remedy, characterized as damages for pain and suffering or mental distress.
55. The Tenant did not have a written diagnosis, nor did she have documentary proof of counselling or therapy for distress suffered as a result of the break-in. The Tenant testified that she became scared at night, sleeping with the lights on, and she underwent therapy. I find that those are not unreasonable reactions to a home invasion, in particular a home invasion where valuable items and documents were lost. The Tenant had to undergo further stress, and quite a lot of bother and time, in order to replace her precious personal documents. She had anxiety and trauma, and it was not unreasonable for her to feel that her personal safety was compromised by the actions of the Landlord and the Landlord's agent.
56. Consequently, I find that it is reasonable to award \$1,000.00 requested for general damages.

It is ordered that:

1. The total amount the Landlord and Landlord's Agent, MK, shall pay the Tenant is \$5,950.52. This amount represents:
 - \$1,207.50 for a 100% rent abatement for May 2021.
 - \$3,000 for loss of personal items, i.e. for the reasonable costs that the Tenant has incurred to replace property that was lost as a result of the Landlord's, and MK's actions.
 - \$195.02 for storage or other like expenses that the Tenant has incurred.
 - \$500.00 for the estimated reasonable out-of-pocket expenses the Tenant has incurred.
 - \$1,000.00 general damages
 - \$48.00 for the cost of filing the application.
2. The Landlord and the Landlord's agent MK shall pay the Tenant the full amount owing by February 26, 2024.
3. If the Landlord and the Landlord's agent MK do not pay the Tenant the full amount owing by February 26, 2024, they will owe interest. This will be simple interest calculated from February 27, 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.

February 15, 2024

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Nancy Morris

Member, Landlord and Tenant Board

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