



**Order under Section 31
Residential Tenancies Act, 2006**

Citation: Mccalla v 1000085600 ONTARIO LIMITED, 2024 ONLTB 55542

Date: 2024-07-25

File Number: LTB-T-071138-23

In the matter of: 2, 2866 KEELE ST
NORTH YORK ON M3M2G8

Tenant

Between: Wayne Mccalla

And

Landlord

1000085600 ONTARIO LIMITED

Wayne Mccalla (the 'Tenant') applied for an order determining that 1000085600 ONTARIO LIMITED (the 'Landlord'): • Entered the unit illegally.

- Changed the locks or the locking system to the rental unit or building without providing replacement keys.
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.
- harassed, obstructed, coerced, threatened, or interfered with the Tenant.

Procedural history:

This application was initially heard on June 10, 2024, and adjourned due to running out of time.

This application was reconvened and heard by videoconference on June 28, 2024, at 1:00 pm.

The Landlord Representative Julie Jing Zhu, the Landlord Lingyan Lu, the Tenant Representative Renisha Cox and the Tenant attended the hearing.

Preliminary Issue:

1. At the outset of the June 10, 2024, hearing the Landlord Representative requested an adjournment, submitting that they had just received the Tenant's amended application, dated June 8, 2024.
2. In response the Tenant Representative submitted that they were prepared to proceed on their previous amended application submitted on March 27, 2024.
3. Based on the above submissions I denied the adjournment and directed the matter would proceed on the Tenant's application of March 27, 2024.

Determinations:

1. The Tenant moved into the rental unit on December 1, 2022, where they still currently reside. The rental unit consists of a two-bedroom apartment in a low rise multi unit apartment building.
2. The lawful monthly rent is \$1,041.12 paid on the first day of each month.
3. The Tenant filed their application on March 27, 2024, alleging the following:
 - a. On January 24, 2024, the Landlord illegally entered the rental unit and change the locks to the unit and the rental complex without providing replacement keys;
 - b. The Landlord substantially interfered with their reasonable enjoyment of the rental unit by their continued refusal to accept the rent, denying them access to their parking space, access to the internet server room and installing surveillance cameras pointed at their unit; and
 - c. Harassed them and their guests.
4. As explained below, the Tenant proved some of the allegations contained in the application.

Illegal entry and changing of locks.

Tenant testimony and evidence

5. The Tenant testified that on January 24, 2024, they returned to the rental unit to find the Landlord along with other agents removing their property and putting it in garbage bags. They also testified that the Landlord had changed the lock to the rental unit and to the rental complex.
6. They further testified, that despite repeatedly asking the Landlord to stop, and calling their representative, the Landlord refused and at one point, after the Landlord had removed all their belongings, an agent of the Landlord entered the unit, placed down a mattress, and

sat down, refusing to leave. They further testified that when their representative arrived and repeated the requests the agent became violent and assaulted them, forcing them to take refuge in the bathroom.

7. They then testified that once the police arrived, they arrested the agent, instructed the Landlord to place the property back and for the Tenant to change the lock to the rental unit back.
8. The Tenant's testimony was corroborated by that of the Tenant Representative who submitted that the alleged assault was still before the courts and that the Tenant was the one to put their property back. They then entered into evidence a video recording taken by the Tenant at the time of incident, Toronto Police Services General Occurrence Report (GO#2024-177946) and pictures of the new locking mechanism installed on the rental unit and the exterior door to the complex.
9. It was the Tenant's submission that he had yet to recover, repair or place all the property that was removed and it taking several months to gain a key to the exterior door to the complex. They also testified to suffering from anxiety from the event and to have incurred out of pocket expenses for replacing the lock.
10. The Tenant Representative submitted that these events were further exasperated by the Landlord's callousness and the fact that the Board had already determined the Landlord had illegally entered the rental unit per order LTB-L-012098-23-LTB-T-001870-23 issued on June 8, 2023, entered in evidence.

Landlord testimony and evidence

11. The Landlord testified that the entry of January 24, 2024, was to conduct a pest control treatment and that they had provided proper Notice of Entry (NOE) to the Tenant. The Landlord Representative submitted a NOE, pictures of ants from the unit above that of the Tenant and an audio recording in which the tenant could be heard acknowledging there was a problem with ants in evidence to support this.
12. The Landlord then testified that they changed the lock to the rental unit because the Tenant had previously changed it and refused to provide them with a key. They also denied changing the lock to the exterior door.
13. They further testified that they had attempted to conduct the treatment on previous occasions, but the tenant refused.
14. On cross examination the Landlord testified that the pest they were treating was Argentinean ants and that they learned about them and how to treat them through another tenant who had experience in these matters.

15. They then testified that the agents with them were not licensed technicians and that they were placing the Tenant's belongings into garbage bags so that they could treat them with the pesticide that they ordered from Japan. Again, they learned of this process from another tenant.
16. They also testified that the reason why the agent entered the unit, placed the mattress down and sat was because they were tired.
17. In response to the Landlord's testimony the Tenant denied ever receiving the NOE.

Substantial interference.

Refusal to accept rent.

Tenant testimony and evidence

18. The Tenant testified that they inherited the rental unit and in June 2023 the Board had determined that they were a lawful tenant after the Landlord had applied for an order determining they were an unauthorized occupant.
19. They testified that they had no issues paying the rent up to October 2023 when the Landlord refused to accept an electronic funds transfer. They learned of the refusal a month later when the transfer was returned. This was supported by screenshot of the funds returned unaccepted into evidence.
20. They then testified that they never received a notice about a change in procedure and didn't learn that the Landlord had changed accounts and now required the provision of a password until talking to other tenants. They then testified that following this and despite repeated attempting to transfer funds and contact the Landlord, the Landlord refused to respond or accept the rent payment, so they engaged their representative.
21. The Tenant Representative then submitted they had attempted to contact the Landlord in November 2023, but received no response. They then entered in a recording from December 1, 2023, in which the Landlord could be heard complaining about the amount of rent the Tenant was paying and that they "could not make a living if the Tenant only paid \$1,000.00."
22. They then submitted that once the Landlord obtained representation, they began communicating to the Landlord through them, the Landlord began accepting the rent. It was their submission the information they provided was no different than what the Tenant had provided after he had learned of the new account and requirement to provide a password. It was their submission that the Landlord was deliberately refusing to accept the rent to frustrate the Tenant and create the conditions for an application to evict for nonpayment.

Landlord testimony and evidence

23. The Landlord Representative submitted that the change in account and the provision of a password was communicated by a notice sent to all tenants and again to the Tenant directly on November 18, 2023, after they had repeatedly failed to provide the password. A screenshot of the notice of November 18, 2023, being slid under the rental unit door was entered in evidence to support this along with a video in which the Landlord could be heard asking for the password.
24. They then submitted into evidence screenshots from Landlord's phone showing that they received notice of the rent transfer of October 5, and November 1, 2023, and that they both expired on November 5, and December 1, 2023. It was the Landlord Representatives submission that it expired due to the Landlord not having been able to accept the funds for lack of password from the Tenant.
25. They then submitted that the reason the Tenant failed to provide the password was that they could not or did not want to pay the rent, which in turn prompted the Landlord to serve a N4 Notice to terminate the tenancy for non-payment of rent (N4 Notice). A screenshot of the N4 Notice being slide under the rental unit door on December 15, 2023, was entered in evidence to support this.

Denied access to internet room.

Tenant testimony and evidence

26. The Tenant testified that on November 5, 2023, their internet ceased working adversely affecting their ability to watch TV and play their video games. Calling Rogers, they attended and could not access the cable/internet utility room as the lock had changed. The Tenant then testified that despite repeated calls to the Landlord for access they received no response.
27. The Tenant Representative then entered into evidence an audio recording of the Tenant confronting the Landlord about the issue.
28. On cross examination the Tenant then testified that internet was not a provision in the lease and that they rectified the issue by contracting with a new internet provider.

Landlord testimony and evidence

29. The Landlord Representative submitted that the Landlord never changed the lock to the utility room and given internet was not provided for in the lease as such the Landlord had no obligation to address the issue.

Harass them and their guests.

Tenant testimony and evidence

30. The Tenant testified that on December 1, 2023, when entering the rental unit with a guest, from the back parking lot, the Landlord followed them insisting that the Tenant explain why their guest was there and their intent, complaining that they had been smoking inside the unit and building.
31. On cross examination the Tenant testified this was the only such incident.

Landlord testimony and evidence

32. In response the Landlord testified that they didn't recognize the guest as a tenant and was merely asking as to why they were present on the property and in the building.

Denied access to parking space.

Tenant testimony and evidence

33. The Tenant testified that they own two vehicles and that in addition to the parking spot at the rental unit they had rented an additional spot at a lot across from the rental complex. They then testified to having found a copy of the lease, entered in evidence, in which parking spot 3 was assigned to their rental unit. However, despite communicating this to the Landlord, commencing in January 2024 the Landlord began parking in parking spot 3 to prevent them from using it. This was supported by videos of the Landlord sitting in their car parked in spot 3, refusing to move entered in evidence.
34. The Tenant Representative then submitted that the Tenant had taken to parking on the street due an exception they obtained from the police on the Tenant's behalf.
35. On cross examination the Tenant testified that the Landlord had told him he was assigned garage parking 4 but was never given access, having found that there was a lock on door. They also testified they never asked for access as it was their belief, they were assigned parking spot 3 per the lease.

Landlord testimony and evidence

36. The Landlord Representative submitted that garage parking spot 4 was in fact assigned to the rental unit. Claiming they only learned about this in March 2024, they entered into evidence a declaration from the previous landlord dated January 26, 2008, stating that the parking assignments were switched in March 2016, at the previous tenant's request.

37. In response the Tenant Representative submitted this was the first they seen this documentation. This was refuted by the Landlord who testified to disclosing it at their previous hearing of May 24, 2023, via the Tribunals Ontario Portal (TOP). This was supported by a review of TOP that showed the document was uploaded on May 24, 2023, and that both the Landlord and Tenant Representative consented to disclosure through the portal.

Security Cameras

Tenant testimony and evidence

38. The Tenant testified that despite several requests to remove them, the Landlord has left security cameras installed within the rental complex to include installing a new one pointed at his door after the previous one had been broken. They supported this with a video, entered in evidence, of them walking through the building from the upper floors to their own showing that there are only security cameras on his floor.

39. On cross the Tenant testified that he believed the camera could look directly into their unit when their door was open.

Landlord testimony and evidence

40. The Landlord Representative submitted that the cameras were already installed when the Landlord purchased the property. Totalling approximately 8-10 total throughout the complex it was their submission that none of them looked directly into the Tenant's unit or that of any other tenant. It was their submission they were pointed at common access points and areas in the building, including a locker room located on the Tenant's floor.

41. The Landlord testified that she did replace the camera on the Tenant's floor, claiming the Tenant had deliberately broken it.

Remedies sought.

42. The remedies sought by the Tenant are as follows:

- a. Rent abatement of \$2,394.79 for 5 months interference, 2 months without keys to the changed locks and 3 months discomfort by Landlord's actions;
- b. The Landlord to cease illegally entering the rental unit, refusing to accept rent, harassing, and interfering with them, their guests, and their access to parking. To remove the security cameras;
- c. The Landlord to pay a fine to the Board;

- d. Reimburse out of pocket expenses totalling \$138.33;
- e. General compensation totalling \$20,000.00 for the fear and anxiety caused by the Landlord's actions.

Final submissions.

43. Given the alleged seriousness of the events of January 24, 2024 and the fact the Board had already determined the Landlord had illegally entered the rental unit per order LTB-L012098-23-LTB-T-001870-23 issued on June 8, 2023, I direct the parties to provide post hearing written submissions as to the merits for and against ordering the Landlord pay the maximum administrative fine per the Boards guidelines.

Analysis

44. The following sections of the residential Tenancies Act, 2006 (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, etc.

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

Changing locks.

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

Privacy.

25 A landlord may enter a rental unit only in accordance with section 26 or 27.

45. As noted above, and for the reasons that follow I am satisfied that the Tenant has proven some of the allegations within their application.

Illegal entry and changing of locks.

46. First regarding the alleged illegal entry of January 24, 2024, I am satisfied the Tenant has proven their case. I base this on the video and photographic evidence entered, which clearly show the Landlord and their agents removing property, the locks being changed, and having an agent enter despite the Tenants requests to cease and leave.
47. Furthermore, even though I accept there were ants in the rental complex, sections 26 and 27 of the Act do not allow for a Landlord to physically remove a tenant's property and treat it with chemicals. I find it more likely than not that the Landlord was using the pest control treatment as an opportunity to forcibly remove and harass the Tenant from the rental unit. I base this on the lack of licensed technicians, the circumspect manner in which the Landlord identified the alleged pest and a lack of collaborating evidence and testimony, such as the tenant that identified alleged species and treatment.
48. Similarly, I am satisfied that this was also the purpose of the Landlord Agent entering the unit with mattress and sitting down, not to rest as submitted by the Landlord. In either case, the alleged treatment and Landlord Agent entering the unit both constitute an illegal entry.
49. As to changing the locks, as stated the video and photographic evidence clearly refute the Landlord's denials and the subsequent delay in providing keys constitute another breach of the Tenant's rights. Accordingly, for this reason and those above I am satisfied the Tenant is entitle to the abatement sought.

Substantial interference.

Refusal to accept rent.

50. It is clear by both the Landlord and Tenant's testimony that the process in how rent was to be paid and accepted changed in October 2023. It is also clear that attempts were made by both sides to rectify the situation as evident by the video and audio recordings of the Landlord requesting the password and the Tenant engage legal representation.
51. That said, I am satisfied based on the evidence provided that the Landlord has rebutted the Tenant's case, specifically, their repeated requests for the password and screenshots of their banking application. Accordingly, I must dismiss this part of the Tenant's application.

Denied access to internet room.

52. Both the Tenant and Landlord agreed that internet was not a provision of the lease agreement. Nor did the Tenant lead any evidence to support that the Landlord somehow prevented them from rectifying it themselves by seeking out another provider. Accordingly, I am satisfied that the Landlord rebutted this portion of the Tenant's application, therefore I must dismiss this part of the Tenant's application.

Harass them and their guests.

53. The Tenant testified to only one incident occurring on December 1, 2023, that they confronted the Landlord and that no other occurred thereafter. Based on this testimony they communicated their issue and the Landlord obliged. Accordingly, I am not satisfied this one incident constitutes a pattern or that the Tenant has proven their case regarding the alleged harassment.

Denied access to parking space.

54. Based on the evidence entered, namely the affidavit from the previous Landlord, coupled with the Board's records, I am satisfied that as of May 2023 the Tenant had no right to parking spot 3, and the Landlord parking and denying them access to it in January 2024 did not constitute interference. Accordingly, this portion of the Tenant's application is dismissed.

Security Cameras.

55. Despite the Tenant's submissions I am not satisfied they have proven the security cameras, namely the one on their floor constitute an invasion of privacy. The pictures and video evidence entered show the camera to be at the other side of the hall and pointed straight, not directly into the Tenant's unit. Nor am I satisfied that they prove that if their unit door was open the camera could see inside. Accordingly, I must dismiss this portion of their application.

Remedies Sought.

56. Based on the above determinations I am satisfied that the Tenant is entitled to the following remedies:
- a. A rent abatement of \$1,249.66 representing the rent paid for January 2024 and 2 months without keys to the changed locks;
 - b. Reimbursement for the new lock of \$122.80 supported by the receipt entered in evidence;

- c. General compensation totalling \$5,000.00 for affect that the Landlord's actions of January 24, 2024 caused. The video entered in evidence clearly showed the haphazard manner by which the Landlord removed the Tenants belongings, leaving much of which scattered on the hallway floor. This was further exasperated by the blatant disregard to the Tenant's repeated requests for them to stop and the actions of their agent when they entered the rental unit.
57. Regarding the administrative fine sought by Tenant, as stated both parties made post hearing submissions as to the merits for and against ordering a fine to the maximum of the Board's jurisdiction, \$35,000.00.
58. The Landlord representative's submissions relied on the Board's guidelines and several previous Board orders, along with other alleged mitigating circumstances including other tenants' safety owing to the alleged ant infestation and financial implications on the Landlord.
59. The Tenant Representative submissions referred to the Board order issued on June 8, 2023, and the minimal fine of \$300.00 and its apparent failure to deter future behaviour. Their submissions also relied upon *Ginez v EQB Ltd Property Management, 2024, ONLTB 20201 (CanLII)*, the impact on the Tenant and the Landlord's apparent lack of accountability and defiance when presented with the video evidence of January 24, 2024.
60. Having considered both parties submissions I am satisfied that an administrative fine is warranted. I cannot overlook the lack of accountability on part of the Landlord. It is clear to me that the Landlord is unwilling to accept wrongdoing regarding the events of January 24, 2024. As such, I am satisfied to not administer a fine would only serve to reinforce that belief. The blatantness and callousness of the Landlord's actions cannot continue and must be deterred to the maximum effect. That said, given the already awarded rent abatement and general compensation I am satisfied that a fine of \$2,500.00 will serve to deter future behavior towards the tenant directly and any other tenants in future.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is **\$6,372.46**. This amount represents:
 - \$1,249.66 for a rent abatement.
 - \$122.80 for the reasonable out-of-pocket expenses the Tenant has incurred.
 - \$5,000.00 in general compensation.
2. The Landlord shall pay the Tenant the full amount owing by August 31, 2024.

3. If the Landlord does not pay the Tenant the full amount owing by August 31, 2024, the Landlord will owe interest. This will be simple interest calculated from September 1, 2024, at 7.00% annually on the balance outstanding.
4. If the Landlord does not pay the Tenant the full amount owing by August 31, 2024, the Tenant may recover this amount by deducting \$1,000.00 from the rent each month from September 1, 2024, to February 28, 2025.
5. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.
6. The Landlord shall not enter the Tenant’s unit except for those circumstances as provided by section 26 and 27 of the Act.
7. The Landlord shall facilitate the Tenant’s access to garage parking spot 4 and the return of any property not already recovered.
8. The Landlord shall pay to the Landlord and Tenant Board an administrative fine in the amount of **\$2,500.00** by August 31, 2024.

August 8, 2024

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Kelly Delaney

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.

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

- a. The Tenant **does** not file this order on or before August 9, 2024 with the Court Enforcement Office (Sheriff) which has territorial jurisdiction where the rental unit is located, or
- b. The Tenant **files** this order with the Court Enforcement Office (Sheriff) but the order has not been enforced on or before September 8, 2024.

Payment of the [fine {and} costs] must be made to the LTB by the deadline set out above. The

[fine {and} costs] 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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.