



Order under Section 31 Residential Tenancies Act, 2006

Citation: Borland v Bharj, 2024 ONLTB 8713

Date: 2024-02-08

File Number: LTB-T-066337-22

In the matter of: Lower, 51 Degrey Drive Brampton
ON L6P3X7

Tenants

Between: Madison Borland
Jordan Missailidis-Camara

And

Amaninder Bharj

Landlord

Madison Borland and Jordan Missailidis-Camara (the 'Tenants') applied for an order determining that Amaninder Bharj (the 'Landlord'):

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household.
- harassed, obstructed, coerced, threatened or interfered with the Tenants.
- withheld or interfered with their vital services or care services and meals in a care home.

This application was heard by videoconference on November 29, 2023.

Only the Tenants and their Representative Claudette Clark attended the hearing.

As of 1:40 pm, the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenants' evidence.

Determinations:

1. The Tenants rented the basement apartment of a single detached dwelling by entering into a one-year lease from July 1, 2021 to June 30, 2022.
2. Both Tenants provided oral testimony supported by photos and documents.
3. The Tenants sought to amend their original application to include the amendments that had been filed with the Board April 13, 2022. I consented to the amendments.
4. As explained below, the Tenants proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenants \$11,298.00.

Tenants' Evidence

Substantial interference

5. The Tenants testified that the Landlord failed to inform them at the time of entering into the lease agreement that the upstairs unit was an Air B&B.
6. As a result of the upstairs unit being an Air B&B, nightly and on the weekends, the parties, lasting to 4:00 am on occasions, would result in loud music, screaming, and dancing which was so loud that the Tenants were denied sleep, the ability to work from home and reasonable enjoyment of the rental unit.
7. The Tenants initially tried to speak with the occupants of the Air B&B and then the Landlord, but with no results from either party, the Tenants eventually called the city bylaw department and the police.
8. The Tenants testified that children with the occupants of the Air B&B would stare into the basement windows denying them privacy.
9. The Tenants further testified that the occupants of the Air B&B would deposit large amounts of garbage at the side of the home, overflowing out of the garbage bins and attracting rodents. The garbage would also block the Tenants' access to the walkway to their unit and they would have to cross on to the neighbor's property to gain entry.
10. The Tenants testified that the Air B&B was being used by large gatherings, sometimes up to 30 people, even during the Covid restrictions, which caused them to be fearful for their own health and safety.
11. The Tenants testified that they would continually bring these issues to the Landlord's attention, but the Landlord refused to address the issues. The Tenants further testified that if the Landlord did respond, it would be responses such as:

- You're in a basement, you will hear noise
- If you don't like it, move out

12. Therefore, by failing to address the Tenant's complaints about the upstairs unit reasonably, I find that the Landlord substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household.

Harassment, etc.

13. The Tenants testified that as the result of their complaints to the Landlord about the excessively loud noise and disturbances from the upstairs unit, 1 month into their 12month lease, the Landlord served the Tenants with an N12 notice for his son to move into the unit with a termination date of September 30, 2021.
14. The Tenants testified that once the Landlord realized that they were not vacating the unit as a result of the N12, he demanded that they move out of the rental unit at the end of their lease.
15. The Tenants further testified that as a result of their refusing to move out on the basis of the N12, the Landlord demanded monthly inspections of their unit. The Tenants agreed to inspections every 3 months, but the Landlord never attended their unit for any inspections. They feel that the demand of the inspections was just another way the Landlord was trying to force them out of the unit.
16. The Tenants testified that in an effort to make them move out of the rental unit, the Landlord gave their phone number to a Real Estate Agent without their permission so the agent could help them find a new rental unit to move to.
17. The Tenants testified that they could no longer deal with the stress, anxiety, insecurity of a place to live and the loss of the reasonable enjoyment of the rental unit and were forced to move out of the unit only 10 months into their 1-year lease.
18. Section 23 of the Act states that a "landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant".
19. The Act does not provide a definition of harassment. The *Ontario Human Rights Code*, R.S.O. 1990, c. H.19, defines harassment as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome".

20. Therefore, based on the Tenant's uncontested and detailed evidence, I find that the Landlord harassed the Tenants.

Withheld or interfered with vital services or care services

Hydro

21. The Tenants testified that fuses, would occasionally pop, causing loss of hydro to areas in the rental unit and the Landlord would attend the unit to reset them. Once the Tenants started complaining about the upstairs unit, the Landlord would no longer attend the home to reset the breakers, and the Tenants would have to endure days without hydro.
22. The Tenants testified that when attempting to get the Landlord to attend the unit to restore the hydro, the Landlord responded by telling them that if they wanted power, they should move out.
23. The Tenants also testified that on one occasion where they had been without power for an extended period of time, the Landlord responded to them with a message telling them to go buy an extension cord. The Tenants, to regain some hydro, drove to the Walmart and purchased the cord themselves.

Heat

24. The Tenants testified that the Landlord, during the winter months, would lower the heat after the occupants of the Air B&B left, causing the temperature in their unit to fall below the required standards. The Tenants provided multiple pictures throughout the winter month's showing temperature readings in their unit of 16 to 17 degrees.
25. The Tenants would request the Landlord to return to the unit to raise the temperature, but their requests were denied.
26. The Tenants further testified that in October 2021, upon the occupants leaving the Air B&B, one of the occupants turned on the air conditioning. The Tenants unit became extremely cold and their requests to the Landlord to attend the unit to turn off the cold air were ignored.
27. The Tenants testified that to stay warm, they had to use space heaters which would often cause the breakers to pop and result in additional losses of hydro.
28. Therefore, I find that the Landlord withheld or interfered with the Tenants' vital services of heat and hydro.

Remedies

29. I find that a rent abatement 25% or \$4,250.00 is appropriate in the circumstances. (\$1700.00 x 25% = \$425.00 x 10 months). For the reasons provided above, I find that a rent abatement of 25% for the 10 months of the tenancy is appropriate for the Tenants' loss of enjoyment of their rental unit as a result of the Landlord's substantial interference, harassment and withholding of vital services.
30. I further find that the Tenants moved out of the rental unit because of the Landlord's actions. For general damages, I am awarding the Tenants the \$7000.00 they were seeking in the application. This amount takes into consideration the Landlord's overall conduct and impact on the Tenants. I find that the Landlord's actions are unacceptable and show a blatant disregard for the legislation and the Tenant's rights under the Act.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is \$11,298.00. This amount represents:
 - \$4,250.00 for a rent abatement.
 - \$7000.00 in general damages.
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenants the full amount owing by February 19, 2024.
3. If the Landlord does not pay the Tenants the full amount owing by February 19, 2024, the Landlord will owe interest. This will be simple interest calculated from February 20, 2024 at 7.00% annually on the balance outstanding.
4. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

February 8, 2024

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Brenda Mercer

Member, Landlord and Tenants Board

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