



Order under Section 31 Residential Tenancies Act, 2006

Citation: Arnold v M&K Construction Company, 2024 ONLTB 61081

Date: 2024-08-28

File Number: LTB-T-040456-23

In the matter of: SUITE 2, 69 GAMBLE AVE
EAST YORK ON M4K2H4

Tenant

Between: Miguel Arnold

And

Landlord

M&K Construction Company

Miguel Arnold (the 'Tenant') applied for an order determining that M&K Construction Company (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. (T2 Application)
- withheld or interfered with their vital services or care services and meals in a care home. (T2 Application)
- collected or retained money illegally (T1 Application)

These applications were heard by videoconference on April 8, 2024.

The Landlord and their legal representative, Matt Anderson, and the Tenant attended the hearing. The Tenant identified that he is also a licensee of the Law Society of Ontario.

Determinations:

1. As explained below, the Tenant did not prove the allegations contained in the applications on a balance of probabilities. Therefore, the applications are dismissed.

Substantial interference

2. Every time the Tenant uses their window air conditioner at the same time as the microwave or rice cooker, the fuse blows in the rental unit. The Tenant says the inability to use multiple appliances at the same time interferes with his enjoyment of the rental unit because the Landlord is not providing enough electricity for him to use the air conditioner and kitchen appliances at the same time. The Tenant is also requesting compensation for the cost of the replacement fuses which he has had to purchase. He has asked the Landlord to replace the fuse panel with circuit breakers rather than fuses but the Landlord has not agreed to conduct this work.

3. On June 21, 2022, the Tenant signed and agreed to the terms set out in the following document titled:

‘AGREEMENT RESPECTING AIR CONDITIONING UNITS’
Application for Approval
Re: Installation of Air Conditioning Units

4. This agreement includes an agreement to pay an additional fee for the extra electricity used by the air conditioning units: \$30/month per window unit and \$15/month per stand-alone unit.

5. Page 1 of the agreement states:

Pursuant to Section 123(1)(2) of the Residential Tenancies Act (RTA) and 16 (1)(4) of Ontario Regulation 516/06, the use of air conditioning units in your apartment is prohibited by your lease without our prior written approval. No approval will be given to the installation and use of an air conditioner in your apartment unless installed in accordance with the terms of this Agreement and the related Schedule “A”.

6. Schedule A includes 9 terms, the most relevant of which for this application 1.b) which states an air conditioning unit will not exceed 8,000 BTU, and 8 which state the Tenant will take full responsibility for the repair of any damages incurred as a result of the above installation, operation, and/or removal.
7. The agreement and the schedule are both signed by the Tenant, the schedule is dated June 20, 2022.
8. The Landlord had a contractor inspect the unit on July 6, 2023 in response to the Tenant’s complaints about fuses blowing. The contractor’s report states ‘Found tenant plugging in too many appliances. Told tenant to spread out appliances and identified power circuits in unit.’
9. The Tenant says he can’t spread out the appliances without putting the microwave and the rice cooker in the bedroom. He testified that he has never tried using the appliances on a different circuit. He never tried unplugging the air conditioner before turning on the microwave or rice cooker.
10. The manual for the Tenant’s air conditioner lists its cooling capacity as 12,000 BTU.
11. It is common knowledge that running multiple appliances on one electrical circuit can overload the circuit, resulting in a blown fuse or a tripped circuit breaker. Kitchen appliances are particularly well known for this – for example many households cannot operate the microwave and the toaster at the same time or the toaster and the kettle at the same time unless they are plugged into separate circuits. While this can be frustrating, it is not the fault of the Landlord and does not constitute interference.

12. In this instance the Tenant also chose to utilize an air conditioner which greatly exceeded the maximum BTU allowed in the agreement. It is entirely possible that a less powerful air conditioner would draw less power and not cause the same problems.
13. The Tenant is responsible for any damages caused by an air conditioner he installs. I find that this extends to the cost of replacing fuses. The Landlord is not obligated to provide replacement fuses or upgrade the fuse panel to address the issue. I also note that while a circuit breaker would not need to be replaced every time the circuit is overloaded, as happens with a fuse, when the circuit is overloaded the circuit will still be broken and the power to all affected outlets stopped.
14. Therefore, 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.

Withheld or interfered with vital services or care services in a care home

15. The rental unit is not a care home, therefore this claim is moot.

Landlord charged an illegal rent

16. The Tenant does not dispute the amount collected by the Landlord for the air conditioners and acknowledges that the Landlord is entitled to collect this amount under s.123 of the Act. However, he feels the Landlord should not have withdrawn the money without first providing confirmation to the Tenant that his application to install and use an air conditioner had been accepted, and that as he did not initial the pre-authorized payment plan portion of the agreement, the Landlord should not have automatically withdrawn the money from his bank account. He also feels that he isn't receiving the services he is paying for because of the fuse issues, and therefore shouldn't be charged the full price. This last complaint doesn't fall under a T1 and has instead been considered with the interference application.
17. The Tenant's complaints rest largely on the fact that the Landlord never confirmed in advance with the Tenant that his application had been accepted and his understanding was that the application was not approved. However, he proceeded to install and use the air conditioners. I find that the Tenant's behaviour shows that he believed his application had been accepted, even if he didn't receive formal confirmation of the acceptance. The alternative would be that he deliberately installed two air conditioners with the understanding that they had not been approved by the Landlord and that he was doing so in direct violation of the lease agreement. The more logical and common-sense interpretation is that the Tenant understood that the application had been accepted.
18. The Landlord says that they don't usually return the application forms as they usually approve every request and just collect the forms to know how much to bill. They don't inspect every unit and every air conditioner for compliance with the terms of the agreement, rather they rely on tenant complying with the agreement that they sign.
19. The Landlord says that they don't usually automatically withdraw the air conditioning charges without specific authorization, however usually when tenants are on pre-authorized

payment for rent, they do the same for the air conditioning charge. The Landlord incorrectly assumed this was the case with this Tenant.

20. The Tenant questioned the Landlord on July 7, 2022 about the withdrawal, noting that the withdrawal had been higher than expected and he had incurred a \$5 NSF fee. The Landlord deactivated the automatic withdrawal for the air conditioning amount on July 11, 2022.

21. I find that although the Landlord erred in adding the air conditioning charges to the pre-authorized payment amount without specific authorization to do so, this does not constitute an illegal rent charge. The Landlord was entitled to charge the Tenant the additional air conditioning amount as specified in the air conditioning agreement which was signed by the Tenant, and which the Tenant, by his actions demonstrated he believed to have consented to by the Landlord.

It is ordered that:

1. The applications are dismissed.

August 28, 2024

Date Issued

Dawn Carr

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.