



Order under Section 31 Residential Tenancies Act, 2006

Citation: Teixeira v Warwick, 2024 ONLTB 22123

Date: 2024-06-03

File Number: LTB-T-038114-23

In the matter of: B, 87 BOND ST
Waterloo ON N2H4S4

Tenant

Between: Michael P. Teixeira

And

Karen Warwick
Leo Henhoeffler

Landlord

Michael P. Teixeira (the 'Tenant') applied for an order determining that Karen Warwick ('KW') and Leo Henhoeffler ('LH') (collectively, 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.
- 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.

When the capitalized word "Landlord" is used in this order, it refers to all persons or companies identified as a Landlord at the top of the order.

This application was heard by videoconference on February 23, 2024.

The Landlord and the Tenant attended the hearing. KW was represented by Peter Miller. The Tenant was represented by Elizabeth Purkiss.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenant \$18,848.00.
2. KW shall also pay a \$2,000 fine to the LTB.

Overview and uncontroverted evidence

3. The residential complex contains two units. The Tenant occupies one, KW occupied the other. LH co-owns the property with KW but does not reside at the residential complex. All of the allegations contained in this application are based on the conduct of KW.
4. The Tenant testified about the issues at the rental unit.
5. His evidence was that KW has been harassing him since 2020. Given the limitation period in *the Residential Tenancies Act, 2006* (the 'Act'), the testimony focused on the events that started in 2023.
6. The Tenant's testimony was clear, compelling and straightforward. It was supported by voluminous documentary, photo, and video evidence and it was corroborated by LH.
7. KW chose not to testify and did not contradict the Tenant's allegations.
8. The cross-examination did not seriously challenge or undermine the Tenant's evidence.
9. I will therefore provide only a summary of the evidence as the facts were not seriously disputed.
10. KW put cinder blocks in the Tenant's parking to prevent him from moving his vehicle, blew snow onto his car, aggressively approached the Tenant with a snowblower, played loud music into the air vent, harassed and insulted the Tenant on multiple occasions, put a wet smelly note into the Tenant's mailbox, turned off the heater and the furnace, left notes and yelled at the Tenant to induce him to move out, intentionally destroyed property (cameras) at the property, spilled chemicals in from of the Tenant's front door, attempted to rip the mailbox off the wall with a screwdriver and a hammer, followed the Tenant as he would exit the unit, and attempted to block his path, poured chemical cleaners into the mailbox thus destroying the Tenant's mail, sprayed water into the Tenant's windows, onto the security cameras and into his mailbox, and poured chemicals into the air vents.
11. The Tenant testified about the impact KW's conduct has had on him.
12. He felt targeted for KW's amusement, he was harassed and threatened and had to call the police on multiple occasions. The Tenant filed some of the police reports into evidence and

obtained a restraining order against KW. KW was charged with criminal harassment and destruction of property.

13. One day the Tenant woke up choking because KW poured bleach into the HVAC system before she left her unit. He had to change multiple filters on the furnace and felt that he experienced poisoning.
14. On cross-examination the Tenant explained that he moved into the property in 2020, and his issues with KW began only a few weeks later. The Tenant was questioned about his decision to stay at the unit despite KW's behaviour. The Tenant testified that he initially considered moving out and breaking the lease but at that time LH spoke to KW and it was agreed that the issues would be rectified. Then the Tenant became stuck due to Covid-19 and the rental rates skyrocketing.
15. The Tenant was also cross-examined about LH's role. He confirmed that LH has been trying to help.
16. LH testified that he has done everything in his power to assist the Tenant. He called by-Law, answered every call from the Tenant, tried to get KW's family involved, spoke to the Police, installed cameras, and put lockbox on the mailbox after KW stole the Tenant's mail. LH confirmed that the Tenant's testimony was accurate and that KW's conduct was even worse than what the Tenant was able to testify about.
17. KW's legal representative questioned LH why he didn't just buy KW out. LH explained that this was not the agreement the parties had as KW was already benefitting from not having to pay rent and from retaining more than half of the Tenant's rent. Neither landlord provided detailed evidence about the nature of their arrangement.

Remedies

18. S. 21(1) of the Act states: 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, withhold the reasonable supply of any vital service, care service or food that it is the landlord's obligation to supply under the tenancy agreement or deliberately interfere with the reasonable supply of any vital service, care service or food.
19. Section 22 of the Act states: 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.
20. Section 23 of the Act states: A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.

21. Based on the totality of the evidence adduced at the hearing I find that KW established all of the claims contained in his application. I find that the Landlord breached the Act by withholding vital services, harassing the Tenant, and substantially interfering with the Tenant's reasonable enjoyment of the property.

22. I also find that the Tenant is entitled to the following remedies he requested in his application:

1. A rent abatement of \$10,800 for the period of January 2023 to January 2024 under s. 31(1)(c) of the Act;
2. An order that the Landlord shall not:
 - i. harass the Tenant;
 - ii. leave notes on the Tenant's door;
 - iii. pour noxious substances into the HVAC system;
 - iv. play loud music between 11pm and 8am
 - v. interfere with the Tenant's ability to receive mail;
3. A reimbursement of the cost of filing this application of \$48.00; and
4. A payment of \$8,000 in damages under s. 31(1)(f) of the Act;

23. This relatively high amount is warranted given the prolonged and egregious nature of the actions and the very serious impact it has had on the Tenant.

24. I am also ordering KW to pay an administrative fine to the LTB in the amount of \$2,000 in accordance with s. 31(1)(d) of the Act. This is an appropriate amount given the egregious conduct of KW.

Is LH liable?

25. LH's position at the hearing was that he should not be held liable for KW's actions. He did not rely on any authority but submitted that he did his best to help the Tenant and that he didn't even know whether he was a landlord.

26. S. 2(1) of the Act defines 'landlord' to include:

- (a) the owner of a rental unit or any other person who permits occupancy of a rental unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit,

(b) the heirs, assigns, personal representatives and successors in title of a person referred to in clause (a), and

(c) a person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent;

27. I find that LH meets the definition of a landlord. He conceded that he was one of the two owners, and I find that he was involved in managing the property and collecting rent. He conceded that he was entitled to receive at least a portion of the rent the Tenant paid.

28. Divisional Court recently addressed the issue of apportioning liability between landlords in a Tenant application in *Akbari et al. v. Blenkinsop et al.*, 2024 ONSC 1184. It held that LTB and the Act are best positioned to balance rights of landlords and tenants, not multiple landlords. Paragraphs 32 – 38 of the decision provide:

[32] The balancing of rights referenced in this section is between residential Landlords and Tenants. It is, specifically, not a statute designed to address the balancing of rights between multiple Landlords with respect to a specific residential unit.

[33] Nowhere in this consumer protection legislation is there language requiring the LTB to make such inquiries and determine issues as between multiple Landlords. [34] If the legislation required the LTB to make an inquiry and determination with respect to determining and apportioning responsibilities and liability as between multiple Landlords, as part of an inquiry to determine whether there has been a breach of s. 48 of the RTA, the RTA would clearly and unequivocally state this. It does not.

[35] As well, such a statutory scheme runs contrary to the general purpose of the legislation. For example, it would require tenants who file a bad faith application pursuant to s. 57 to participate in a process that could stretch out extensively beyond a finding a violation of s. 48 in order for the Tribunal to apportion responsibility and liability among multiple Landlords.

[36] Such a process could be factually complicated and legally lengthy. It could involve extensive evidence determining contractual rights and responsibilities between any number of Landlords with respect to a specific property.

[37] There are also numerous other methods or processes to apportion liability among multiple Landlords, including, but not limited to, contractual arrangements between Landlords who are owners and their agents, such as the Appellant. In many (if not most) instances that would involve the hearing of evidence with respect to the contractual relationships between Landlords. In many instances, the Tenants would have no knowledge of any such contracted arrangements.

[38] The purpose of s. 202 of the RTA is to assist the Tribunal in determining the real nature of the relationship between Landlords and Tenants. It is not to require the Tribunal to determine the relationship between multiple Landlords in the event of a breach of the RTA.

29. While that case was based on a bad faith notice, I find that it equally applies to the situation at hand. I will not apportion liability between the Landlords for the purposes of this order. They are both liable to the Tenant. The only exception is the administrative fine, which is only payable by KW as it is intended to penalize and discourage her personally.

30. This order contains all the reasons herein. No further reasons shall issue.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$18,848.00 including the cost of filing this application.
2. The Landlord shall pay the Tenant the full amount owing by June 13, 2024.
3. Karen Warwick shall pay to the Landlord and Tenant Board an administrative fine in the amount of \$2,000.00 by June 13, 2024
4. If the Landlord or Karen Warwick does not pay the Tenant the full amount owing by June 13, 2024, the Landlord will owe interest. This will be simple interest calculated from June 14, 2024 at 7.00% annually on the balance outstanding.
5. If the Landlord does not pay the Tenant the full amount owing by June 14, 2024, the Tenant may recover this amount by deducting \$1,300 from the rent each month starting July 1, 2024.
6. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.
7. The Landlord shall not:
 - a. harass the Tenant,
 - b. leave notes on the Tenant's door,
 - c. pour noxious substances into the HVAC system,
 - d. play loud music between 11pm and 8am, or
 - e. interfere with the Tenant's ability to receive mail.

June 3, 2024

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Vladimir Nikitin

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.