



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: WENTWORTH PROPERTY MANAGEMENT INC. v TIMMINS, 2024 ONLTB 2730

Date: 2024-01-15

File Number: LTB-L-075772-22

In the matter of: 106, 75 WENTWORTH STREET S
HAMILTON ON L8N2Y6

Between: WENTWORTH PROPERTY MANAGEMENT INC. Landlord

And

REGINALD TIMMINS Tenant

WENTWORTH PROPERTY MANAGEMENT INC. (the 'Landlord') applied for an order to terminate the tenancy and evict REGINALD TIMMINS (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on December 12, 2023.

The Landlord's legal representative, Luisa Goncalves, attended the hearing.

A witness for the Landlord, and superintendent, Gary Boast (GB), attended the hearing.

The Tenant also attended the hearing.

Background:

1. File SOL-23640-21 a Landlord's L2 application based on an N5 notice was previously settled by a Mediated Agreement issued on March 2, 2022. The

2. The Tenant filed a request to re-open this file on July 11, 2022 claiming the Landlord was in breach of the conditions of the mediated agreement.

Determinations:

8. The Tenant's request to re-open the mediated agreement is based on claims the Landlord has breached two conditions of the mediated agreement that states:

Paragraph 1:

The Landlord will authorize the Tenant to park his mobility scooter on the North-East side of the property provided the scooter does not have any attachments to it (trailer, wagon etc...).

Paragraph 2:

The Tenant shall not charge his mobility scooter through his unit window. The Landlord will provide the Tenant with a way to charge his scooter through the office backdoor during business hours.

Tenant Claim Landlord Denied Access to Designated Spot: Paragraph 1

Tenant Evidence

9. The position of the Tenant is that the Landlord has not allowed him to park his scooter in the assigned spot at the North-East side of the property as agree upon in the mediated agreement.
10. The Tenant testified that after the agreement he was parking his scooter in the designated spot, but soon stopped as he was unable to park his scooter there due to other vehicles blocking this area. The Tenant claims the Landlord has not taken steps to prevent other vehicles form blocking access to this spot.
11. The Tenant testified that he collects scrap metal as a hobby and often uses a wagon to collect the scrap metal. The Tenant testified that in accordance with the mediated agreement he was not allowed to park his wagon in the designated spot. Given his hobby,

the Tenant stated he had to rent a unit to store his wagon and required an area to pursue his scrap metal hobby.

12. The Tenant did not submit documentary evidence or photographic evidence to support his claim the Landlord is in breach and relies on his oral testimony.
13. The Tenant could not provide specific dates or times he was unable to park his scooter in the designated spot.
14. Further when I asked the Tenant if he informed the Landlord at times when vehicles prevented him from parking his scooter in the assigned spot the Tenant responded he did not.

Landlord Evidence

15. The position of the Landlord is that the Tenant has not been denied access to the designated spot in accordance with the mediated agreement and the area the Tenant has been assigned the area to park his scooter is not big enough for a vehicle to park there.
16. To support their claim the Landlord submitted evidence in the form of photographs of the designated area.
17. The Landlord's photos show a flat paved strip of asphalt approximately 1 ½ meters wide beside the residential complex parking area. The Landlord submits this is the area that the Tenant was provided as the designated area to park.
18. The Landlord submits that this area is not part of the residential complex assigned parking and is a buffer zone between the residential complex parking lot and the fence line. The Landlord submits that no one parks on this strip of asphalt and the area is more than large enough for the Tenant to park his scooter unimpeded by anyone parking in the parking lot.

Analysis

19. The onus rests with the applicant, in this case the Tenant to provide sufficient evidence to support his claim the Landlord is in breach of the conditions of the mediated agreement.
20. On a balance of probabilities means the Tenant must show that his version of events is the more probable and should succeed. Saying something is proven on a balance of probabilities simply means that it is more likely than not to have occurred. It means that it is probable, i.e., the probability that some event happened is more than 50%--indeed,

50.1% is sufficient. In all cases, the decision maker must weigh up the evidence and decide which version is most probably true. Consequently, the real truth may never be known. All that can be done is to decide which of the parties has presented the most probable version.

21. I further questioned the Tenant on his interpretation of the mediated agreement. I asked the Tenant if he expected the Landlord to provide him a Tenant parking spot, specifically a vehicle parking spot between the yellow lines.
22. The Tenant testified he feels the Landlord should provide him with a free parking spot, and not the designated paved strip.
23. I asked the Tenant why he felt the Landlord should give him a free parking spot when other Tenants had to pay.
24. The Tenant provided no response to my question.
25. I further note that the Tenant took it upon himself to rent a storage unit in order to have enough room to engage in his scrapping hobby and keep his wagon.
26. In my view the Tenant has chosen not to park his scooter in the designated area due to needed space for his scrapping hobby, and while the Tenant feels he is entitled to a vehicular parking spot, this is not the condition outlined in the mediated agreement.
27. In addition to my reasons above, I further do not find the Tenant's evidence persuasive enough, relying solely on his oral testimony as evidence the Landlord has breached Paragraph 1 of the mediated agreement. The Tenants' lack of particulars and specific details regarding dates he was blocked from using the designated spot, and the fact he did not inform the Landlord on these occasions, are such that I am not satisfied the Tenant has met that burden of proof to support his claim.
28. Given all the above, with the evidence before me and on a balance of probabilities I find there is no evidence to support the Tenant's claim the Landlord has breached the condition in Paragraph 1 of the mediated agreement and therefore this portion of the Tenant's claim is dismissed.

Tenant Claim Landlord Did Not Provide Charging for Scooter: Paragraph 2

Tenant Evidence

29. The Tenant testified that the Landlord has not allowed him to charge his scooter through the back door of the residential complex office.

30. The Tenant testified that approximately early June 2022 he was attempting to charge his scooter in accordance with the mediated agreement.
31. The superintendent GB, provided the Tenant with an extension cord and allowed the Tenant to charge his scooter parked just outside the back door of the office.
32. The Tenant testified that an altercation took place between him and the tenants in rental unit 108. Rental unit 108 is not on the ground floor and is directly above the back door entrance to the office where the Tenant was charging his scooter.
33. The Tenant testified that after the altercation he did not feel safe charging his scooter in that location due to the interaction with the tenants in rental unit 108.

Landlord Evidence

34. GB testified that he was asked by the Tenant for an extension cord several times before June 2022 and accommodated the Tenant with charging his scooter in accordance with the mediated agreement.
35. GB testified he was made aware of the altercation between the Tenant and the tenants in rental unit 108 and the altercation took place sometime in mid June 2022. GB stated he told the tenants in 108 that the Tenant had permission to use the area outside the back office and charge his scooter.
36. GB testified that during one of the conversations with the tenants in rental unit 108 the Tenant was present for the conversation where GB informed the tenants in rental unit 108 that they were not to interfere with the Tenant charging his scooter.
37. GB testified that he informed the Tenant that could continue to request to charge his scooter out of the back door of the office without interference from the tenants in rental unit 108.
38. Further GB testified that a warning letter was sent to the tenants in rental unit 108 explaining that the Tenant was allowed to charge his scooter in the designated area, and there was to be no interference or further incidents from tenants in rental unit 108.
39. GB testified that after the altercation with the tenants in rental unit 108, the Tenant did not ask for an extension cord to charge his scooter. As of the day of the hearing GB stated the Tenant has not come to him since the mid June 2022 altercation and asked to charge his scooter, however, if the Tenant were to request access to the back door office to charge his scooter he would be accommodated in accordance with the mediated agreement.

Analysis

40. I prefer the evidence of the Landlord and the testimony of GB that the Landlord has not breached Paragraph 2 of the mediated agreement.
41. I find GB credible in his testimony and I accept that as the superintendent he had settled the matter regarding the altercation between the Tenant and the tenants in rental unit 108. I am satisfied that the Landlord followed up with a letter to the tenants in rental unit 108 explaining the position of the Landlord and that GB had confirmed this in person with the tenants in rental unit 108 and in the presence of the Tenant.
42. The Tenant testified that he had not made any further requests to charge his scooter after the mid June 2022 altercation. The Tenant testified he did not feel safe in doing so, however I am not persuaded by the Tenant's testimony of any reason for him to in fear of his safety.
43. In my view the Tenant has chosen not to ask GB to charge his scooter, and this does not constitute a breach by the Landlord.
44. Given all the above, with the evidence before me and on a balance of probabilities I find there is no evidence to support the Tenant's claim the Landlord has breached the condition in Paragraph 1 of the mediated agreement and therefore this portion of the Tenant's claim is dismissed.
45. Given that the Landlord is not in breach of the mediated agreement in accordance with Paragraph 1 or Paragraph 2 of the mediated agreement the Tenant's request to re-open is denied.
46. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
47. This order contains all reasons for the determinations and order made. No further reasons will be issued.

It is ordered that:

1. The Tenants request to re-open the application is denied.
2. The term and conditions of the mediated agreement, file SOL-23640-21 are unchanged and remain.

January 15, 2024

Date Issued

Greg Brocanier

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

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

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