



Order under Section 31 Residential Tenancies Act, 2006

Citation: Binner v Baghel, 2024 ONLTB 62112

Date: 2024-08-27

File Number: LTB-T-052444-23

In the matter of: Half Ground Floor Back Entrance, 54 PETERSON CRT
BRAMPTON ON L6Z1K6

Tenant

Between: Harvinder Singh Binner
Amandeep Kaur

And

Shweta Baghel

landlord

Harvinder Singh Binner and Amandeep Kaur (the 'Tenants') applied for an order determining that Shweta Baghel (the 'Landlord'):

- entered the rental unit illegally.
- altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant 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.
- withheld or interfered with their vital services or care services and meals in a care home.
- did not give the Tenant 72 hours to remove their property from the rental unit or from some place close to the rental unit after the Sheriff evicted the Tenant.

This application was heard by videoconference on August 14, 2024.

The Landlord and the Tenants attended the hearing.

Determinations:

1. For the reasons that follow, I am satisfied on the balance of probabilities that the Landlord: (1) entered the rental unit illegally, (2) altered the locking system on a door giving entry to the rental unit without giving the Tenants replacement keys, (3) substantially interfered with the Tenants' reasonable enjoyment of their rental unit and residential complex and (4) that the Landlord harassed and/or threatened the Tenants.

Facts

2. The Tenants reside in a one-bedroom, furnished apartment in a three-unit building. The rent was \$1,350.00 per month. The lease agreement commenced May 1, 2023. Only the

Tenant Harvinder Singh Binner (H.S.B.) moved into the rental unit on May 1, 2023, because his wife was overseas at the time and joined him on May 3, 2023.

3. The rental unit has no locking mechanism on the outside of the rental unit door. The Tenants were able to lock the rental unit from the inside only. The Tenants entered their rental unit through a sliding door at the back of the residential complex. Access to this door was through a gate to the rear of the property. This was not disputed by the Landlord.
4. On July 5, 2023, the Tenants filed an Application about Tenants Rights (T2 application with the Board. The Application alleges the following facts:
 - Between approximately the end of May 2023 and June 29, 2023, the Landlord harassed the Tenants by demanding they vacate the rental unit and by demanding to see legal document such as a record of marriage, passports and a criminal check for the Tenant, Amandeep Kaur (A.K.)
 - On June 24, 2023, the Landlord did not allow use of the stove in the rental unit and changed the password for internet access.
 - On June 25, 2024, the Landlord blocked access to the driveway thereby not allowing the Tenants to park their vehicle.
 - On June 30, 2023, the Landlord entered the rental unit under for a purpose other than what was stated to the Tenants.
 - On June 30, 2023, the Landlord packed the Tenants belongings in bags, placed them outside and changed the lock on the gate which the Tenants used to access their rental unit.
5. The Tenants' T2 Application seeks the following remedies: (1) the Landlord be ordered to pay a fine to the Board, (2) the Landlord be ordered pay the Tenants for their moving expenses (3) the Landlord be ordered pay the Tenants their out of pocket expenses for accommodation and food during the time they were locked out of their rental unit (4) the Landlord be ordered to pay the Tenants compensation for the Landlord's actions (no specific dollar amount was requested by the Tenants in the application for this compensation).

Analysis

6. The *Residential Tenancies Act, 2006* (the 'Act'), states the following:
 - s. 22** provides that a landlord shall not substantially interfere with the reasonable enjoyment of the rental unit or the residential complex for all usual purposes by a tenant or members of his household.
 - s. 23** provides that a landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.
 - s. 24** provides that 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.

s. 27(1) provides that a landlord may enter a rental unit in accordance with written notice give to the tenant at least 24 hours before the time of entry under the following circumstances:

1. To carry out a repair or replacement or do work in the rental unit.
2. To allow a potential mortgagee or insurer of the residential complex to view the rental unit.
3. To allow a person who holds a certificate of authorization within the meaning of the *Professional Engineers Act* or a certificate of practice within the meaning of the *Architects Act* or another qualified person to make a physical inspection of the rental unit to satisfy a requirement imposed under subsection 9 (4) of the *Condominium Act, 1998*.
4. To carry out an inspection of the rental unit, if,
 - i. the inspection is for the purpose of determining whether or not the rental unit is in a good state of repair and fit for habitation and complies with health, safety, housing and maintenance standards, consistent with the landlord's obligations under subsection 20 (1) or section 161, and
 - ii. it is reasonable to carry out the inspection.
5. For any other reasonable reason for entry specified in the tenancy agreement.

s. 27(3) states the written notice under subsection (1) or (2) shall specify the reason for entry, the day of entry and a time of entry between the hours of 8 a.m. and 8 p.m.

Illegal Entry and Lock Out

7. The Tenant H.S.B. testified that the Landlord asked the Tenants to sign an N11 form indicating an agreement to end the tenancy on August 1, 2023. A copy of the N11 given by the Landlord was submitted. The Tenants also submitted a text conversation with the Landlord on dated June 19, 2023, wherein the Landlord advises that once the form is signed the Tenant can just put it in the mailbox. The Tenant responded to this text on June 20, 2023 as follows:

Sorry, you have put the last date on the form as 1 August. But when we talked in person you said 6 months, although I asked for one year. Now you are restricting us to only one more month. Sorry, I can't sign it as I don't agree with last date. I can return the form whenever you like it.

8. The Tenant H.S. B. testified that prior to the Landlord giving them the N11 form, they spoke to the Landlord about her need for them to vacate the rental unit. The Tenant testified that during this conversation the Landlord offered 6 months for them to move.
9. The Tenant H.S.B. testified that the Landlord sent a message to all residents of the building via group text that pest control services would attend on June 30, 2023, and that everyone must leave the property when the treatment takes place. The Tenants submitted a copy of this text exchange. In the text the Landlord advised residents to leave the premises around 1 pm and provided other instructions relating to removing valuables,

sealing clothing and protecting food. The Tenant stated the Landlord advised the treatment process would take 4 hours. The Landlord's text further instructed residents to make sure all the doors are left open/not locked and that it should be safe for residents to enter by 6:00 PM.

10. The Tenant H.S.B. testified that they left the rental unit as requested by the Landlord and that a short while later he noticed that the Landlord had removed him from the texting group for residents. The Tenant submitted a text exchange with the Landlord time stamped at 5:36 PM on June 30, 2023, wherein the Landlord states "as per our mutual agreement as you moved out today last month settlement amount is e-transferred." The Tenant responded by text which states "I didn't sign any mutual agreement to move out and neither am I leaving this place. I have already sent you the rent for next month".
11. The Tenant H.S.B. testified that when he returned to the rental unit, he found all their personal belongings in bags and placed at the side of the house outside the rear gate entrance. The Tenant further testified that the gate allowing access to the entry door of his rental unit now had a pad lock attached to it which was not there previously. The Tenant testified that the Landlord did not provide him a key for this lock. The Tenants submitted photos of bags of their belongings at the side of the house.
12. The Tenant H.S.B. testified that he called the police and that they advised him that this is a Landlord and Tenant issue and that the Tenant needed to file an application with the Board. The Tenant testified that they had nowhere to go that evening, so they slept in their car. The Tenant further testified he found an Airbnb rental the next day where they stayed from July 1, 2023, to July 4, 2023.
13. The Tenant H.S.B. testified that they did not have the financial resources to continue staying in the AirBnB and so they returned to the rental unit on July 4, 2023, and forced the lock on the gate open to gain access their rental unit.
14. The Landlord testified that the Tenant originally signed a month-to-month lease and that she advised the Tenant when she leased the unit that her father was critically ill and that she would, at some point, require the rental unit to care for her father. The Landlord further testified that on June 29, 2023, the Tenants verbally agreed to vacate the rental unit on June 30, 2023. The Landlord conceded that she was not provided with an N9 form or any other written notice by the Tenants of their intention to vacate the rental unit.
15. The Landlord testified that it was the Tenants themselves that placed their packed belongings outside to collect later. The Landlord testified that the lock was present on the gate prior to June 30, 2023, and that the Tenants had a key.
16. The Landlord testified the Tenant was set up on automatic payments and this is the reason why his July rent was deposited in her bank account. The Landlord testified she attempted to return the rent paid for July and the Tenant's last month rent deposit on June 30, 2023, by e-transfer to the Tenants, but they did not accept this transfer.
17. The Tenants submitted a video of an exchange between the Tenants and the Landlord when they returned to the unit on July 4, 2023. In the video the Tenant H.S.B. asks the

Landlord why she evicted him illegally and why she packed all their things and threw them outside. The Landlord can be heard saying “why are you here, why don’t you get a house somewhere else”. The Landlord then says she will call police and the Tenant invites her to do so. An individual with the Landlord can be heard saying that they will call immigration on the Tenants.

18. Based on the evidence and testimony before me, I find based on the balance of probabilities that the Landlord did illegally enter the rental unit and did alter the locking system on a door giving entry to the rental unit without giving the Tenant replacement keys.
19. The Tenants testified they never told the Landlord they were vacating, and that the Landlord packed all their belongings when they were out of the rental unit for a pest control treatment. The Landlord testified that the Tenants agreed to vacate the rental unit and accordingly they packed their own belongings and left them at the side of the house to collect later.
20. I prefer the evidence and testimony of the Tenants and I say this for the following reasons.
21. The Tenants submitted multiple texts with the Landlord indicating repeatedly that they did not wish to vacate the rental unit. The Tenants also submitted a copy of the e-transfer they initiated to the Landlord as payment of the rent due for July. This indicates the Tenants were not on an “auto-pay” system but rather had to physically issue a transfer to the Landlord to pay their rent. If the Tenants agreed to vacate on June 30, 2023, there would be no need to pay the rent due for July 2023. I also find it unlikely that the Tenants would pack all their belongings in garbage bags and leave them at the side of the house to be retrieved later given the Tenant’s statements in the video submitted.
22. Section 39 of the Act states that a landlord shall not recover possession of a rental unit subject to a tenancy unless (a) the tenant has vacated or abandoned the unit; or (b) an order of the Board evicting the tenant has authorized the possession.
23. In the text chain submitted by the Tenant following the Landlord giving the N11 form the Landlord responds to the Tenants refusing to sign the document by stating “you’re leaving on Aug 1” and “I already have family moving in on Aug 1”. I find it more likely than not that when it became clear to the Landlord that the Tenants were not going to vacate, she took matters into her own hands and removed their belongings. This is a blatant disregard of the Act and the Tenant’s rights.
24. The month-to-month lease agreement does not provide the right for the Landlord to simply evict the Tenants at any time. A landlord may only apply to evict a tenant for a reason allowable under the Act and an eviction may only be granted by an Order of the Board.
25. I also find that the Landlord illegally entered the rental unit on June 30, 2023. Though the Landlord gave notice by text to the residents of the building that entry was required, the purpose was to be for pest control. The Tenants allowed access to their unit for that stated purpose only. Instead, the Landlord entered to remove the Tenant’s belongings and

reclaim the rental unit. Therefore, the Landlord cannot be said to have provided notice in accordance with subsection 27(3) of the Act.

Substantial Interference with Reasonable Enjoyment and Harassment

26. Based on my findings above, I find that the Landlord's behaviour of entering the rental unit under false pretenses and removing the Tenant's property to illegally gain possession of the rental unit substantially interfered with the reasonable enjoyment of the rental unit. The Landlord's behaviour was an egregious invasion of the Tenants' privacy.
27. The Tenant H.S.B. testified that the Landlord began harassing him to vacate the rental unit after an incident between the parties in late May 2023. The Tenant testified that the Landlord scratched his car when trying to leave her parking space and that he asked the Landlord to pay for the damages which he estimated to be around \$1,000.00 to \$2,000.00. The parties settled this matter by the Landlord agreeing to pay the Tenant \$350.00 to fix his car. A copy of this written agreement was submitted by the Tenant. The Landlord does not dispute the settlement agreement.
28. The Tenant H.S.B. testified that after this incident, the Landlord began to harass him about vacating the rental unit. The Tenant stated this started by the Landlord telling him the stove could not be used in the rental unit because it was not vented properly. The Tenant stated that the Landlord told him he had to leave due to this issue. The Tenant testified that the Landlord also was harassing him about his wife by demanding to see her passport and their marriage licence.
29. The Tenant H.S.B. testified that when they returned to the unit on July 4, 2024, the Landlord called police and falsely accused him of trying to assault her. The Tenant stated that the police suggested it was likely in his best interest to find a new place to live. The Tenant testified that given this advice and because of the Landlord's prior actions, they moved out of the rental unit on July 29, 2023.
30. The Landlord testified that when the Tenant's returned to re-occupy the rental unit on July 4, 2023, the Tenant, H.S.B. became aggressive, threatened her, and tried to assault her. The Landlord stated that she called police who registered her complaint of a break-in and advised her to stay away from the Tenants given the unsafe circumstances. The Landlord further testified that she felt unsafe, so she moved out of her unit in the house on July 5, 2023. The Landlord did not submit an occurrence report from the police for this alleged incident.
31. The Landlord testified that the Tenants were complaining about the stove not working so she provided them with a cook top. The Landlord submitted a photo of a box containing a portable cook top that was left at the back gate for the Tenants which was provided on July 6, 2024.
32. The Landlord testified that she only asked for official documents of Amandeep Kaur (A.K.) for safety purposes.

33. Based on the evidence and testimony before me, I find on the balance of probabilities that the Landlord did harass the Tenants by repeated demands for the Tenants to vacate and by unreasonable demands for the Tenants to provide official government documents.
34. The Tenants have submitted several text conversations with the Landlord that corroborate their testimony that the Landlord repeatedly attempted to evict the Tenants from the rental unit in contravention of the Act. An example some of these messages from the Landlord are as follows:

This apartment is not suitable as per law. Did you told [sic] Ltb that. I have a right to remove the stove right now....I am helping you out by not removing and giving you decent time to move out...

This is a month to month lease why can't you understand the legality here...

You are moving out on August 1st and that stand [sic] as is....

35. There are messages which also show that the Landlord demanded a copy of A.K.s passport and a record of the Tenants' marriage on June 20, 2023, and again on June 21, 2023. In further texts, the Landlord also refers to Immigration Canada and the Tenants were threatened with the Landlord contacting Immigration Canada in the video recording submitted.
36. The Ontario *Human Rights Code* defines harassment as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome". There is no specific definition of "harassment" in the Act; however, it is generally held that "harassment" is a course of conduct that a reasonable person knows or ought to know would be unwelcome.
37. The testimony and evidence support that the Landlord sent repeated texts to the Tenants telling them they must move out and that the Landlord demanded to see government documents that she had no legal right to request. I find that a reasonable person with a even a minimal understanding of the Act would know this conduct would be unwelcome. A month-to-month lease does not give the Landlord the right to unilaterally terminate the tenancy any time she wishes. The Landlord began harassing the Tenants to vacate just one month after they moved in and unreasonably questioned the legitimacy of the right for A.K. to be in Canada followed by veiled threats to call Immigration. The Landlord ought to have known this behaviour is inappropriate and would be unwelcome.

Landlord Withheld Vital Services and Did Not Give 72 Hours to Remove Property

38. For the following reasons, the above noted allegations in the Tenants' application are dismissed.
39. The Tenants' position is that the Landlord withheld access to the Wifi, that the Landlord did not allow them to park their vehicle in the spot designated to them, and that the Landlord withheld use of the stove in the rental unit.

40. Section 2(1) of the Act defines “vital services” as hot or cold water, fuel, electricity, gas, or during the part of each year prescribed by the regulations, heat. The services that the Tenants allege the Landlord withheld do not meet this definition and therefore cannot be considered on this application.
41. The Tenants are also claiming that the Landlord did not give 72 hours to remove their property from the rental unit or from some place close to the rental unit after the Sheriff evicted the Tenant.
42. This allegation on the Tenants’ application is brought pursuant to subsection 41(2) which states:

Despite subsection (1), where an order is made to evict a tenant, the landlord shall not sell, retain, or otherwise dispose of the tenant’s property before 72 hours have elapsed after the enforcement of the eviction order.

43. The Tenants were not evicted by an order of the Board which was enforced by the Sheriff. The Tenants were illegally locked out of their rental unit from June 30, 2023 to July 4, 2023 when they gained access again. All the Tenants’ property which was removed from the rental unit by the Landlord on July 30, 2023, was retrieved by the Tenants. Therefore, this allegation on the application is dismissed.

Remedies

Moving Expenses

44. The Tenants’ requested \$300.00 for moving expenses in their application; however, the Tenants advised this was an estimate of what their expenses would be as they had not yet vacated at the time they filed their application.
45. The Tenant, H.S.B. testified that they did not rent a moving truck nor hire movers.
46. Since the Tenant has no actual moving expenses they incurred, this remedy will not be ordered.

Out of Pocket Expenses

47. The Tenants claim \$556.00 in out-of-pocket expenses for an AirBnB rental from July 1 to 4, 2023, as well as food expenses during this time. The Tenants submitted receipts which substantiate these expenses and as such, this remedy will be granted.
48. Under “other remedies” the Tenants made the following request: “Please compensate me for the harassment and trouble she created for my family”.
49. Though the Board may have the authority to award general compensation based on its jurisdiction to ‘make any other order that it considers appropriate’ under subsection 31(1)(f) of the Act, the Tenants did not specify the monetary amount they were seeking.

50. In *Beauge v. Metcap Living Management Inc.*, 2012 ONSC 1160 (Div. Ct.) ('*Beauge*') the Divisional Court found that the Board had erred in awarding damages that were not claimed in the tenant's application. I am bound by *Beauge* and so I cannot order any remedy that has not been claimed by the Tenant in their application. I am therefore prohibited from ordering any compensation in this case.

Administrative Fine

51. The Tenants also requested the Board order the Landlord to pay an administrative fine for breach of the Act. The Board's Interpretation Guideline 16 provides insight into the Board's use of fines and states that an administrative fine is a remedy to be used to encourage compliance with the Act and to deter landlords from engaging in similar activity in the future. "This remedy is not normally imposed unless a landlord has shown a blatant disregard for the Act and other remedies will not provide adequate deterrence and compliance."

52. In the present case the Tenants personal belongings were placed into bags and removed from the rental unit. The Landlord did not apply to the Board for lawful eviction of the Tenants nor did the Tenants provide any indication that they wished to end the Tenancy. On the contrary, the Tenants were clear that they had no intention of ending the Tenancy by the timeline imposed by the Landlord. The Landlord repeatedly insisted that she had a lawful right to evict the Tenants and then harassed the Tenants about their immigration status.

53. Due to the disruption caused to the Tenants, the apparent lack of regard for the Act, and in order to deter the Landlord from engaging in similar activity in the future, the Landlord will be ordered to pay an administrative fine. Having considered the nature and severity of the breach (the invasion of privacy and temporary loss of the Tenants' home) and the effect of the breaches on the Tenants as well as considering the other remedy ordered, the Landlord will be ordered to pay a fine in the amount of \$1,000.00.

54. The Tenants have incurred the cost of \$48.00 for filing the application and are entitled to reimbursement of those costs.

55. 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.

56. This order contains all of the reasons for the decision within it and no further reasons will be issued.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$604.00. This amount represents:
 - \$556.00 for the reasonable out-of-pocket expenses the Tenants have incurred.
 - \$48.00 for the cost of filing the application.

2. The Landlord shall pay the Tenant the full amount owing by September 30, 2024.
3. If the Landlord does not pay the Tenants the full amount owing by September 30, 2024, the Landlord will owe interest. This will be simple interest calculated from October 1, 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.
5. The Landlord shall pay to the Landlord and Tenant Board an administrative fine in the amount of \$1,000.00 by September 30, 2024.

August 27, 2024
Date Issued

Melissa Anjema
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.

Payment of the fine must be made to the LTB by the deadline set out above. The fine 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.