Order under Section 30, 31 and 138
Residential Tenancies Act, 2006

Citation: Jashinsky v LG Investment Inc, 2024 ONLTB 40636
Date: 2024-06-18
File Number: LTB-T-015857-22

In the matter of: 4 Doner St
Gormley ON L0H1G0

Tenants

Between: Timothy Jashinsky
Dennielyn Arquero

And

Landlord

LG Investment Inc

Timothy Jashinsky and Dennielyn Arquero (the 'Tenants') applied for an order determining that

LG Investment Inc (the 'Landlord'): • entered the rental unit illegally.

- 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.

The Tenants also applied for an order determining that the Landlord failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards.

The Tenants also applied for an order determining that the Landlord(s) failed to meet the Landlord's obligations related to suite meters under the *Residential Tenancies Act*, 2006 (the 'Act').

This application was heard by videoconference on October 11, 2022, February 16, 2023, October 16, 2023, December 18, 2023, February 16, 2024 and May 10, 2024.

The Tenants, the Landlord, E. Gu, the Landlord’s legal representatives, R. Smith and J. Zhu, and the Landlord’s interpreters attended the hearing.

Determinations:

1. As explained below, the Tenants proved the allegations contained in the T2 / T6 application on a balance of probabilities. Therefore, the Landlord must pay to the Tenants compensation. The Tenants have not proved the allegations contained in the T7 application on a balance of probabilities. Therefore, this application is dismissed.

2. The Tenants resided on the main floor of a house. Other tenants occupied the basement unit. The tenancy began on November 1, 2021. The Tenants vacated July 1, 2022.
3. The lawful monthly rent was $2,465.00.

T6 Application - Maintenance

4. The Tenants submit that there were the following maintenance issues:

    a) Fridge Filter and Kitchen Faucet
    b) Broken Window
    c) Broken Blinds and Screens
    d) Sewage Ejector Pump
    e) Pest Issue
    f) Garbage Removal
    g) Snow Removal
    h) Mould

A. Fridge Filter and Kitchen Faucet

5. The Tenants requested the consent of the Board to withdraw their claim for the fridge filter and kitchen faucet. The Tenants' request was granted.

B. Broken Window

6. The Tenants submit that before they occupied the unit, they cleaned the unit thoroughly. They found a crack on the window. They sent a photo of the cracked window to the Landlord on November 2, 2021 via text message. The Landlord said that she was coming later to repair it. The Landlord put scotch tape on the window. The Landlord testified that the tape fixed the window issue.

7. I find that the Landlord was in breach of her maintenance obligations. This application is based on the rights and obligations set out in s. 20(1) of the *Residential Tenancies Act, 2006* (the 'Act') which says:

> A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.

8. It is uncontested that the window in the rental unit was cracked. As such, I am satisfied that it was in disrepair. While the Landlord submits that the window was fixed on November 2, 2021, it cannot be said that scotch tape is a sufficient fix as the crack still existed.

9. As such, the Tenants are entitled to a remedy. An abatement is a contractual remedy. It recognises the idea that a tenant is paying rent for a bundle of goods and services and if the tenant is not receiving everything being paid for then they are entitled to abatement proportional to the difference between what is being paid for and what is being received. The Board's Interpretation Guideline 5 provides some guidance on rent abatement. In determining the amount to be ordered, the Member will consider the period of time that the problem existed and the severity of the problem in terms of its effect on the tenant. The test should be the impact on the average tenant or the impact a reasonable person would expect this problem to have had on a tenant.

10. The Tenants are entitled to rent abatement of 1% from November 3, 2021 to the date they vacated on July 1, 2022. The Tenants did not lead sufficient evidence to suggest that the crack in the window had any substantial impact, such as creating a draft in the unit. Instead, they submit it was visually disturbing. I am of the view that a reasonable abatement of the rent with respect to a problem that is essentially aesthetic in nature is 1% of the rent charged. The amount is $194.40.

C. Broken Blinds and Dirty Screens

11. The Tenants submit that on November 14, 2021, a set of blinds had only one side go up or down. The screens were also filthy. They notified the Landlord the same day. The Landlord advised the Tenants not to use the blinds or remove the screens to clean them. They submit that the blinds were never repaired, and the screens were not cleaned. The Landlord submits that on January 13, 2022, she attended the unit because the Tenants reported that the blinds were broken, and she immediately fixed it. The Landlord did not contest the evidence regarding the screens.

12. On a balance of probabilities, I find that the Landlord was in breach of her maintenance obligations. It was uncontested that the blinds were not functioning properly, and the Landlord did not dispute that the screens were filthy. I also find that the issues were never repaired. The Landlord did not produce sufficient reply evidence to establish that the blinds were repaired on January 13, 2022, such as a photograph of the fixed blinds, or that she ever addressed the dirty screens.

13. I find that 1% rent abatement for the broken blinds and 1% rent abatement for the dirty screens is appropriate from November 15, 2021 to July 1, 2022. The Tenants testified that this was irritating. I am not satisfied that these issues had a substantial impact as it appears this was no more than an irritation. The amount is $369.36.

D. Sewage Ejector Pump

14. The Tenants submit that on February 18, 2022, the sewage ejector pump in the garage failed. This led to all water waste in the house overflowing from the drain in the basement. The pump was replaced a day or two later. The Tenants also submit that there was an awful sewage smell and complained to the Landlord of this issue on November 30, 2021 via text message. The Landlord attended the unit on December 1, 2021 and denied the smell. The Tenants complained again on May 25, 2022. They submitted that the smell was so bad that they had to leave the house and experienced headaches. The smell was not daily. The Landlord submits that the ejector pump was fixed immediately and there was no smell.

15. On a balance of probabilities, I find that the Landlord was not in breach of her maintenance obligations when the sewage ejector pump failed on February 18, 2022. In *Onyskiw v. CJM Property Management Ltd.*,[1] the Court of Appeal rejected the position that a landlord is automatically in breach of its obligation to maintain and repair under subsection 20(1) of the Act as soon as an interruption in service occurs or the unit is in need of repair. The Court found that the reasonableness of a landlord's response and conduct to the maintenance issue(s) is a factor in deciding whether a breach occurred and/or a remedy. This is consistent with the Board's Interpretation Guideline 5. In this case, it is undisputed that the sewage ejector pump was fixed a day or two after it failed. I find that two days to repair a sewage ejector pump is reasonable.

[1] 2016 ONCA 477 (*Onyskiw).*

16. I find that the Landlord was in breach of her maintenance obligations with respect to the sewage smell. I am satisfied that the smell existed based on the text messages reporting it to the Landlord. I am not satisfied that the Landlord attending the rental unit on one occasion was a sufficient investigation as to whether the smell existed.

17. I find that 100% rent abatement for the two days the Tenants reported the issue is reasonable in the circumstances. It is evident that the smell had a substantial impact as the Tenants felt they needed to leave the rental unit. However, the abatement is limited to the dates it was reported because it was not a daily smell. This amount is $162.08.

E. Pest Issue

Mice

18. The Tenants submit that on November 27, 2021, they reported to the Landlord via text message of a mice infestation. They found a dead deer mouse in the garbage can under the sink and mouse droppings. The Landlord wanted to use a device that you plug into a wall that would allegedly ward off mice, but the Tenants objected. On December 2, 2021, the

Tenants performed temporary work in the rental unit to exclude pests e.g., covering the dryer vent. On December 3, 2021, the Tenants reported to the Landlord that they found mice droppings in their vehicles and there were concerns that they were accessing the garbage shed. On December 6, 2021, the Landlord attended the rental unit with an exterminator and they laid poison. On December 14, 15 and 16, 2021, the Tenants advised the Landlord that there were additional mice droppings and they believed poison was insufficient.

19. On January 13, 2022, the Landlord and the exterminator attended the unit to refill the bait traps with more poison. The exterminator opened the attic and there was a downpour of mice droppings. On March 17, 2022, the exterminator attended again and put more poison. On May 4, 2022, the exterminator attended again and checked the bait stations. The report identified that there was some tree overhang. The Tenants requested that the trees be trimmed on May 25, 2022 as per the exterminator report. Timothy Jashinsky (TJ) testified that he believed he last reported the mice issue on June 20, 2022 in person. The Tenants also submit that they believe that the exterminator was colluding with the Landlord.

20. The Landlord submits that she adequately responded to the mice issue. When it was first reported, she contacted a pest control company and asked them what to do. They responded by advising her to use certain equipment which the Landlord purchased and was going to use. However, the Tenants objected. She then found a pest control company and entered a contract with them for their services immediately. Submitted into evidence were the reports from Abell Pest Control. The reports demonstrate that the exterminator attended the unit on the dates provided and on May 4, 2022, there were “no rodent issues.”

21. On the evidence before me, I find that the Landlord’s response to the mice issue was reasonable in these circumstances. The undisputed evidence was that an exterminator attended the rental unit only nine days after the issue was reported. I am also satisfied that the mice issue was resolved on May 4, 2022 based on the report that there were no more rodent issues. While the Tenants submit that TJ reported more mice verbally on June 20, 2022, I do not find that the Tenants produced sufficient evidence to support that he did. Submitted into evidence was an audio recording from June 20, 2022. The recording demonstrates that the Tenants stated that they believe they have raccoons in the attic but did not report mice.

22. Consequently, in accordance with *Onyskiw*, I am not satisfied that the Landlord breached subsection 20(1) of the Act by failing to maintain the rental unit with respect to the mice as the Landlord acted reasonably and responded when advised that there was a problem.

23. While the Tenants assert that the treatment was insufficient, I do not find that it was. The Tenants did not testify to having expert knowledge in pest control to qualify that poison was insufficient. The Tenants also did not produce competing evidence, such as testimony from a different pest control agent or a report from someone who investigated the work performed, to demonstrate that the pest control was insufficient.

24. In addition, the May 4, 2022 report does not require the Landlord to trim the trees. In fact, there is a section of page 1 of 2 of the report that directs the Landlord to perform certain work. On March 17, 2022, it was ordered that the Landlord seal gaps to exclude pests and the exterminator noted that the issue was addressed. In my view, if the exterminator ordered that the trees be trimmed as well, he would have done so in this section. Instead, the report only identifies that there is some overhang of tree branches. As such, I do not find that this work was required. Furthermore, based on my knowledge of like cases before the Board, the length of time for the unit to be deemed clear of mice was not unreasonable. Therefore, I am not satisfied that the Tenants proved that the Landlord was in breach of her maintenance obligations with respect to the mice.

Raccoon

25. The Tenants submit that there was also a raccoon in the residential complex. The Tenants reported to the Landlord in person that there was a raccoon in the attic on June 20, 2022. They found a paw print on their window and droppings on the windowsill of their bedroom which overlooks the garage. They heard noises on June 18, 2022 which prevented them from sleeping. They believed that the raccoons were in this area for the duration of the tenancy and that this area was unsanitary. The Landlord denied that the Tenants reported a raccoon, and, in any event, the photographs do not demonstrate that the raccoon was inside the rental unit.

26. I am satisfied that the Landlord was in breach of her maintenance obligations. I am satisfied that the Tenants reported the raccoon issue to the Landlord on June 20, 2022 based on the audio recording and the photographs of the paw print and droppings. While the Landlord submits that the evidence does not support the raccoon in the rental unit, section 20(1) requires the Landlord to maintain the residential complex. The Landlord did not submit any evidence that they attended the unit to investigate the raccoon issue thereafter.

27. However, I find that there is no remedy that stems from the breach. The Tenants' first report was on June 20, 2022 and I am satisfied that this is the date the Landlord should have first been reasonably aware of the raccoon. It would be unreasonable to suggest that the Landlord should be responsible for compensating the Tenants for a period prior to them having any knowledge of the issue. In addition, the Tenants did not produce sufficient evidence to show that there were additional noises from the raccoons after June 20, 2022 and while the Tenants submit this was unsanitary, it was undisputed that the Tenants did not have use or access to the garage. Therefore, I find that this had no discernible impact on the Tenants that warrants compensation.

F. Garbage Removal

28. The Tenants submit that the Landlord did not provide adequate garbage removal. The parties entered an oral agreement for garbage removal. On January 4, 2022, the Tenants reported to the Landlord that the garbage was piling up in the garbage shed. The Tenants submit that they produced only one garbage bag every other week whereas the downstairs tenants produced six. Garbage collection would only accept three bags every two weeks. On January 11, 2022, the Landlord provided a fourth garbage receptacle which did not address the issue as there was still a surplus of garbage in the shed. The Tenants submit that the solution was extra garbage tags. They submit that this was an issue until they vacated the rental unit and the extra garbage posed a smell and pest issue. The Landlord replied that they provided the extra garbage receptacle as a solution. After the Tenants advised that this was an insufficient solution, the Landlord provided garbage tags.

29. I find that the Landlord was responsible for garbage removal. A review of the lease agreement shows that garbage removal was not specified as the Landlord or the Tenants' responsibility; the lease is silent on this issue. On a balance of probabilities, I find that the parties entered an oral agreement based on the Tenants' consistent testimony. Moreover, as the written lease agreement is silent on garbage removal, I find that the principles of contract law should apply. *Contra proferentum* requires that where a term is ambiguous, the preferred meaning should be read against the interests of the party who provided the wording. As such, the lease should be read against the Landlord and consequently, I find that she was to provide garbage removal.

30. I also find that the evidence establishes that the Landlord was in breach of this obligation. The photographs demonstrate that there was a surplus of garbage at the residential complex and an extra receptacle could not have addressed this issue. The Landlord did not produce sufficient evidence to establish that they provided the Tenants with garbage tags.

31. The Tenants are entitled to 3% rent abatement from January 12, 2022 to July 1, 2022. I am satisfied that while the garbage was contained in a shed, the additional garbage posed a smell and pest issue. I am satisfied that 3% is appropriate based on my knowledge of like cases before the Board. This amount is $413.10.

G. Snow Removal

32. The Tenants submit that the Landlord had not provided adequate snow removal. The parties entered an oral agreement for snow removal. On December 18, 2021, the Tenants noticed that the downstairs tenant was shovelling snow in the driveway. They sent photographs to the Landlord and asked why the Landlord was not performing this duty and they did not receive a response. On January 17, 2022, there was 1.5 days of snowfall. The Landlord attended the residential complex to shovel, but this was inadequate as the Tenants had to shovel again after the Landlord left. Submitted into evidence were photographs of the driveway on January 18, 2022. On January 25, 2022, the Tenants contacted City by-law and they received an order for the Landlord to remove the snow. On February 13, 2022, the

Tenants reported the snow removal issue to the Landlord, and she replied it was impossible to remove the ice. Snow removal was not done from February 13, 2022 to March 2022 because the Tenants stopped reporting the issue since the Landlord's response was inadequate.

33. The Landlord submits that they entered an agreement with the downstairs tenant to perform snow removal. The downstairs tenant would get a rent rebate for shovelling the snow and would notify the Landlord when she did not need to attend the residential complex to complete it. On January 17, 2022, there was two and a half meters of snow, and she was unable to attend the residential complex right away. She contacted companies for snow removal, but they responded that they could not attend immediately as the snow was continuing to fall and they were fully booked. She had to wait until the city removed snow from the public roads. As soon as the public roads were cleared on January 19, 2022, she attended the unit and removed all of the snow from the driveway. She submits that the photographs submitted into evidence were before and during the snow removal. She received an order to comply for snow removal and did not receive any additional orders or fines because she was compliant. In addition, she salted the driveway on February 13, 2022.

34. I find that the Landlord was responsible for snow removal. A review of the lease agreement shows that snow removal was not specified as the Landlord or the Tenants' responsibility; the lease is silent on this issue. On a balance of probabilities, I find that the parties entered an oral agreement for snow removal based on the Tenants' consistent testimony. Moreover, I find that the driveway is a common area which was the Landlord's responsibility to maintain pursuant to section 20(1) of the Act and section 26(1)5 of O. Reg 517/06.

35. I find that the Landlord was in breach of her maintenance obligations on January 17, 2022 and February 13, 2022. The Landlord was not in breach on December 18, 2021 as the believable and credible evidence is that the Landlord entered a separate agreement with the downstairs tenant for snow removal. In addition, the Tenants did not explain how they were inconvenienced on this date, just that they were unclear why the downstairs Tenants were doing this work. This is insufficient to establish that the Landlord was in breach.

36. I am satisfied that the Landlord was in breach of her maintenance obligations on January 17, 2022 because it was uncontested that the Landlord received an order from city by-law requiring her to remove the snow and the Tenants' consistent testimony that they had to perform snow removal themselves after the Landlord left. I also find that the Landlord's response to the February 13, 2022 complaint was insufficient. The Landlord asserted that she was unable to remove the ice because it was too cold. She advised the Tenants that she had salted the driveway but there were no other steps taken, such as contacting a snow removal company, to address the issue.

37. The Tenants are entitled to a rent abatement of 20% on January 18 to January 25, 2022. This period is when the Landlord ought to have remove the snow when it was reported up

to the date that she received the city order. The Tenants are also entitled to 20% rent abatement on February 14, 2022, the period for which the Landlord ought to have addressed the ice issue. The Tenants are not entitled to a rent abatement for after February 14, 2022, as the Tenants did not testify to any additional snow removal issues. This amount is $145.89.

H. Mould

38. The Tenants submit that the downstairs tenant reported finding mould in the basement. They saw mould growth in the downstairs tenant's unit on May 30, 2022. TJ testified to having symptoms related to mould on March 19, 2022 e.g. vomiting and diarrhea. The Tenants believe that the mould issue was from the sub pump ejector failure on February 18, 2022. On June 3, 2022, the Tenants made a formal request for air quality testing to be done in the basement and to allow Public Health to inspect the basement. The Landlord did not respond. On June 8, 2022, TJ reported experiencing headaches, sore throat and burning eyes. The Tenants left for vacation and when they returned to the unit on June 14, 2022, the symptoms returned.

39. On June 16, 2022, an air quality test was performed by an agent hired by the Tenants. The mould report conducted by Air Quality Canada found that the results were indicative of the presence of mould activity. After the Tenants vacated and moved into a new unit, TJ testified to having mould symptoms again. Their air quality tester advised them to use a spray, which resulted in the symptoms going away a few days later.

40. The Landlord's position was that they responded reasonably to the alleged mould complaints. After the downstairs tenant reported a leak in their unit, the Landlord attended immediately to address it. The Landlord's agent removed the affected drywall, waited for the walls and beams to be dried completely before repairing the walls. After the work was completed, the downstairs tenant said that he was satisfied with the work performed. On June 20, 2022, the Landlord conducted her own air quality testing by AllTrust Home Inspection Inc. The report found that there were not elevated findings of mould.

41. I find that the Landlord's response was reasonable. I am satisfied that the Landlord was first aware of a leak issue in the downstairs tenant's unit on May 25, 2022, when it was first reported to the Landlord. While the Tenants submit that there was mould from the sub pump ejector failure on February 18, 2022, this appears to be speculation as there is insufficient evidence to establish that this event caused mould.

42. I also find that the Landlord responded in a timely manner after the downstairs tenant reported the issue. The Landlord attended immediately and removed the affected area and dried it. I am satisfied this occurred based on the photographs submitted into evidence of a person cutting out drywall. In addition, when the Tenants produced their report on June 16, 2022, the Landlord's response was timely as they conducted their own air quality report only four days later.

43. While the Tenants submit that the Landlord did not properly address the mould issue on May 25, 2022, I am not satisfied that they produced enough evidence to find that the Landlord's work was insufficient. It was undisputed that the Tenants were not present in the downstairs tenant's unit on May 25, 2022 and did not produce as a witness the downstairs tenant to testify that there was a mould issue.

44. While the Tenants produced a report from Air Quality Canada which shows there is a presence of mould activity, the Landlord's AllTrust Home Inspection Report shows that there are not elevated findings of mould. While the Tenants may dispute the accuracy of the AllTrust Home Inspection Report, I see no reason to find it was inaccurate or flawed. The Tenants did not testify to having expert knowledge in mould analysis to qualify that the report was flawed. The Tenants also did not call as a witness a professional in mould analysis to qualify that the report was flawed. Based on the foregoing, I cannot be satisfied that the Tenants proved on a balance of probabilities that there was mould in the unit after May 25, 2022.

45. The Tenants also would like me to infer that because TJ had certain health symptoms, that these were mould related. The Tenants produced insufficient supporting documentary evidence, such as a doctor's note, to establish that the symptoms experienced were related to mould. The Tenants appear to be arguing that there is causal connection between when they left the unit and when TJ was not experiencing symptoms. However, the problem is that it is undisputed that TJ has a medical issue. Consequently, there could be a myriad of other causes, including TJ's medical issue, that caused his symptoms. Without supporting documentary evidence, I cannot make this inference.

T2 Application - Tenant's Rights Application

Entries

46. The Tenants submit that the Landlord entered their unit excessively. The Landlord entered the Tenants' unit fourteen times from November 2021 until June 2022.

47. The Tenants also submit that the Landlord illegally entered the rental unit on January 14, 2022, March 28, 2022 and June 20, 2022.

48. On January 13, 2024, the Landlord sent correspondence to the TJ requesting his consent to enter the unit to take a look and fill the hole behind the vanity in the master bathroom to exclude mice. TJ replied that he consents to the entry. On January 14, 2022, the Landlord did not complete the work and therefore the Tenants submit this was an illegal entry. The Landlord submit that they entered the rental unit on January 14, 2022 to repair the Tenants' blinds and they repaired it on this date. TJ testified that he had stress and anxiety from the Landlord's failure to do the exclusionary work.

49. On March 18, 2022, the Tenants requested accommodation for TJ's disability pursuant to the *Human Rights Code, 1990* (the 'Code'). The Tenants' requested that additional people do not attend the rental unit as TJ is immunocompromised.

50. On March 25, 2022, the Tenants received a notice of entry for March 28, 2022. On March 28, 2022, the Landlord attended the unit with her husband and someone who was allegedly a city employee. They took photos and asserted these were for drawings pursuant to the fire code. However, no pictures were submitted with the drawing plans and instead it appears that the photographs were taken to support the Landlord's claim that the Tenants were abusing the electricity. The Tenants submit that the entry was illegal because the Landlord failed to accommodate TJ by attending with too many people and that the photos were taken for an improper purpose.

51. On June 18, 2022, the Tenants received a notice to enter for June 20, 2022. On June 20, 2022, the Landlord attended the rental unit with the air quality tester. The Tenants submit that the entry was illegal because the Landlord failed to accommodate TJ by attending the unit with too many people. In addition, the Landlord raised her voice at the Tenants, told the Tenants to move out if they were unhappy, took photos of the rental unit without the Tenants' consent, and when the police were called, she lied to them and said that the Tenants pushed her out. TJ testified that the Tenants, the Landlord and her agent wore PPE during the entries.

Law and Analysis

52. Section 26 of the Act states that a landlord can enter a tenant's unit without written notice in the case of an emergency or with the tenant's consent. Section 27 of the Act states that a landlord can enter a tenant's unit with written notice if it is given to the tenant at least 24 hours before the time of entry under certain circumstances. The written notice must specify the reason for entry, the day of entry and time of entry between the hours of 8 a.m. and 8 p.m.

53. Section 22 of the Act states that a landlord shall not at any time during a tenant's occupancy of a rental unit substantially interfere with the reasonable enjoyment of the rental unit for all usual purposes by a tenant.

54. Section 23 of the Act states that a landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant. Although the word harass is not defined in the Act, harassment has been found by this Board to generally be a course of conduct or behaviour that the reasonable person knows or ought to know would be unwelcome.

55. I find that the number of entries constitutes substantial interference and harassment. While I am satisfied that some of the notices of entry were given for a valid reason, the Landlord

also attended the rental unit and did not complete work proposed or attended repeatedly in a short period of time. The number of notices is a nuisance. The Landlord knew or ought to have known that the repeated entries would be unwelcome.

56. I find that the January 14, 2022 entry was not illegal. Pursuant to section 26, I am satisfied that this was a valid entry as the text messages between the parties unequivocally show that the Tenants consented to the entry. I considered the Tenants' submission that the Landlord served a notice of entry to fill in holes and then did not complete the work. In my view, an entry where the proposed work is not completed is surely pointless and inconvenient for the Tenants, but I do not find that it is illegal.

57. I also do not find that the January 14, 2022 entry was substantial interference or harassment. As noted above, the entry was surely pointless and inconvenient for the Tenants. However, I am not satisfied that this rises to the level of substantial as required by section 22 or is a course of conduct pursuant to section 23. The Tenants did not prove there was an impact by the January 14, 2022 entry. While TJ testified he had stress and anxiety from the Landlord's failure to do the exclusionary work, there was no documentary evidence, such as a doctor's note, to support this allegation.

58. I find that the March 28, 2022 and June 20, 2022 were not illegal. It is undisputed that the Tenants were provided at least 24 hours' written notice of the Landlord's intent to enter the rental unit for a purpose permitted under section 27, the day of entry and a time of entry between the hours of 8 a.m. and 8 p.m. Under the circumstances, I find that the notices of entry were validly given.

59. However, I am also required to consider whether these entries substantially interfered and harassed the Tenants.

60. I am satisfied that the March 28, 2022 entry constitutes substantial interference. The Tenants have proven that the Landlord served a notice of entry for fire code drawings, photographs were taken and then not included in the drawing plans. I based this on the credible testimony of TJ which were supported by the drawing plans.

61. The Landlord taking photographs of the Tenants' unit was not improper. In *Nickoladze v. Bloor Street Investments/Advent Property Management*,[2] the Court found that the fact that photographs were taken did not, on its own, constitute an infringement of the tenant's privacy rights. The Court stated that this would constitute a breach of privacy if the photographs were taken for an improper purpose and that the purpose of taking photographs for use in a Board proceeding was a proper purpose. In *Juhasz v. Hymas*,[3] the Divisional Court distinguished *Nickoladze* on the basis that in *Juhasz* the issue was the landlord took photographs for the purpose of marketing the rental unit for sale and posting the photographs on the internet. The Court found that in these circumstances, the tenant's privacy interests were engaged, whereas in *Nickoladze* the tenant's privacy interests were not engaged.

62. The facts in the case before me are similar to those in *Nicholadze*. In the case before me, the Landlord took photographs of the unit for the purpose of supporting their claim that the Tenants were using excessive electricity. Based on the reasoning in *Nicholadze,* I find that the Landlord taking photographs to support a legal claim was a proper purpose.

[2] 2015 ONSC 3893 (CanLII) (*Nicholadze*).
[3] 2016 ONSC 1650 (CanLII) (*Juhasz*).

63. However, the Landlord's conduct in attending the rental unit to take photographs for another purpose was underhanded and such conduct should be discouraged. A landlord who gives lawful notice of entry to conceal other conduct is flouting the intent of the notice provisions.

64. However, I am not satisfied that the entries comprising too many people constitutes substantial interference or harassment.

65. The Code is the primary source for human rights law for provincial tribunals such as the Landlord and Tenant Board. Section 2(1) of the Code provides that everyone has the right to equal treatment with respect to disability. "Disability" is defined by section 10(1) of the Code to include both physical conditions and mental disorders.

66. It was undisputed that TJ disclosed to the Landlord that he had a medical condition on March 18, 2022 and that he requested accommodation. I am satisfied that TJ has a Code-related disadvantage and that there was a duty to accommodate. TJ's requested accommodation was that the entries do not have more people than necessary as he has a suppressed immune system. However, the duty to accommodate does not provide the requestor the opportunity to dictate the solution.[1] The accommodation need only be reasonable. In my view, the Landlord attending the rental unit with one or two other persons was not excessive. In addition, it is uncontested that the Landlord, people attending the rental unit and the Tenants wore PPE for the entries. In my view, the Landlord met their accommodation obligation.

67. I also do not find that the June 20, 2022 entry constitutes substantial interference or harassment. As found above, the fact that the Landlord did not comply with the Tenants' request did not meet the test. In addition, the Landlord's actions at the visit do not constitute substantial interference or harassment. The audio recording demonstrates that while the Landlord raised her voice, the Tenants certainly had done so as well. In my view, the demeanor of both parties was equally rude. However, rudeness does not rise to the level of substantial interference or harassment.

[1] *Renaud v. Central Okanagan School District No. 23*, 1992 CanLII 81 (SCC), [1992] 2 S.C.R. 970 (S.C.C.).

68. The Tenants are entitled to a remedy for the repeated entries and the March 28, 2022 entry. The Tenants are entitled to $500.00 for the repeated entries. While the Tenants submit that the multiple entries were stressful and were an impediment to TJ's health, the Tenants produced insufficient evidence to support this allegation. However, I am satisfied that a lump sum of $500.00 is appropriate to compensate the Tenants for the disturbance. The Tenants are also entitled to $500.00 for the March 28, 2022 entry to compensate the Tenants for the deceit. I do not find that more is appropriate, given that the Tenants' privacy was not breached as the photos were not released to the public but used to pursue a legal action.

Landlord Outside Rental Unit and UPS

69. The Tenants submit that on April 22, 2022, the Landlord was observed sitting in her van on the residential complex for 30 minutes. The Landlord had done so again on May 13, 2022 for 30 minutes. Submitted into evidence were photographs of a vehicle at the residential complex.

70. I am satisfied that the Landlord was sitting outside of the rental unit on April 22, 2022 as the photo clearly shows a person sitting in the driveway that the Tenants identified as the Landlord. While the Tenants submit that the Landlord was there on May 13, 2022, the photograph submitted into evidence is so dark that I am not persuaded this is the Landlord. I am not satisfied that this was substantial interference or harassment as this is not a course of conduct; it was one occasion. Furthermore, the Tenants have not established that the Landlord attending on April 22, 2022 for 30 minutes was done to harass or stalk the Tenants. It is undisputed that there was another unit at the residential complex and therefore, the Landlord could have attended to address something unrelated to the Tenants.

71. The Tenants submit that on June 9, 2022, the Tenants placed a note on the front door for UPS. The Tenants' neighbour advised the Tenants that on the same day, the Landlord attended the rental unit and removed the note. The Landlord denied removing the Tenants' note. I am not satisfied that the Tenants proved on a balance of probabilities that the Landlord removed the note. There was insufficient evidence to prove this claim as the Tenants were not present to observe the Landlord doing this and the neighbour did not attend the hearing to corroborate the allegation.

Communications between Landlord / Agents and Tenants

72. The Tenants submit that on March 9, 2022, TJ was instructed by Canada Post to provide a letter to the Landlord. The letter was not in a sealed envelope and only a folded piece of paper. The Tenants sent a photograph to the Landlord and explained the problem. The Landlord threatened legal action against TJ for opening her mail.

73. The Tenants submit that as a term of the lease agreement, electricity and internet was provided by the Landlord. This was important to TJ for his work-from-home employment. On April 25, 2022, the Landlord communicated to the Tenants that their use of electricity resulted in over $400.00 more per month than typical and the unit should not be used for any other purpose than residential. The letter also demanded that the Tenants pay the Landlord the hydro bill for the additional use of the electricity.

74. The Tenants submit that the Landlord sent an email to the Tenants requesting proof of renter's insurance on April 11, 2022. As per the lease agreement, the Landlord has the right to request proof of insurance every year. The Tenants' position is that the Landlord already asked for proof of insurance and that she should not have asked for it again.

75. A landlord cannot be found to have harassed a tenant if they are pursuing their legal rights. In my view, the communications between the Landlord / her agents and the Tenants were in pursuit of her legal rights. In my view, whether the opening of mail or abuse of electricity are well-founded claims should be left to the trier of fact. Furthermore, asking the Tenants for proof of renter's insurance a second time in the tenancy could not be considered substantial interference or harassment. To find this request to be a breach would be contrary to the purpose and spirit of the Act. Therefore, I do not find that the Landlord substantially interfered with or harassed the Tenants on these occasions.

Communications between Landlord's Agents and Public Officials

76. The Tenants submit that the Landlord's agents lied to city officials to prevent them from actioning on the Tenants' claims. They submit that the Landlord's agents misled a Municipal Enforcement Officer by stating that the mould had been removed and the Tenants had interfered with the June 20, 2022 entry for mould analysis. The Landlord also breached bylaw ordinances by converting the single-family dwelling to a 3-unit complex.

77. I find that the communication regarding the mould being removed was not substantial interference or harassment. As found above, the Tenants had not established that the mould was not removed on May 25, 2022 and therefore, this information provided to Municipal Enforcement was not untruthful. However, I find that the correspondence regarding the June 20, 2022 event was untruthful given that the entry was permitted.

78. The Tenants are entitled to a remedy for this substantial interference. I find that the Tenants should be entitled to a lump sum of $500.00 for this event. I am satisfied that the deceit was offensive to the Tenants' character.

79. Regarding the breach of by-law ordinance, the Tenants have not satisfied me that the existence of two other units substantially interfered or harassed them. The Tenants did not testify to any actual impact.

T7 Application - Suite Meters

80. The Tenants submit that the building contains 6 or fewer units and the Landlord transferred the obligation to pay a portion of the utility costs to the Tenants without getting the Tenants' written consent contrary to section 138 of the Act. The Tenants submit this occurred on April 25, 2022 when the Landlord communicated to the Tenants that their use of electricity resulted in over $400.00 more per month than typical and demanded that the Tenants pay the Landlord the hydro bill for the additional use of the electricity.

81. I am not satisfied that the Landlord transferred the obligation to pay the utility costs. While not defined in the Act, 'transfer' means "1. To convey or remove from one place or one person to another; to pass or hand over from one to another, esp. to change over the possession or control of. 2. To sell or give."[2] I am not satisfied that the Landlord transferred the responsibility of the utilities to the Tenants. Instead, I find the responsibility for electricity still stayed with the Landlord, but the Landlord was claiming that the Tenants were using electricity beyond what they perceived as reasonable. As such, I do not find that there was a transfer and therefore, no breach of section 138 of the Act.

Remedies

Rent Abatement

82. The chart below outlines the Tenants' rent abatement remedies:

Issue	Remedy	Amount
Broken window	1% November 3, 2021 to July 1, 2022	**$194.40** $2,465.00 (monthly rent) x 12 / 365 = $81.04 daily comp $81.04 x 1% = $0.81 $0.81 x 240 days = $194.40
Broken Blinds and Dirty Screens	2% November 15, 2021 to July 1, 2022	**$369.36** $2,465.00 (monthly rent) x 12 / 365 = $81.04 daily comp $81.04 x 2% = $1.62 $1.62 x 228 days = $369.39

[2] Black's Law Dictionary, 7th ed. (St. Paul: West Group, 1999) at p. 1504.

Garbage Removal	3% January 12, 2022 to July 1, 2022	**$413.10** $2,465.00 (monthly rent) x 12 / 365 = $81.04 daily comp $81.04 x 3% = $2.43 $2.43 x 170 days = $413.10
Sewage Ejector Pump	100% November 30, 2021 + May 25, 2022	**$162.08** $2,465.00 (monthly rent) x 12 / 365 = $81.04 daily comp $81.04 x 2 days = $32.42
Snow Removal	20% January 18, 2022 to January 25, 2022 + February 14, 2022	**$145.89** $2,465.00 (monthly rent) x 12 / 365 = $81.04 daily comp $81.04 x 20% = $16.21 $16.21 x 9 days = $145.89
Repeated entries + March 28, 2022 entry		**$1,000.00**
Communication between Landlord's Agents and Public Officials		**$500.00**
TOTAL		**$2,784.83**

Stop Activities

83. The tenancy is terminated and therefore the Tenants' request for the Landlord to stop activities is moot. The Board does not have jurisdiction over the parties' conduct after the tenancy has ended.

Costs to Repair or Replace

84. The Tenants submit that they are entitled to $58.75 for a product purchased to manage the mould on their items that they brought to their new rental unit. As found above, I am not satisfied that the Landlord was in breach of her maintenance obligations regarding mould. As such, the Tenants are not entitled to this amount.

Rent Differential / Moving and Storage

85. The Tenants submit that they moved to a new rental unit with higher rent. The Tenants submit that they needed to vacate the rental unit due to the mould. As found above, I am not satisfied

that the Tenants established that the Landlord was in breach of her maintenance obligations regarding mould. As such, I am not satisfied that the Tenants were required to move. Therefore, the claim for rent differential and moving / storage is denied.

Other Remedies

86. The Tenants requested $837.50 for the air quality control test, the costs to file these applications, Freedom of Information Act request for the fire code drawings and software to extract information from TJ's phone.

87. The Tenants are entitled to $70.00 for the Freedom of Information Request and $48.00 for the filing of the T2/T6 application. As I am satisfied that the Landlord was deceitful regarding the fire code drawings, I find that the Tenants are entitled to reimbursement of the request. In addition, I am satisfied that the Tenants are entitled to the cost of filing the T2/T6 as the Tenants were partially successful in this application.

88. As found above, the Tenants have not established that the Landlord was in breach of her maintenance obligations regarding mould. As such, the claim for the Air Quality Control test will not be granted. In addition, application filing fees are granted for successful applications. As I have found that the T7 application was not successful, the Tenants are not entitled to the cost of filing this application. I am also not satisfied that the cost for the software should be granted as it is too remote to the issues in the application. The Tenants have not established that the software was required for this application.

Administrative Fine

89. The Tenants requested an administrative fine. As stated in the Board's Interpretation Guideline 16:

> An administrative fine is a remedy to be used by the Board to encourage compliance with the *Residential Tenancies Act, 2006* (the "RTA"), 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 RTA and other remedies will not provide adequate deterrence and compliance.

90. In the present case, I find that the remedies owing to the Tenants provides a sufficient deterrent that is also commensurate to the breaches. The request for an order for an administrative fine is denied.

Costs

91. The Tenants requested preparation costs. Pursuant to Interpretation Guideline 3, in most cases, the only costs allowed will be the application fee. While the Board may order a party to pay the costs of another party, costs to a successful party for the preparation/

representation fees paid are generally only awarded in cases of unreasonable conduct. Conduct is unreasonable if it causes undue expense or delay.

92. I note that there were several adjournments on this file. Many were because there was an exceptional amount of evidence that needed additional days to get through, others were because of unfortunate and uncontrollable events with the Landlord's legal representative (e.g., health issues, death). However, the Landlord was often late to the proceedings. In addition, there was one adjournment where the Landlord had changed legal representatives and consequently, requested an adjournment. While there is a myriad of reasons why a landlord could change representatives, the length of time in between hearings could have afforded the Landlord with a reasonable opportunity to retain and have the representative prepared for the next hearing day. It would be unreasonable to suggest that the Board and the Tenant's time and resources should be wasted because of this change.

93. In consideration of Rule 23 of the Board's Rules of Procedure and Interpretation Guideline 3, the Tenants are entitled to $175.00 in costs, representing a quarter of the maximum allowable cost award. The full amount will not be awarded as the delays were not all a result of the Landlord and/or their representative's conduct.

It is ordered that:

T2/T6 Application

1. The total amount the Landlord shall pay the Tenants is $3,077.83. This amount represents:

    - $2,784.83 for a rent abatement.
    - $70.00 for the Freedom of Information Act request.
    - $48.00 for the cost of filing the application.
    - $175.00 for costs.

2. The Landlord shall pay the Tenants the full amount owing by June 29, 2024.

3. If the Landlord does not pay the Tenants the full amount owing by June 29, 2024, the Landlord will owe interest. This will be simple interest calculated from June 30, 2024 at 7.00% annually on the balance outstanding.

T7 Application

4. The Tenants' application is dismissed.

June 18, 2024
Date Issued

Camille Tancioco
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.