Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: Morrison v DH Westview Properties Ltd, 2024 ONLTB 19297
Date: 2024-03-19
File Number: LTB-T-075293-22-RV
(formerly SOT-14743-20)

In the matter of: 11, 2091 MEADOWBROOK ROAD
BURLINGTON ON L7P 2A5

Between: Michael Morrison — Tenant

And

DH Westview Properties Ltd. — Landlord

Review Order

Michael Morrison (the 'Tenant') applied for an order determining that DH Westview Properties Ltd (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 Tenant’s reasonable enjoyment of the rental unit or residential complex for all usual purposes;
- harassed, obstructed, coerced, threatened or interfered with the Tenant;
- did not give the Tenant 72 hours to remove the Tenant's property from the rental unit or from some place close to the rental unit.

This application was resolved by order LTB-T-075293-22 issued on September 16, 2020.

On October 16, 2020, the Tenant requested a review of the order.

On October 19, 2020, interim order LTB-T-075293-22-RV-IN was issued directing that the request to review be scheduled for a hearing.

The request to review was heard by videoconference on October 27, 2021.

On September 16, 2022, interim order SOT-14743-20-RV-IN2 was issued granting the request to review and directing that the application be heard *de novo.*

The application was heard *de novo* by videoconference on February 6, 2024.

The Tenant, the Tenant's legal representative, Desislava Yordanova ('DY'), the Landlord's agent, John Dehaan ('JD'), the Landlord's witness, Lynn Arnold ('LA'), and the Landlord's legal representative, Kelly Hawkes ('KH'), attended the hearing.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities.

2. It was not contested that the Landlord changed the lock for the rental unit on January 7, 2020 without enlisting the assistance of the Sheriff, and without an order terminating the tenancy and evicting the Tenant. The Landlord's position was that the Tenant was not a tenant of the rental unit.

Evidence of the Parties

Tenant's Evidence: Michael Morrison ('MM')

3. MM said he moved into the rental unit on November 11, 2018. He said that he was originally given a key to the rental unit by the property manager, LA. He said LA was his girlfriend at the time and he moved into the rental unit with her. LA was already a tenant of the rental unit prior to MM moving in.

4. MM presented as evidence a letter from the Landlord dated November 27, 2019, addressed to both LA and MM (DOC-2677059, p. 26). Underneath the names of LA and MM, the letter begins with the phrase "Dear Tenants". The letter describes the lawful monthly rent at the time, including that part of the rent was covered by a taxable benefit provided to LA as an employee of the Landlord.

5. The letter goes on to state:

> "At any point in time, should Lynn Arnold choose to move from the above referenced unit (and Mike Morrison elects to stay), the rent will remain at $1,444.60 per month subject to the annual rent increase as prescribed by the Ontario government."

6. The letter then requests that LA and MM acknowledge their agreement to this by signing the letter and returning it to the Landlord. It is signed by JD as the President of the Landlord, and "Accepted and Agreed To" on November 27, 2019 when both LA and MM signed the letter.

7. MM said that LA paid the rent to the Landlord, and MM gave his portion of the rent to LA.

8. MM said that he returned to the rental unit from work on January 7, 2020 and the locks were changed. He said he tried to unlock the door with his key but it did not work.

9. MM said he did not know why the locks had been changed. He said when he discovered that his key did not work he phoned the Landlord. He said the person who answered the

phone hung up on him, and this happened twice. He said that he spoke with a neighbour who said that someone had changed the locks.

10. MM said that all of his clothes and personal belongings were in the rental unit, and the Landlord would not let him retrieve his property at the time.

11. After being locked out of the rental unit, MM said he stayed in a motel from January 7, 2020 to February 1, 2020. He provided as evidence an invoice from the motel he stayed at, confirming a stay from January 7, 2020 to February 1, 2020 at a total cost of $1,895.62 (DOC-2677059, pp. 12-13).

12. MM also entered two invoices from U-Haul for the rental of moving trucks. One was for the dates of January 7-9, 2020 at a total cost of $78.70, and the other for the dates January 31 to February 1, 2020 at a total cost of $54.41 (DOC-2677059, p. 7-8). MM said he also paid a person $130.00 to help him move, but that payment was made in cash.

13. MM said that because of the lock change, he lost about 1.5 days' of pay from his employer. He presented as evidence a paystub for the pay period ending January 4, 2020 showing his earnings for that period.

14. MM said that while staying at the motel he had to pay to go out for meals because there was no kitchen. He did not present documentary evidence, but said he conservatively estimates he paid $1,200.00 for food during this time.

15. MM also presented a copy of the rental ledger for his new living accommodation, showing that beginning on February 1, 2020 he commenced a new tenancy, and the monthly rent was $1,520.00.

16. MM said he has recovered all his personal property from the rental unit.

17. MM said that he wanted to stay in the rental unit because it was nice, and that when he moved he had to downsize to a one-bedroom. He said that the lock change changed his whole life and was very stressful. MM said that he was required to go to a motel and then find a new place to live. He said he was not told in advance that the locks would be changed, and he was never given a replacement key. He also said that being thrown out of the rental unit, and other tenants seeing him move his property, was humiliating.

18. MM said he believes the locks were changed because on December 31, 2019 LA had some family members at the rental unit, and MM found some of the family members "doing drugs", then on January 4, 2020 LA was "drunk" and assaulted him. MM said LA was arrested and not permitted back on the property.

19. MM presented as evidence a copy of an Undertaking indicating that LA was charged with Assault under section 266 of the *Criminal Code* on January 4, 2020. The Undertaking includes a promise not to communicate, directly or indirectly, with MM, and not to go within 500 meters of the residential complex, except one time with police to obtain personal belongings. The Undertaking is dated January 4, 2020.

20. MM said that LA was the property manager and he thinks that the lock change, three days after her arrest, was done because of this incident.

21. On January 15, 2020, MM emailed JD providing some evidence that he had made payments for rent to LA. JD's response was that MM's arrangement with LA was not of any concern to the Landlord.

22. On cross-examination MM confirmed that before moving into the rental unit with LA he was a tenant of a different unit in the residential complex, and that when he moved into the rental unit, he knew that the rental unit was part of LA's employment with the Landlord.

23. He also said that he told LA at the time he would only move into the rental unit if he is added to the lease as a tenant.

24. MM acknowledged that he had previously been arrested for assaulting LA and he was on probation in relation to this at the relevant time. LL was presented with a "Consent to Allow Association and/or Contact" dated March 5, 2019 (DOC-2690492, p. 41). In this document, LA confirms that MM was bound by a 12-month probation order that would expire on February 20, 2020. Part of MM's probation was that he was not to contact or communicate with LA, directly or indirectly, except with LA's written consent, filed in advance with the assigned probation officer. In this consent, LA consents to having contact with MM without restrictions. It is handwritten on this document that the consent was revoked over the phone on January 7, 2020.

25. MM acknowledged that after he vacated the rental unit, the Landlord gave him a reference letter, and that arrangements were made with LA's daughter for MM to retrieve his personal property. MM said LA's daughter and her partner were present when he was moving, but denied they helped him move, except they helped him take his television off the wall.

Landlord's Evidence: John Dehaan ('JD')

26. JD said he is 94 years old and is the owner and President of the corporate Landlord. JD described the residential complex as a townhouse complex, but with access to the rental units from a common hallway. JD said that LA is the property manager and has worked for the Landlord for about 10 years. He said LA moved into the rental unit on December 7, 2016.

27. JD said that MM had a lease for his former unit, but the Landlord did not enter a lease with MM for the rental unit at issue. He said MM was pressuring LA to add him, but LA said no and JD did not want to get in the middle of it.

28. JD said that LA asked to have the locks changed, and that on January 7, 2020 he spoke with the probation officer on speaker phone with LA, and the probation officer said MM would not be allowed in the unit any longer, so he had the locks changed.

29. JD confirmed that the Landlord gave MM a reference letter after January 7, 2020, and a copy was entered as evidence (DOC-2690492, p. 56). On cross-examination, JD was asked why a reference letter would be given if MM was not a tenant, and JD said that MM had lived at the residential complex for about 4 years – two at unit 10 and two more at the rental unit, and that is what the reference letter says.

30. JD confirmed on cross-examination that there was no order from the LTB or court evicting MM.

31. JD said that he thinks that MM had his cell phone number at the time, but never contacted him about the lock change or to ask to be permitted back in the rental unit. He said the office phone is usually answered by LA, and there are two others who also work in the office.

Landlord's Evidence: Lynn Arnold ('LA')

32. LA said she is a property manager with the Landlord, and she moved into the rental unit on December 1, 2016. She said the rental unit was part of her employment, and she received a discount in the rent as part of her employment. She said she did not have a signed lease for the rental unit.

33. LA said that she met MM when he moved into unit 10 in the residential complex, which is across the hall from the rental unit. LA said she and MM started a relationship and began spending a lot of time together, so they decided to move in together. She said when MM moved into he rental unit he was not added to the lease as a tenant. LA said that MM did not initially ask to be added, but starting asking after a few months.

34. She said that her relationship with MM was not peaceful, and "went sideways" after about a month. She said it was in December 2018 that MM was arrested for assaulting her. She described the terms of MM's probation and her consent to allow communication. She said she revoked the consent on January 7, 2020 because of a January 4, 2020 incident where she was arrested. She said that on January 7, 2020 when the office opened she spoke with the probation officer saying she did not want MM in the unit, and the probation officer said it would be okay to change the locks. She entered a copy of the Revocation of Consent, dated January 8, 2020 (DOC-2690492, p. 44).

35. LA also said that when MM was charged with assault in December 2018, he was out of the unit for around three months and did not make any claim about being a tenant at the time.

36. On cross-examination, LA said that the reference to MM as a "tenant" in the November 27, 2019 letter was an "administrative error".

Position of MM

37. DY submitted that MM was a tenant of the rental unit. He asked to be added to the tenancy agreement as a tenant, but there was no written tenancy agreement to be added to. She points to the November 27, 2019 letter as evidence of MM's tenancy. She noted it

was signed by the Landlord, LA and MM. She argued that any ambiguity in this letter ought to be construed in favour of MM, because the Landlord drafted it.

38. DY submitted that the Landlord illegally locked MM out of the rental unit, and if the Landlord was not sure if he was a tenant, then it should have applied to the LTB for a determination. She submitted that the tenancy was not terminated in a manner permitted by the Act.

39. The Tenant seeks the following remedies:

    a. The rent differential between the rental unit and MM's new unit of $75.40 for 12 months;
    b. Moving costs of $133.12 for the U-Haul, plus $130.00 paid in cash for help moving;
    c. $540.00 for two days' lost wages;
    d. $1,895.62 for out-of-pocket expenses incurred to stay in the motel;
    e. $1,200.00 for food and drink from January 7, 2020 to February 1, 2020;
    f. $50.00 for laundry from January 7, 2020 to February 1, 2020;
    g. $10,000.00 for general damages;
    h. An administrative fine; and
    i. The filing fees for the T2 applications and the request to review.

Position of the Landlord

40. KH submitted that MM moved into the rental unit as an occupant. She noted that the reference letter given to MM only says he lived at the residential complex for four years but did not say he was a tenant for four years.

41. KH submitted that use of the phrase "Dear tenants" in the November 27, 2019 letter does not make a binding tenancy agreement. She submitted there was no tenancy agreement for the rental unit with MM as a party. She also submitted that MM's conduct when the locks were changed was consistent with an occupant and not a tenant, because he did not try to get back in, but instead asked for a reference letter.

Law & Analysis

Was MM a Tenant?

42. A residential tenancy agreement is a legal contract between a tenant (or tenants) and a landlord with respect to a residential rental unit. LA was already a tenant of the rental unit when MM moved in. The evidence before me was that LA did not have a written tenancy agreement for the rental unit.

43. A "tenancy agreement" is defined in the Act as "… a written, oral or implied agreement between a tenant and a landlord for occupancy of a rental unit and includes a licence to occupy the rental unit": ss. 2(1), *Residential Tenancies Act, 2006.*

44. The term "tenant" is defined broadly in the Act. A "'tenant' includes a person who pays rent in return for the right to occupy a rental unit …". The evidence was that MM paid his portion of the rent to LA, and LA paid the rent to the Landlord. That MM did not directly pay rent to the Landlord does not mean he was not a tenant. It is common for one joint tenant to pay the rent to a landlord on behalf of all tenants. Similarly, that MM contributed to the rent does not necessarily mean he was a tenant. It is also common for occupants of rental units to contribute to the rent, and this alone does not make an occupant into a tenant.

45. Since LA was already a tenant when MM moved into the rental unit, adding MM as a tenant to the tenancy agreement would require the agreement of all three parties: the Landlord, LA, and MM. The best evidence before me as to whether such an agreement was reached was the November 27, 2019 letter. I find that this letter is a clear acknowledgement from all parties that MM was a tenant of the rental unit.

46. The letter was addressed to both MM and LL and refers to them as the "tenants". I acknowledge that this reference is not alone determinative of the parties' legal relationships. LA suggested that this reference was an administrative error, but that suggestion is belied by the content and substance of the letter. The letter discusses the rent, including that part of the rent is covered by a taxable benefit as part of LA's employment.

47. The second paragraph of the letter clarifies what the rent payable would be if LA were to vacate and MM were to remain, without the rent payable being reduced by LA's taxable benefit. If MM were not a tenant, there would be no reason for him to be included as a recipient to this letter at all, and there would have been no need to identify what the rent payable would be for him if LA's moves, and the taxable benefit removed.

48. If LA were the sole tenant of the rental unit and decided to terminate her tenancy and move, then MM would not have any right to remain in the rental unit unless he were to enter into a new tenancy agreement with the Landlord, at which point the parties would have to agree to what the rent would be. The letter is signed by JD and asks LA and MM to "… acknowledge your agreement to the above by signing both copies of this letter in the space below and return one copy to the Landlord for our records". Both LA and MM signed this letter, acknowledging that the contents of the letter were "Accepted and Agreed To This 27 day of November 2019".

49. In making findings on applications, the LTB is mandated to ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in so doing may disregard the outward form of a transaction and may have regard to the pattern of activities relating to the residential complex or the rental unit: s. 202, *Residential Tenancies Act, 2006.*

50. On the evidence before me, I find that the real substance of the November 27, 2019 letter, signed by all parties, was an acknowledgement that MM and LA were joint tenants, and intended to clarify/confirm the lawful rent for the rental unit.

Merits of the Application

51. A tenancy can only be terminated in a manner permitted by the Act: ss. 37(1), *Residential Tenancies Act, 2006.*

52. The relationship between LA and MM clearly became acrimonious. Both LA and MM had restrictions on communication with the other because of criminal proceedings. This, however, did not operate to terminate either of their respective interests in this joint tenancy.

53. It was not contested that the Landlord changed the locks for the rental unit on January 7, 2020 and did not give MM a replacement key. He was permanently locked out of the rental unit as of that date. The Landlord's position was that MM was never a tenant, and there was therefore no evidence that MM's interest in the tenancy was terminated in a manner permitted by the Act.

54. I find that the lock change substantially interfered with MM's reasonable enjoyment of the rental unit for all usual purposes. This was not a mere annoyance or trivial incident. The interference caused by the lock change was substantial. It entirely eliminated his access to and use of the rental unit.

55. Harassment is not defined in the Act, but can be understood to mean conduct which one knows or ought to know would be unwelcome by another person, and that is pursued for no lawful purpose: *Grimard v. Knight,* 2006 ORHTD*.* I find that the Landlord knew or ought to have known that changing the lock for the rental unit would be conduct unwelcome by MM. Since I determined that MM was a tenant of the rental unit at the time, I also find that this conduct was pursued for no lawful purpose.

56. I also find that the Landlord changed the locks for the rental unit without giving one of the Tenants, MM, a replacement key. The Landlord's position was that MM did not request a key. MM said he phoned the Landlord's office, but the person who answered the phone hung up on him. A tenant requesting a replacement key is not a precondition to finding that a landlord changed the locks without providing a replacement key. If a landlord changes the lock for a rental unit, it is the Landlord's responsibility to provide replacement keys to tenants.

57. I do not find that the Landlord entered the rental unit illegally. A landlord may enter a rental unit without notice with the permission of the tenant. LA remained a tenant at the relevant time and permitted the Landlord to enter the rental unit.

58. The Tenant claimed in the application that the Landlord did not give him 72 hours to remove his property from the unit or a nearby location after he was evicted. This claim is made under section 41 of the Act, but the relevant provisions apply where an eviction order is enforced. No eviction or was enforced in this case, and the evidence was that MM was permitted remove his property from the rental unit. I therefore do not find that the Landlord failed to give MM 72 hours to retrieve his property as required by section 41 of the Act.

Remedies

59. MM incurred out-of-pocket expenses in the amount of $1,895.62 to stay in a motel from January 7, 2020 to February 1, 2020 because of the Landlord's actions. The Landlord must pay the Tenant this amount.

60. I find that the Tenant moved out of the rental unit because of the Landlord's actions. The Tenant incurred increased rent of $75.40 per month for a one-year period after the Tenant left the rental unit, for a total of $904.40. The Landlord must pay the Tenant this amount.

61. The Tenant also incurred moving expenses in the amount of $133.12 to rent a moving truck. The Landlord must pay the Tenant this amount.

62. The Tenant also claimed an additional $130 that he said he paid someone in cash for help moving. It is the Tenant's burden to prove that the out-of-pocket expenses claimed were incurred or will be incurred. To prove a fact on a balance of probabilities, there must be sufficient clear, convincing, and cogent evidence of the fact: *FH v. McDougall,* 2008 SCC 53, para 46. There was not sufficient clear, convincing, and cogent evidence of this expense being incurred. For example, there was no receipt or bank record to support MM's assertion.

63. The Tenant claimed $1,200.00 for food and drink and $50.00 for laundry during the time period from January 7, 2020 to February 1, 2020. There was not sufficient clear, convincing, and cogent evidence that the Tenant incurred these expenses. For example, there were no receipts or bank records to establish the actual expenses incurred.

64. The Tenant claimed two days of lost wages. There was not sufficient clear convincing, and cogent evidence that the Tenant could not work for two days because of the Landlord's actions, or what the actual loss in net pay would have been. For example, there was no letter from MM's employer confirming non-attendance for any specific day.

65. The Tenant also claimed $10,000.00 in general damages. MM described that the lock change was very stressful. It displaced him from his home, lead to MM living in a motel for over three weeks, and made MM feel humiliated. In assessing general damages, decision-making ought to be based on a degree of "consistency, equality and predictability in the application of the law": *Anderson v. Young,* 2021 CanLII 147275 (ON LTB), para 53.

66. In the absence of any unusual factors, previous LTB decisions have provided that the normal quantum of damages for illegal lockouts is $2,500.00. This amount is "… intended to account for the inherent indignity of having one's home taken away; the time, effort, frustration, and stress of having to arrange food and accommodations while also seeking legal assistance; and the inconvenience and displacement of being without a home": *Anderson v. Young,* 2021 CanLII 147275 (ON LTB), paras 53-62.

67. On all of the evidence before me, I find that $2,500.00 is an appropriate award for general damages in this case. There are unique circumstances relative to the criminal charges

faced by both LA and MM relative to domestic issues and the dispute as to whether MM was a tenant, but $2,500.00 is appropriate given that the Landlord changed the locks without giving MM a replacement key without lawful authority to do so, and the impact of this action on MM.

68. MM sought an order imposing an administrative fine on the Landlord. As is stated in LTB 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. Administrative fines and rent abatements serve different purposes. Unlike a fine, a rent abatement is intended to compensate a tenant for a contravention of a tenant's rights or a breach of the landlord's obligations."

69. I find that the other remedies ordered in this case will provide adequate deterrence and will adequately encourage compliance with the Act. I do not find that an administrative fine is necessary in the unique circumstances of this case.

70. The Tenant incurred $53.00 for the cost of filing the application and is entitled to recover this amount.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is $5,486.14. This amount represents:

   - $904.40 for increased rent the Tenant has incurred from February 1, 2020 to January 31, 2021.
   - $133.12 for the moving, storage or other like expenses that the Tenant has incurred.
   - $1,895.62 for the reasonable out-of-pocket expenses the Tenant has incurred for the cost of the motel.
   - $2,500.00 for general damages.
   - $53.00 for the cost of filing the application.

2. The Landlord shall pay the Tenant the full amount owing by March 30, 2024.

3. If the Landlord does not pay the Tenant the full amount owing by March 30, 2024, the Landlord will owe interest. This will be simple interest calculated from March 31, 2024 at 7.00% annually on the balance outstanding.

4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

March 19, 2024
Date Issued

Mark Melchers
Member, Landlord and Tenant Board

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