



**Order under Section 31
Residential Tenancies Act, 2006**

Citation: Batiso v 690981 ONTARIO LTD/ C/O CRECCAL LTD, 2024 ONLTB 8625

Date: 2024-02-02

File Number: LTB-T-044070-22

In the matter of: 2819, 2360 Dundas Street West Toronto
ON M6P4B2

Tenant

Between: Fantaye Batiso

And

690981 Ontario Ltd/ C/O Creccal Ltd

Landlord

Fantaye Batiso (the 'Tenant') applied for an order determining that 690981 Ontario Ltd/ C/O Creccal 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 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.

This application was heard by videoconference on November 17, 2023. Only the Tenant and their legal representative, E. Roeper attended hearing.

As of 9:30 a.m., the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenant's evidence.

Determinations:

Procedural History:

1. This application has somewhat of a lengthy history. It was originally scheduled before the Board on September 19, 2022, I heard some of the allegations pertaining to the illegal

lockout and restored the Tenant back into possession of the rental unit. Reasons for which were given in LTB-T-044070-22-IN issued September 20, 2022.

2. The next appearance before the Board was on October 28, 2022, at that hearing the Landlord's agent, L. Digeso, the Landlord's legal representative D. Strashin, the Tenant, their legal representative, E. Roeper, and the Tenant's interpreter E. Woldeamanuel attended the hearing. At that hearing we completed the Tenant's evidence and so the matter was adjourned in order to complete the Landlord's evidence.
3. The next appearance was scheduled for September 20, 2023, which was adjourned due to the Tenant not having an interpreter present at the hearing and the Tenant had lost contact with their legal representative until the date before the hearing.
4. On November 17, 2023, the Landlord was not in attendance at the proceeding. I checked the Board's records with respect to service of the Notice of Hearing and confirmed that it was properly served to the Landlord. As we completed the Tenants evidence, this application shall be decided only considering the Tenant's evidence.

T2 Application:

5. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must:
 - Pay to the Tenant \$5,048.00 which represents general damages in the amount of \$5,000.00 and the cost the Tenant incurred for filing the application.
 - Pay to the Board \$5,000.00, which represents the amount ordered for an administrative fine.
 - Shall not collect rent with respect to this tenancy from the period August 2, 2022 to September 19, 2022.
6. The Tenant moved into the rental unit with her husband on August 1, 2021. The Tenant says that her husband moved out of the rental unit and before vacating the rental unit he signed an N11 with the Landlord with a termination date of July 31, 2022.
7. The Tenant did not move out pursuant to that N11. While they were attending an appointment on August 2, 2022, the Tenant was unable to use her keys as the locks to the building and the rental unit had been changed.
8. The Tenant went to speak with a member of the Landlord's staff who told her she had no right to occupy the rental unit, that they would allow her to collect her belongings- but would not allow her to return after that.
9. The Tenant says that her tenancy was not lawfully terminated.

10. As a result of the lockout, the Tenant says that she had nowhere to go and so she slept in the park for one night, visited shelters, but a lady who she worked with allowed her to temporarily stay with her.
11. The Tenant was restored to possession on September 19, 2022. However, voluntarily vacated the rental unit on October 31, 2022.
12. Section 37 of the *Residential Tenancies Act, 2006* (the 'Act') states that a tenancy may only be terminated in accordance with the Act. They are: by notice, by agreement, or by order of the Board.
13. 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.
14. There is no evidence before me that the Tenant had abandoned or vacated the unit nor that there was an order for the Board evicting the Tenant.
15. Although there may have been an N11 signed by the Tenant or Tenants, but given the language of section 39, it limits the Landlord's ability to simply change the locks. If the Tenant has not vacated the rental unit pursuant to an agreement the Board has a process for a landlord to obtain an eviction order. It is not appropriate for a landlord to 'self help' and lock a tenant out of a rental unit.
16. Therefore, base on a balance of probabilities and the uncontested evidence, I find that the Landlord entered the rental unit illegally. I also find that the Landlord altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys. This is prohibited by the Act.
17. Undoubtably, being locked out of your rental unit without any prior notice, suffering homelessness has a negative impact. Therefore, I find that the Landlord substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.
18. However, I do not find that the Landlord harassed, obstructed, coerced, threatened the Tenant. Although the Act does not define harassment, generally it is understood to be a course of conduct that a party would consider to be most unwelcomed. What happened to the Tenant in this case, may be unwelcomed and considered negative and/or concerning, I do not find that it amounts to harassment or threatening.

Remedies

19. The Tenant originally claimed for the return of her belongings, however as of the date of the hearing that issue had been corrected. The remedy requested is now moot.
20. The Tenant was previously restored to possession as per Order LTB-T-044070-22-IN issued September 20, 2022, however as of the date of the hearing the tenancy had been terminated, therefore the request to recover possession is also moot.

Rent Abatement:

21. The Tenant requests a rent abatement in the amount of \$1,389.00, the Tenant was not in the rental unit from August 2, 2022, to September 19, 2022. The evidence before me was that rent was not paid for the month of August by the Tenant.
22. The concept of abatement is a contractual remedy designed to recognize the concept that if 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 an abatement proportionate to the difference of what is being paid for and what is being received.
23. Since the Tenant was not in possession of the rental unit, obviously she was not receiving the benefit of the unit. Therefore, I find that the Tenant is entitled to 100% rent abatement from the period of August 2, 2022, to September 19, 2022. The Landlord is not entitled to rent during that period. I am not ordering an abatement to be paid, because I am not satisfied that the Tenant paid rent for that time.

Other Remedies:

24. The Tenant seeks an order for general damages in the amount of \$5,000.00, for the loss of dignity as a result of facing homelessness.
25. The authority for the Board to order general damages was discussed in *Meja v. Cargini*, [2007] O.J. No. 437 (Ont. Div. Ct.) where the court found that the Board has the jurisdiction to award general damages under the “any other order” remedies clause found in section 31 of the Act, and found that all compensatory damages (which would include aggravated damages), can be ordered but not punitive or exemplary damages.
26. Furthermore, as stated by the Supreme Court of Canada in *Fidler v. Sun Life Assurance Co. of Canada*, [2006] S.C.J. No. 30 at para 27:

Damages for breach of contract should, as far as money can do it, place the plaintiff in the same position as if the contract had been performed.

27. Damages can include special damages (quantifiable pecuniary losses); general damages (nonmonetary losses) such as pain and suffering (physical discomfort or mental or

emotional distress) and inconvenience; and aggravated damages (such as stress, anxiety, and humiliation). These are all compensatory damages following the basic principle of attempting to put the Tenant in the same position they would have been in had the tenancy contract not been breached.

28. Damages are separate from an abatement of rent as an abatement of rent is simply about recognizing the value of what is being paid for but not being received, this does not address the distress, inconvenience, stress, and time lost, humiliation, embarrassment, and damage to self-esteem. These are compensated for through damages.
29. The Tenant is an immigrant to Canada, with an apparent language barrier. Therefore, she is a particularly vulnerable person. As already stated, she spent a night or two on a park bench, stayed in shelters, and received assistance from a colleague who allowed her to stay with them. The Tenant said that during this time she was embarrassed about being homeless, effected her ability to go to work, and the negative effects of the lockout continued after she was restored to possession.
30. The Tenant stated that even though she was allowed to go back to the rental unit she did not wish to remain as she did not feel safe due to the Landlord's actions, she would put furniture against the main doorway in an attempt to stop people from being able to enter and when she felt she no longer wished to live in fear, she moved out of the rental unit.
31. I accept the Tenants uncontested evidence. I accept that an illegal lockout rendering the Tenant homeless could severely and negatively impact the Tenant's life, and those effects have the possibility to continue to negatively impact this Tenant even after being restored to possession. Therefore, their claim for \$5,000.00 in damages is granted.

Administrative Fine:

32. The Tenant request that the Board issue a fine to the Landlord in the amount of \$10,000.00. For the following reasons, I find that an administrative fine in the amount of \$5,000.00 is more appropriate in the circumstances.
33. Guideline 16 outlines that an administrative fine is a remedy to be used by the Board 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 RTA and other remedies will not provide adequate deterrence and compliance. Administrative fines and rent abatements serve different purposes.
34. Guideline 16 also provides the Board with factors to consider with respect to quantum of the fine, the are:
 - The nature and severity of the breach
 - The effect of the breach on the tenant

- Any other relevant factors

35. The Landlord's actions in this case do show a blatant disregard for the Act, the breach is also quite severe. I say this because the purpose of this Act is to provide protection for residential tenants from unlawful evictions and so in keeping with the spirit of the legislation the Board has a large interest to deter landlord's in engaging in this behaviour in the future. The effect of breach on this Tenant was quite substantial. As already mentioned, she was a particularly vulnerable person, who faced homelessness, who was embarrassed and humiliated as a result of the Landlord's actions.

36. Another relevant factor is that this is a corporate landlord who is also assisted by a property management company and often receives the assistance of legal representatives when before the Board- they ought to know their responsibilities and obligations as a landlord.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$5,048.00. This amount represents:
 - \$5,000.00 in general damages
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by February 13, 2024.
3. If the Landlord does not pay the Tenant the full amount owing by February 13, 2024, the Landlord will owe interest. This will be simple interest calculated from February 14, 2024 at 7.00% annually on the balance outstanding.
4. The Landlord shall not collect any rent with respect to this tenancy for the time period of August 2, 2022 to September 19, 2022.
5. The Landlord shall pay to the Landlord and Tenant Board an administrative fine in the amount of \$5,000.00 by February 13, 2024.
6. The tenancy between the Landlord and the Tenant is terminated as of October 31, 2022, the date the Tenant moved out of the rental unit.

February 2, 2024

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Curtis Begg

Member, Landlord and Tenant Board

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

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.