



## Order under Section 31 and 69 Residential Tenancies Act, 2006

**Citation:** Shpeley v Kheppar, 2024 ONLTB 5054

**Date:** 2024-01-26

**File Number:** LTB-T-000069-23

LTB-L-001093-23

**In the matter of:** 3176 SEABRIGHT DR  
MISSISSAUGA ON L5M0B4

Tenant

**Between:** Geoff Shpeley

**And**

Dashvir Kheppar

Landlord

Geoff Shpeley (the 'Tenant') applied for an order determining that Dashvir Kheppar (the 'Landlord'):

- entered the rental unit illegally;
- Substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant; and
- harassed, obstructed, coerced, threatened or interfered with the Tenant. (T2 Application LTB-T-000069-23)

Dashvir Singh Kheppar (the 'Landlord') applied for an order to terminate the tenancy and evict Geoffrey A Shpeley (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 Application LTB-L-001093-23).

The applications were heard by videoconference on August 1, 2023 and January 3, 2024.

The Landlord and the Tenant attended the hearing.

On August 1, 2023, LTB-L-001093-23 and LTB-T-000069-23 were combined, upon the Tenant's request and on consent of the parties.

### Determinations:

#### T2 Application

1. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
2. The Tenant resided in the rental unit from December 12, 2021 to February 11, 2023 and paid a monthly rent in the amount of \$1,050.00.

3. On February 2, 2023 the Tenant filed a T2 Application about Tenant Rights, as amended on July 13, 2023, which allege the following:
  - a. The Landlord entered the rental unit illegally;
  - b. The Landlord substantially interfered with the reasonable enjoyment of the rental unit or complex; and
  - c. The Landlord harassed, coerced, obstructed, threatened or interfered with him.

### ***Illegal Entry***

4. The Tenant claimed that the Landlord illegally entered the rental unit on December 19, 2022 as the Landlord did not enter the unit on the basis of the Notice of Entry provided.
5. The Tenant testified that the Notice of Entry provided claimed that the Landlord would be entering the unit in order to check on the furnace. He testified that the Landlord did not check on the furnace but attended with his son to and moved the internet modem. The Tenant further testified that he did not observe the Landlord during the course of the Landlord's time in the furnace room but believes that as he heard noise from tools and banging that work to relocate the modem was conducted. He stated that he granted entry to the Landlord on the 19<sup>th</sup> when the Landlord arrived at the rental unit.
6. The Landlord testified that he served the Tenant with a proper notice of entry for December 19, 2022 and that when he attended in the furnace room he did perform a check of the furnace. He denies moving the router during his attendance.
7. Section 25 of the *Residential Tenancies Act, 2006* (the 'Act') states:  
A landlord may enter a rental unit only in accordance with section 26 or 27. Section 27(1) of the Act allows the Landlord to enter the rental unit in accordance with written notice given to the Tenant at least 24 hours before the time of entry.
8. It was the Tenant's direct evidence that 24 hour written notice was given by the Landlord and that the Tenant allowed access into the unit on the day. The Tenant provided no evidence that the Landlord did not check on the furnace and he was not present in the furnace room during the Landlord's attendance and therefore could not confirm that a furnace check was not completed. Based on the evidence before us, we find that the Tenant failed to show on a balance of probabilities that the Landlord did not carry out an inspection of the furnace, as stated in the Notice of Termination. Therefore, the Tenant's claim is denied.

## Substantial interference & Harassment Claims

### *Noise – December 19, 2022*

9. The Tenant alleged that the Landlord interfered with his reasonable enjoyment of the rental unit on December 19, 2022 when he attended the unit and made noise with tools in the furnace room. The Tenant submitted that there was a lot of drilling sounds and loud banging.
10. The Landlord testified that he entered the unit to check on the furnace and upon his attendance he found that his security camera located within the furnace room had stopped working, and he changed the camera. The Landlord submitted that the internet router was never moved and that everything else remained as is. He denies that there was a noise occurrence in the unit.
11. The Tenant did not provide any evidence such as video or audio recording to confirm that unreasonable noise was caused by the Landlord. We find that either story of the parties is just as likely as not.
12. Without any other corroborating evidence, we only had the conflicting testimony of the parties before us. On any application before the Board, the person who alleges any particular incident or event occurred has the burden of leading sufficient evidence to establish that it is more likely than not that their version of events is true. In this case that burden falls on the Tenant.
13. We find that there was insufficient evidence before us to determine on a balance of probabilities that the Landlord substantially interfered with the Tenant's reasonable enjoyment of the rental unit or residential complex. Accordingly, the Tenant's claims for substantial interference is denied

### *Cameras in Furnace Room*

14. The Tenant testified that his privacy was breached as the Landlord had live cameras, with audio capture, in the furnace room, which formed part of his rental unit. The Tenant testified that the lease agreement includes sole use of the furnace room which he uses for storage.
15. It was uncontested that the furnace room is a small room with no flooring and only holds the furnace and the water heater and a few shelves. It was also uncontested that the furnace room is accessible from the Tenant's unit and the neighbouring unit.
16. The Tenant submitted that, on December 16, 2022, he discovered that the Landlord had hidden cameras installed in the furnace room without his consent. The Tenant submitted that on inspection of the cameras, he discovered that they had the capability to record audio based on the serial numbers of the cameras. The Tenant testified that he felt unsafe and was unable to sleep knowing that the landlord was able to record and hear his conversations.

17. The Tenant testified that he addressed this issue with the Landlord on numerous occasions but did not receive a response. That when he requested that the camera's be moved, the Landlord moved a camera from the furnace room to the neighbour's unit on December 31, 2022. However, the door in the neighbouring unit was left open into the furnace room, so the camera was still able to capture the furnace room. The Tenant submitted that he sent text messages to the Landlord to close the door on the neighbour's side, but the Landlord failed to do so. The Tenant submitted that he closed the door between his unit and the furnace room.
18. The Tenant testified that the only response received from the Landlord regarding his request to remove the cameras, was that the furnace room was not part of the rental unit. The Tenant stated that he believed that he had sole use of the furnace room.
19. The Landlord testified that the furnace room is not part of the Tenant's unit, that the verbal lease agreement had never provided that the Tenant has "exclusive use" of the room, or any use of the room as it is a utility room and due to fire and safety reasons and for air flow, no items were to be stored there. The Landlord testified that the room is a small space that only holds the furnace and the water heater. The Landlord stated that he has 2 cameras in the furnace room where 1 camera is pointed to the furnace and the other camera is pointed to the water heater to provide a view of the equipment for the purpose of periodic checks for functionality.
20. The Landlord testified that the cameras do have audio capacity, however, he has never activated audio on the cameras; they do not record anything and that the purpose of the cameras is simply to check the furnace and water heater for safety concerns.
21. The Landlord further submitted that the furnace room is accessible from both the Tenant's unit and that of the neighbour's, however, the Tenant barricaded the neighbour's access, so the Landlord no longer had access to the furnace room since late November, early December 2022.
22. The Tenant was unable to provide the Board with a lease agreement confirming that the furnace room was for his sole use. As noted above, it was uncontested that the furnace room was accessible from both the Tenant's unit and that of the neighbouring unit.
23. On a balance of probabilities, we accept the Landlord's evidence in that the furnace room does not form part of the rental unit as it was uncontested that it was accessible from both rental units, did not have items stored, and the Landlord gave clear and concise evidence regarding his awareness of the safety hazards in permitting storage of items there. We do not accept the Tenant's evidence that he had exclusive possession of the furnace room as it was accessible to both rental units.
24. We also do not find that the Tenant has met the burden of proof to establish that the cameras mounted in the furnace room were either contained within or directed into his rental unit, or recording audio within his rental unit. As we have found that the furnace room does not form part of the rental unit, cameras in the furnace room pointed at the furnace and hot water heater, are not a breach of privacy. The Tenant has failed to establish on a balance of probabilities that any audio recordings were made and we accept

the Landlord's evidence that the cameras did not record audio. We find that the Tenant has failed to provide sufficient evidence to meet the burden of proof to establish that the Landlord was listening to or recording conversations through the video cameras located in the furnace room.

25. The Tenant's claim for substantial interference due to the cameras in the furnace room is denied.

***Intentional Interference with Internet Speed***

26. The Tenant asserted that the Landlord substantially interfered with his reasonable enjoyment of the rental unit by tampering with the internet modem to reduce internet speed and internet service which were included in his rental agreement.
27. The Tenant testified that on December 12, 2022 he lost all internet connection, and also that he had internet services but that they were extremely slow. The Tenant stated that he messaged the Landlord about the internet speed but received no response and that the internet was slow from December 12, 2022 to December 31, 2022.
28. He later testified that the internet continued to be slow until he vacated on February 11, 2023. The Tenant did not call the internet provider Rogers to determine if there were any internet issues in the area and or enquire of his neighbour's.
29. The Landlord testified that the internet was slow for him as well, however, he was unable to investigate the issue because the Tenant had barricaded access to the furnace room and the Tenant had changed the locks to the rental unit since some time between late November, early December 2022. The Landlord testified that he never responded to the Tenant's text messages as the relationship had gone sour and he wanted to limit contact with the Tenant. The Tenant confirmed that he had changed the locks and blocked access to the furnace room by the Landlord or the adjoining unit.
30. On the uncontested evidence before us, we find that the internet was slowed but there was no evidence to provide information as to how or why. It was uncontested that the modem was in the furnace room and that the Tenant had barricaded, or removed access, to the furnace room by the Landlord. The parties agree that internet service was not stopped but rather slowed and the Landlord testified that this impacted him as well.
31. Based on the evidence before us, the Tenant has failed to prove on a balance of probabilities that the Landlord interfered with the internet service. On the evidence before us, it would appear that the cause of the internet slowdown was unknown to both parties.
32. The Tenant's substantial interference and harassment claim regarding interference with internet services is denied, as they have failed to establish this claim on the balance of probabilities.

***Harassment regarding Text Messages to Cease Smoking***

33. The Tenant claims harassment by the Landlord for the Landlord sending text messages requesting that he stop smoking marijuana in the unit. The Tenant testified that because there is no “non-smoking clause” in the lease agreement, the Landlord’s text messages to stop smoking are harassment and substantial interference with his enjoyment of his rental unit.
34. The Landlord testified that he sent a few text messages to the Tenant when smoke emanated from the rental unit, into his unit as his senior parents live with him and due to his parents’ health concerns, including breathing issues, the second-hand smoke was irritating to them and harmful.
35. On the evidence before us, we do not find that there were excessive or inappropriately worded text messages to the Tenant regarding the request to cease smoking on the occasions that it was irritating members of the Landlord’s household. We do not find that the Landlord’s occasional requests to the Tenant to stop smoking to be substantial interference or harassment of the Tenant and therefore, the claim is denied.

***Parking***

36. The Tenant testified that on one occasion, the Landlord told him to change the way he parks his vehicle on the property. The Tenant testified that, a female individual told him to park differently from what the Landlord had told him. The Tenant testified that this made him upset and it is harassment and substantial interference.
37. The Landlord testified that the Tenant never addressed this issue with him and that he does not know who the female referred to is or what the circumstances of any alleged conversation with that person were. He denies that the single conversation about parking was a breach of the Tenant’s rights.
38. Having considered the evidence before us, we do not find that a single discussion about parking a vehicle rises to the level of substantial interference or constitutes harassment. The Tenant’s claim is denied.

***Request to remove mud on the stairs***

39. The Tenant testified that all residents in the residential complex share the stairs to enter and exit the home and that this area is considered a common area. It was uncontested that in the winter of 2022, on one occasion, the Landlord sent the Tenant a text message requesting that he clean mud that was on the stairs. The Tenant asserts that this request constituted substantial interference and harassment as he was the only one asked to clean the stairs.
40. The Landlord testified that he asked the Tenant to clean the stairs because he knows the Tenant works in construction and the stairs were covered in mud with construction shoe like footprints. The Landlord submitted that this was a one-time event, and he only made a request of the Tenant, not a demand.

41. Having considered the evidence before us, we do not find that a single text about cleaning mud off of a staircase rises to the level of substantial interference or constitutes harassment. The Tenant's claim is denied.

### ***Electrical Breakers***

42. The Tenant submitted that on December 20, 2022, the Landlord sent him a text message accusing him of shutting off the electrical breakers and that this false accusation constitutes substantial interference and harassment because he never shutoff or interfered with the electrical breakers.

43. Having considered the evidence before us, we do not find that a single text about a breaker panel rises to the level of substantial interference or constitutes harassment. The Tenant's claim is denied.

### ***Illegal basement***

44. The Tenant submitted that the basement unit is not registered with the City of Mississauga and is an illegal basement unit and therefore, constitutes substantial interference with his rights to a safe unit. At the hearing, the Tenant also raised issues regarding potential fire code violations that were not on the application, were speculative in nature and were therefore not considered.

45. The Tenant failed to provide evidence of the breach of zoning by-laws or how the breach of such a by-law is substantial interference with his reasonable enjoyment of the rental unit. The lack of registry of the basement unit does not automatically equate to substantial interference, there must be actual interference.

46. The Tenant's claim is denied.

### ***Landlord calling the Police to the Tenant's Unit***

47. The Tenant submitted that he was harassed and that the Landlord interfered with his reasonable enjoyment to the unit on December 31, 2022, when he was setting up a shelving unit, he received a text message from the Landlord requesting that he "stop destroying the house", which was proceeded by the Police attending the rental unit, because the Landlord called regarding him in the furnace room.

48. The Landlord submitted that Police were called because of the banging he heard coming from basement and likely the Tenant. It was initially the Tenant's evidence that he was putting a shelf together and he subsequently agreed that he had barricaded the furnace room door by nailing wood across the door, barring entry from the neighbouring rental unit, although he was uncertain if this was on the day the Police were called, as he could not recall exactly when the door was barricaded.

49. Having heard and considered the evidence of both parties, we find that the Landlord's evidence was credible that he heard a significant amount of noise from the Tenant and had

great concerns regarding what was being done, as the relationship between the parties had deteriorated.

50. We do not find that calling the Police in relation to this occurrence rises to the level of substantial interference or constitutes harassment. Therefore, Tenant's request is denied.
51. For the above reasons, we do not find that the Landlord substantially interfere with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household or that the Landlord harassed, obstructed, coerced, threatened or interfered with the Tenant; the Tenant's T2 application will be dismissed.

## **L1 Application**

52. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
53. The Tenant was in possession of the rental unit on the date the application was filed.
54. The Tenant vacated the rental unit on February 11, 2023. Rent arrears are calculated up to the date the Tenant vacated the unit.
55. The lawful rent is \$1,050.00. It was due on the 12th day of each month.
56. The Tenant has not made any payments since the application was filed.
57. The parties agree that the Landlord holds a \$500.00 security deposit that is owed to the Tenant.
58. It was undisputed that the rent arrears owing to February 11, 2023 are \$4,200.00.
59. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
60. The Landlord collected a rent deposit of \$1,050.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
61. Interest on the rent deposit, in the amount of \$6.62 is owing to the Tenant for the period from November 12, 2022 to February 11, 2023.

## **It is ordered that:**

### *T2 Application - LTB-T-000069-23*

1. The Tenant's application is dismissed.



*L1 Application - LTB-L-001093-23*

2. The tenancy between the Landlord and the Tenant is terminated as of February 11, 2023, the date the Tenant moved out of the rental unit.
3. The Tenant shall pay to the Landlord \$2,829.38. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. The security deposit, the rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
4. If the Tenant does not pay the Landlord the full amount owing on or before February 6, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 7, 2024 at 7.00% annually on the balance outstanding.

**January 26, 2024**

**Date Issued**

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**Mayra Sawicki**

Member, Landlord and Tenant Board

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**Nicola Mulima**

Vice Chair, Landlord and Tenant Board

15 Grosvenor St, 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.

**Schedule 1**  
**SUMMARY OF CALCULATIONS**

**A. Amount the Tenant must pay as the tenancy is terminated**

Rent Owing To Move Out Date	\$4,200.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,050.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$6.62
<b>Less</b> the amount the Landlord owes the Tenant for a security deposit	-\$500.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	-\$0.00
<b>Total amount owing to the Landlord</b>	<b>\$2,829.38</b>