



Order under Section 31 Residential Tenancies Act, 2006

Citation: Duguay v Rosslyn Arms Apartments, 2024 ONLTB 915

Date: 2024-01-03

File Number: LTB-T-065665-22

In the matter of: 745 Stevenson
Oshawa Ontario L1J5P4

Tenants

Between: Lori Duguay
Wendy Price

And

Rosslyn Arms Apartments

Landlord

Lori Duguay and Wendy Price (the 'Tenants') applied for an order determining that Rosslyn Arms Apartments (the 'Landlord'):

- 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.

This application was scheduled for a Case Conference to be heard by videoconference on December 6, 2023. Only the Tenants attended the Case Conference. As of 3:07 p.m., the Landlord was not present or represented at the hearing although properly served with notice by the LTB. There was no record of a request to adjourn. As a result, the hearing proceeded with only the Tenants' evidence.

Determinations:

1. This is a multi-tenant application involving two tenants who live in the same residential complex. The Tenants filed this application based on the same issues: that the Landlord failed to provide them with replacement fobs, refused to provide security footage of stolen property and engaged in harassing behaviour.
2. As explained below, the Tenants proved some of the allegations contained in the application on a balance of probabilities.

Replacement Fobs

3. The Tenants submitted that on August 6, 2020, they received notice that they were to return their old fobs for access to the parking garage to obtain new fobs. The Tenant, Wendy Price (WP), attended the rental office on August 11, 2020 and returned five old fobs and only received two working fobs and three that did not. The Tenant, Lori Duguay (LD), attended

the rental office on August 12, 2020. She provided the Landlord with the two old fobs and only one new one was returned.

4. On August 16, 2020, WP contacted the Landlord and requested three working fobs. She did not receive a response. On August 17, 2020, LD asked for one working fob and the Landlord's response was that each resident was entitled to only one fob per vehicle.
5. In the Tenants' pleadings, there was correspondence from the Landlord dated October 10, 2001 regarding the distribution of radio keys. It stated that the maximum number of keys allowed for each apartment was 2 and above that, the number charged per key was \$25.00. There was also correspondence from the Tenants advising the Landlord on August 17, 2020 that they had paid additional money to the Landlord for the extra fobs under the old system.
6. The Tenants submitted that not having the additional fobs has substantially interfered with them because they have more than one occupant requiring access to the underground garage. For example, LD and her father share a car, but she only has one fob.
7. I find that the Tenants were substantially interfered with by not having all of the fobs initially provided to them returned. I base this on the Tenants' uncontested testimony, which was supported by the August 17, 2020 correspondence advising the Landlord that all of the fobs were not returned and that they had paid for additional fobs under the old system.
8. The requested remedy was that the Landlords provide them with the number of fobs that they initially had under the previous system. The more appropriate remedy is for the Tenants to be compensated for the fobs that were not returned to them. In my view, this remedy more adequately reflects the impact of the loss of additional keys. As such, the Landlord shall pay to WP \$75.00 and shall pay to LD \$25.00.

Security Footage

9. The Tenants submitted that in 2017, WP's vehicle was vandalized. The police requested security footage from the Landlord and the Landlord did not respond promptly. The Tenants then contacted the Landlord, and the Landlord responded that under their new system, the security cameras re-write every seven days and therefore, the security footage had been overwritten. The Landlord advised that they set it up for 30 days in the future.
10. On June 19, 2021, the Tenants' chairs located on the porch next to the front entrance were stolen. LD made a request from property management to look at the security footage for that time frame. There was no response. She sent another request and was told that the Landlord was unable to view the tapes due to technical difficulties. In the Tenants' pleadings, there was a copy of said correspondence.
11. I find that the Tenants were not substantially interfered with by not being provided with a copy of the security footage. While it appears that the Landlord's failure to respond promptly in 2017 resulted in the lost security footage, the Board does not have jurisdiction to order a remedy for this incident pursuant to subsection 29(2) of the *Residential Tenancies Act, 2006* (the 'Act'). In addition, the lost security footage in 2021 appears to be an isolated incident as the stated reason was technical difficulties.

Harassment

12. The Tenants submitted that they were harassed by the Landlord for forming a tenant association. They stated that after they formed a tenant association, LD received an N7 Notice for an AC unit that was not previously an issue, the Landlord placed non-smoking signs around WP's vehicle which were not previously there and stalked them for seven weeks resulting in police involvement.
13. The Board has held that a landlord has harassed a tenant where the landlord engages in a course of conduct which the landlord knew or ought to know would be unwelcome.
14. I do not find that the Landlord harassed, obstructed, coerced, threatened or substantially interfered with the Tenants' reasonable enjoyment. A landlord is entitled under the Act to give their tenant a notice of termination. As explained on every notice of termination, if a tenant believes that the tenancy should not be terminated, they can refuse to move out. The landlord can then file an application and the Board will decide whether the tenancy should be terminated. While the service of multiple and invalid notices of termination has been found to be harassment, in my view, the service of one N7 Notice does exhibit a pattern of behaviour to warrant harassment.
15. There was also insufficient evidence to establish that the non-smoking signs were posted to harass WP. There could be multiple reasons for posting the signs, including to ensure the building is compliant with fire code regulations. I also do not find there is sufficient evidence to support the stalking claim, such as a copy of a police report.
16. I also considered the documents in the Tenants' pleadings. There was a notice to remove the Tenants' chairs, a notice regarding loitering, and a letter regarding gathering in common areas. These documents appear to be provided to the Tenants or posted in 2019 and therefore, the Board does not have jurisdiction to order a remedy for this incident pursuant to subsection 29(2) of the Act.

It is ordered that:

1. The total amount the Landlord shall pay is \$158.00. This amount represents:
 - \$75.00 to Wendy Price for the fobs.
 - \$25.00 to Lori Duguay for the fob.
 - \$58.00 for the cost of filing the application (application filing fee + \$5.00 for additional tenant for multi-tenant application).
2. The Landlord shall pay the Tenants the full amount owing by January 14, 2024.
3. If the Landlord does not pay the Tenants the full amount owing by January 14, 2024, the Landlord will owe interest. This will be simple interest calculated from January 15, 2024 at 7.00% annually on the balance outstanding.

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

January 3, 2024
Date Issued

Camille Tancioco
Member, Landlord and Tenant Board

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