Order under Section 31
Residential Tenancies Act, 2006

Citation: Goldie (Formerly Haq) v IMH POOL XX LP, 2023 ONLTB 79666
Date: 2023-12-12
File Number: LTB-T-081784-22 (TST-18975-20)

2023 ONLTB 79666 (CanLII)

In the matter of: 1412, 55 TRILLER AVENUE
TORONTO ON M6R2H6

Between: Janine Goldie (Formerly Haq)
Megan Goldie

Tenants

and

IMH POOL XX LP

Landlord

Your file has been moved to the Landlord and Tenant Board's new case management system, the Tribunals Ontario Portal. Your new file number is LTB-T-081784-22.

Janine Goldie (Formerly Haq) and Megan Goldie (the 'Tenants') applied for an order determining that IMH POOL XX LP (the 'Landlord'):

- entered the rental unit illegally.
- 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 23, 2022.

The Landlord's Legal Representative, Bryan Rubin, the Landlord's Agent and Senior Property Manager, Karen Jones, and the Tenant, Janine Goldie, on behalf of both Tenants, attended the hearing. The Tenant present declined the opportunity to speak with Duty Counsel prior to the start of the proceeding. The hearing was adjourned after the Tenant's evidence as additional time was required.

At the return on August 9, 2023, the Landlord's Legal Representative, Bryan Rubin, the Landlord's Agent and witness, Lucy Gates, and the Tenant, JG, on behalf of both Tenants, attended the hearing. The Tenant present declined the opportunity to speak with Duty Counsel prior to the start of the proceeding. While Fjoralba Jano initially attended to testify as a witness for the Landlord she was ultimately not called.

References to the Tenant's evidence in the below order are to the Tenant JG who attended the hearing.

Determinations:

2023 ONLTB 79666 (CanLII)

1. As explained below, the Tenants proved their allegation with respect to illegal entry and I have found the tenancy terminated on February 25, 2021. Therefore, the Landlord must pay the Tenant $248.00.

2. However, for the reasons set out below, I find the Tenants did not prove the allegations regarding substantial interference or harassment on a balance of probabilities. Therefore, the remainder of the Tenants' application is dismissed.

Preliminary Issues

3. On consent of the parties, the application is amended as per the Amended T2 from February 2021.

4. Further, on consent of the parties Karen Jones, Asha Sugram, Starlight Investments Inc., and DMS Property Management Ltd. are removed as responding parties.

Denial of Landlord's request for summary dismissal

5. At the outset of the hearing the Landlord's Representative raised a concern, repeated after the completion of the Tenants' evidence, that the Tenants' application was based on appropriate actions of the Landlord taken in accordance with their duty to take steps to ensure there is no substantial interference with a tenant's reasonable enjoyment.

6. The Landlord's Representative requested the Tenants' application be summarily dismissed.

7. I denied the Landlord's request for summary dismissal as I was satisfied that if the entirety of the Tenant's evidence was accepted she met her burden of presenting sufficient evidence to prove her claims for illegal entry, substantial interference, and harassment.

8. In particular, I note the notice of entry supported finding a breach on its face as the time of the unit inspection extended over an eight-hour window. While the Tenant's evidence with respect to harassment was admittedly speculative, at the time of the request for summary dismissal, there was no other evidence. As a result, I was not then satisfied that when the totality of the Tenant's evidence with respect to the overall impact and pattern of communications, events, investigations, inspections, and Landlord's response that culminated in the service of an N5 Notice was considered, the Landlord could not have been found to have harassed or substantially interfered with the Tenants' reasonable enjoyment.

Substantial interference and Harassment

9. Section 22 of the Act provides:

> **22** A landlord shall not at any time during a tenant's occupancy of a rental unit and before the day on which an order evicting the tenant is executed substantially interfere with the reasonable enjoyment of the rental unit or the residential complex

in which it is located for all usual purposes by a tenant or members of his or her household.

10. Section 23 of the Act provides:

    23 A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.

11. Harassment is generally a course of conduct the reasonable landlord knows or ought to know would be most unwelcome to the reasonable tenant.

12. The Tenants' allegations center around communications and steps taken by the Landlord with respect to another tenant's noise complaints about them up to and including service of an N5 notice of termination.

13. Under section 22, a landlord has positive obligations to take reasonable steps to provide tenants with reasonable enjoyment.

14. A landlord's obligation with respect to the harassing behaviour of one tenant towards another was addressed in *Hassan v. Niagara Housing Authority*, [2000] O.J. NO. 5650 (Ont. Div Ct). The Court held at para. 18, "the landlord has the positive obligation to provide the tenant with quiet enjoyment and take the reasonably necessary action against any tenant that denies a neighbouring tenant quiet enjoyment of his premises." This includes taking immediate steps to terminate the harasser's tenancy. I find the same test also applies with respect to other behaviours that substantially interfere with a tenant's reasonable enjoyment.

15. The Act also provides a landlord the right to seek termination for substantial interference with another tenant's reasonable enjoyment of their rental unit and/or the residential complex by service of an N5 Notice.

16. As discussed by Vice-Chair Carey in *TET-69036-16 (Re),* 2017 CanLII 49915 (ONLTB), at para. 70, "the Board will not make a finding that serving a notice of termination to terminate is a breach of the Act unless a tenant can establish that the landlord was deliberately serving notice to harass the tenant as opposed to making a genuine effort to exercise the right to terminate under the Act."

17. While LTB decisions are not binding, I find this reasoning persuasive. I accept that service of an N5 Notice will only amount to harassment where the evidence indicates the Landlord was taking this action for the improper purpose of harassing the Tenants. Additionally, I find that serving an N5 Notice will only amount to substantial interference where a landlord's actions were unreasonable.

<u>Communications and steps taken regarding noise complaints</u>

18. The first communication regarding noise complaints about the Tenants' rental unit was a call from the Landlord to the Tenant on June 5, 2020. The Tenant testified she requested additional information during this call. A letter followed from the Landlord later the same day providing additional particulars.

2023 ONLTB 79666 (CanLII)

2023 ONLTB 79666 (CanLII)

19. The Tenant testified she tried to follow up but was unable to leave a direct message and instead left a message in a general mailbox. The Tenant testified she wanted to convey to the Landlord that the complaint about the night before, i.e. June 4, 2020, was baseless as they had gone to sleep before the time in issue in the complaint. The Tenant testified she never heard back but also admitted she was not sure whether this message was ever actually forwarded to the Landlord's Senior Property Manager.

20. The Tenant testified they modified their behaviour given the noise concerns including buying and installing furniture pads. There were no further communications from the Landlord regarding noise complaints until October.

21. On October 23, 2020, the Tenant testified she received two identical letters and a Notice of Entry for October 28, 2020. The Tenant testified the letters advised of additional noise complaints but did not provide particulars such as dates. The letters also contained cautions of the Tenants' obligations under the Act. The Tenant characterised the letters as advising their tenancy may be in jeopardy if these issues were not addressed.

22. The Tenant testified she emailed the Landlord requesting additional information. In her email dated October 23, 2020, the Tenant denies the allegations, provides her explanations, suggests there be further investigation, and indicates she would be interested in receiving a list of dates and times and proof of where the noises are coming from such as recordings.

23. While the Tenant testified she did not receive a response to her email, the Tenant also testified she spoke with an agent of the Landlord a few days later on October 28, 2020. This individual advised the inspection that had been planned for that day was with respect to the noise complaints and would not be proceeding as the individual who was to conduct the inspection was not available. The Tenant testified she was assured she should not be concerned as the Landlord's agents were discussing other possible sources of sound.

24. On or about November 9, 2020, the Tenant received a new notice of entry for November 11, 2020. The Tenant testified she understood this inspection was related to the noise complaints.

25. On November 12, 2020, the day after the inspection took place, the Tenant followed up with the Landlord and was advised that same day that she would be kept informed.

26. By letter dated November 16, 2020, the Landlord advised that during the inspection of the rental unit they had observed a treadmill and free weights as well as a lack of area rugs and carpeting. The Landlord also advised they had performed a sound transfer test by both dropping and then placing the weights on the floor and that the sounds made were audible in the unit below. The Landlord requested the Tenant install sufficient matting to suppress noise and not drop articles on the floor. The Landlord also and indicated a follow up inspection would be conducted on November 25, 2020.

27. On November 18, 2020, the Tenant emailed the Landlord and denied the weights or exercise equipment were the cause of any noise as they belonged to the other tenant in

the rental unit. As that tenant was away at school these were not and had not been in use since the summer. The Tenant also advised how she had modified her behaviour including the installation of furniture pads and her distress as a result of this situation. The Tenant requested a complete list of dates and times of the complaints with the nature of the noise identified. In addition, she sought clarification regarding what additional matting was required as there were already floor mats stacked behind the treadmill and carpeting seemed to be an undue expense given her certainty she was not the source of the noise. Finally, with respect to the proposed inspection, she advised of concerns about her COVID-19 status.

28. The Tenant called and spoke with the Property Administrator to see if anyone would be following up with respect to her email.

29. On November 23, 2020, having not heard back, the Tenant testified she filed this application, again wrote the Landlord about her concerns, and advised the Landlord she had filed this application.

30. By email dated November 24, 2020, the Landlord's Senior Property Manager responded to the Tenant and advised a summary of dates and times would be provided shortly. She also asked whether area rugs had been installed, agreed to delay the follow-up inspection, and invited the Tenant to provide a time when she could speak the following afternoon.

31. The Tenant did not respond to this email.

32. Starting December 29, 2020, and continuing until January 5, 2021, the Tenant emailed the Landlord now complaining about the downstairs tenant, who was the induvial making the noise complaints about the Tenants, banging on their floor/his ceiling.

33. On January 5, 2021, upon returning after the holidays, the Landlord's Senior Property Manager responded and confirmed they had spoken with the neighbouring tenant to cease his behaviour. She also confirmed their understanding that the Tenant disputed the noise complaints received against her and provided a list of new dates and times of the most recent noise complaints. Finally, she asked the Tenant to confirm the installation and timing of any sound dampening measures including furniture pads, matting, area rugs and carpets.

34. The Tenant never installed additional matts, area rugs, or carpeting as she testified the Landlord never responded to her November 18, 2020 request for clarification.

35. On or about January 6, 2021, the Landlord delivered an N5 notice of termination to the Tenants with a termination date of January 30, 2021.

36. The Landlord's Agent testified the Landlord has a duty to investigate when they receive noise complaints and testified they did receive noise complaints from a neighbouring tenant about the Tenants.

2023 ONLTB 79666 (CanLII)

2023 ONLTB 79666 (CanLII)

37. The Landlord's Agent testified to the Landlord's standard practice. The Landlord's Agent did not personally participate in any of the steps taken on or behalf of the Landlord in this case.

38. The Landlord's Agent testified upon receiving a noise complaint, it is the Landlord's standard practice to speak with all parties and try to understand everyone's point of view, and that they do their due diligence to investigate the source of the noise. Depending on the circumstances of the situation, they will call and send warning letters. The Landlord's Agent testified they will always work with all parties to try and avoid coming to the LTB. Where a situation does not improve and individuals remain unsatisfied, then the Landlord will serve a N5 Notice.

39. The Landlord's Agent testified that is what occurred in this case.

<u>Analysis</u>

40. The Tenant did not dispute the Landlord was receiving noise complaints about the rental unit; their complaints center on the sufficiency of the Landlord's investigation and problem solving surrounding the noise complaints. In particular, the Tenant submitted she was not provided with a list of dates and times of the noise complaints, or recordings of the alleged sounds, and that the Landlord was unresponsive to her communications.

41. The Tenant also complained about the frequency and fact of communications from the Landlord particularly after she told them her reasons why she was not the source of the noise and what steps she was taking to ensure there was no noise. In total, the Tenant received four letters, two of which were identical except for the date and were received on the same day, and one N5 Notice. While three notices of inspection were provided, only one unit inspection was conducted.

42. A landlord has an obligation to act to ensure tenants' reasonable enjoyment are not substantially interfered with. I accept the Landlord's Agent's evidence as to their understanding of the Landlord's obligations upon receipt of a noise complaint and find that receipt of a complaint necessitates and creates a duty to take reasonable steps which starts with investigation. I therefore find it was reasonable for the Landlord to call and write the Tenants after they first received a noise complaint in June.

43. The N5 Notice indicates the next noise complaint was received in September 2020 and a further complaint followed in October 2020. As a few months had passed, I find it was reasonable for the Landlord to again write to the Tenants and take the additional step of conducting an inspection of the rental unit. I do not find cancellation of an inspection due to unavailability of an employee on one occasion and rescheduling of this inspection was unreasonable.

44. I further find it was reasonable for the Landlord to advise the Tenants of the results of their unit inspection and request a follow-up inspection to ascertain compliance with their requests and then to agree to postpone and/or reschedule this when the Tenant advised of the potential for health concerns.

2023 ONLTB 79666 (CanLII)

45. I do not find the Landlord failed to respond to the Tenant's emails regarding the noise complaints in a timely fashion. In particular, I do not find the failure to respond to a voice mail message for which there was no evidence the intended recipient received at a time when there were no ongoing noise complaints amounts to substantial interference or harassment. Otherwise, the most time that elapsed between when the Tenant wrote to the Landlord and either spoke with an agent of the Landlord or heard back was a few days. I do not find this constitutes a failure to respond or an unreasonable delay in response.

46. The Tenant was distressed because she did not believe she was causing unreasonable noise and thought it was the responsibility of the Landlord to demonstrate the basis for the complaints was reasonable. The Tenant alleges the Landlord's response was inadequate but the Tenant had no evidence the Landlord did not speak with the neighbouring tenant and was advised in October that the Landlord was considering alternative sources of noise. Further, the evidence was that it is part of the Landlord's standard practice to speak with all parties involved when they receive noise complaints and to duly investigate.

47. By November, the Landlord was in a position where they had conducted an inspection of the rental unit, found a potential source of noise, and were consistently receiving noise complaints from a neighbouring tenant.

48. The Tenant did not respond to the Landlord's invitation to speak in November and did not comply with the additional steps the Landlord requested be taken.

49. The adequacy and reasonableness of the steps taken by the Landlord in response to the Tenant's complaints about the neighbour below banging on his ceiling were not the subject of this proceeding; nonetheless, the evidence was the Landlord, in accordance with their standard practice spoke with the neighbouring tenant about the Tenant's complaints and that they advised the Tenant they had done so. Therefore, starting in at least late December, the Landlord was in the position of receiving complaints from two neighbouring tenants about each other's noise.

50. I find it was only after again seeking confirmation about steps the Tenants had taken that the Landlord served the Tenants with an N5 Notice. In the above circumstances, I do not find it was unreasonable for the Landlord to serve the Tenants with an N5 Notice.

51. There was also no evidence the Landlord's communications and actions regarding noise, including the N5 Notice, were delivered with the intent to harass the Tenant. The Tenant's evidence that it felt like she was being targeted was speculative and the evidence was that delivery of an N5 Notice was part of the Landlord's standard practice in such circumstances. As a result, I do not find the service of the N5 Notice was harassing or amounts to substantial interference.

52. While it is clear that the communications regarding the noise complaints were unwelcome to the Tenant, a tenant will likely always find complaints directed towards their behaviour unwelcome. As a result, I cannot find on its face that advising of noise complaints and the potential consequences – particularly where it was not disputed that such complaints were being received - constitute harassment. Nor do I find the letters and communications the

Landlord sent to the Tenant regarding noise complaints about their rental unit were unreasonable in their frequency or content.

53. As a result, I do not find the Landlord’s delivery of letters of complaints, decision to conduct a unit inspection, communications regarding noise complaints, including response time, or service of an N5 Notice were unreasonable or amount to harassment.

54. Upon receipt of the N5 Notice, the Tenants were able to dispute the allegations at a hearing or attempt to resolve matters with the Landlord. Instead, after receipt of the N5 Notice, the Tenants chose to vacate.

55. In the above circumstances, I find that the Landlord did not substantially interfere with the reasonable enjoyment of the rental unit or residential complex by the Tenants and did not harass, obstruct, coerce, threaten or interfere with the Tenants.

<u>Illegal entry</u>

56. With respect to the investigation and noise testing in the rental unit, the Landlord admitted their Senior Property Manager and an employee at the building entered the rental unit on November 11, 2020.

57. The notice of entry specified an eight-hour window of time during which the entry would take place and the only reason identified for the entry was unit inspection.

58. The LTB’s Interpretation Guideline 19 – *The Landlord’s Right of Entry into a Rental Unit* provides, in part:

> **Reason for entry**
>
> …
>
> The notice should provide as many details as possible with respect to the proposed entry, including details with respect to the repair or replacement or with respect to an inspection of the rental unit. In considering whether or not the notice complies with the RTA, the Board may consider whether details about the entry have been provided to the tenant.
>
> **Specifying the time of entry**
>
> Where a specific time of entry is known, it should be stated in the notice. Where it is not possible to state a specific time of entry, the notice may provide a reasonable window of time for entry.
>
> What is a reasonable window of time will depend on the facts and circumstances in each case. Where the landlord exercises control over the work being done and who is doing the work, the notice should be reasonably specific with respect to the time for entry.
>
> …

2023 ONLTB 79666 (CanLII)

2023 ONLTB 79666 (CanLII)

> The Divisional Court in *Wrona v. Toronto Community Housing Corporation* found that while a landlord is not required to specify the exact hour and minute of a required entry into a rental unit, a written notice providing for a nine hour period for entry to permit the landlord to carry out an annual inspection of smoke detector equipment does not comply with the requirements that the notice specify a time of entry between 8:00 a.m. and 8:00 p.m.

59. The LTB's Guideline with respect to providing details on a Notice of Entry accords with the Divisional Court's finding in *Nickoladze v. Bloor Street Investments*, 2015 ONSC 3893. There the Divisional Court held it is prudent for a landlord to state on a notice of entry that it intends to take photographs; however, there is no requirement to do so. I find this reasoning extends equally to it being prudent for a landlord to include on its notice of entry details as to what they intend to do with respect to noise testing in a rental unit and similarly do not find that this is mandated under the Act.

60. Additionally, I find the Divisional Court's reasoning with respect to whether the conduct of the Landlord in the rental unit renders the entry unlawful persuasive and have extended and applied this to the circumstances of this case. In *Nickoladze*, the Court held, at para. 9:

> [9] … the fact that photographs were taken does not, by itself, constitute an infringement of the Tenant's privacy rights. It would only constitute an infringement if it was done for an improper purpose. In the case, the Board determined that the photographs were taken for the purpose of the inspection and for use at the hearing of the tenant's outstanding applications.

61. Here, the Tenant admitted she was aware the unit was being inspected because of noise.

62. The Tenant's evidence was that cupboards and doors were opened when she got home and that items had been moved; however, her only specific evidence of what had been moved were the free weights the Landlord admitted they had dropped on the parquet floor as part of their noise testing.

63. While the Tenant was concerned other items of hers may have been touched, there was no evidence the Landlord had acted in a way that was inconsistent with attempting to recreate and test what noises might be emanating from the rental unit. As a result, I do not find the conduct of the Landlord was improper and so do not find the Landlord's conduct during the unit inspection infringed the Tenant's privacy rights.

64. With respect to the time of entry, an eight-hour window was provided and yet it was the Landlord's Senior Property Manager and employee who were to enter the rental unit and conduct the noise testing. As a result, I find the timing of the entry was within the Landlord's control and the notice of entry ought to have more specifically identified the time of entry.

65. I therefore find this situation similar to that in *Wrona*, insofar as the notice of entry did not comply with the requirements for time of entry under the Act, and find the Landlord entered the rental unit illegally on November 11, 2020.

2023 ONLTB 79666 (CanLII)

Remedies

66. I have found the Tenants proved their application with respect to their claim of illegal entry and have otherwise dismissed the Tenants' claims for substantial interference and harassment.

67. The Tenant submitted the notice of entry, which I have found constituted an illegal entry, was part of the remedy they claimed for harassment as it was part of the alleged problematic pattern of behaviour for which they sought 50% abatement for the months of June, October, November, December, January and February.

68. I have found one illegal entry took place on November 11, 2020. In *Wrona*, the Divisional Court awarded $1,000.00 for a single illegal entry; however, case law reflects there was a history of disputed notices of entry between the parties. Here the Tenant testified she did not think much of the fact that the entry window was broad at the time she received the notice. Her real concern was the conduct of the Landlord while inside the rental unit; but, I have found these actions were not improper and did not amount to a breach of the Tenant's privacy.

69. Nonetheless, there was a breach of the Tenants' privacy albeit one which had a minor impact on the Tenant. The monthly rent in November 2020 was $1,711.30. In the above circumstances, I have awarded a nominal abatement to the Tenants for the illegal entry in the amount of $200.00.

70. The Landlord admitted they served an N5 Notice with a termination date of January 30, 2021.

71. The Tenants vacated the rental unit after service of the N5 Notice.

72. While the Tenant suggested they would have moved earlier if they could have, the Tenant testified it was only after receiving the N5 Notice they started to look for a place and thought they had no choice but to move out because they would otherwise be evicted.

73. I therefore do not find the illegal entry caused the Tenants to vacate the rental unit but instead that the Tenants vacated because of receipt of the N5 Notice.

74. A claim for rent differential and out-of-pocket moving and storage expenses is only available under s. 31(2) of the Act where the Tenant was induced to vacate the rental unit because of the conduct of the Landlord. Because I have found the Tenants did not vacate because of the illegal entry – the only claim I have found proven on this application - I do

not find the Tenant is entitled to these remedies. The Tenants' requests for rent differential and moving and storage expenses are dismissed.

75. The Tenant's evidence they actually moved out on February 25, 2021, as a result of the N5 Notice was uncontested. I therefore find the tenancy terminated on February 25, 2021.

76. At the hearing, the Tenant raised that they paid rent for February 2021 but the Landlord did not return their last month's rent deposit. The Landlord's Representative submitted it would be improper to address a request for the last month's rent deposit on this application.

77. This is an application for Tenant's Rights - a T2 Application - and is not a claim for the return of illegally retained funds - a T1 Application. While there were emails submitted that support finding the Tenant asked the Landlord to return their last month's rent deposit, there was no mention in the Tenant's application that they took issue with the Landlord not returning their last month's rent deposit or that they were seeking the return of this amount on this application under the remedies sought.

78. Accordingly, I find the Tenant's claim for the return of their last month's rent deposit was not properly before the Board on this application and this claim was not considered.

79. An administrative fine is not normally imposed unless a Landlord has shown a blatant disregard for the Act and other remedies will not provide adequate deterrence and compliance. On the evidence before me, I was not satisfied there was a blatant disregard of the Act. As a result, the Tenants' request for an administrative fine is denied.

80. The Tenants no longer reside at the rental unit. As a result, they no longer sought an order that the Landlord stop sending them notices and letters.

81. The Tenants were successful on proving their claim for illegal entry and I have found the tenancy terminated at the end of February. As a result, I have awarded the Tenants the cost of filing their application.

2023 ONLTB 79666 (CanLII)

It is ordered that:

1. Karen Jones, Asha Sugram, Starlight Investments Inc., and DMS Property Management Ltd. are removed as responding parties.

2. The tenancy between the Landlord and the Tenants is terminated as of February 25, 2021, the date the Tenants moved out of the rental unit.

3. The total amount the Landlord shall pay the Tenants is $248.00. This amount represents:

    - $200.00 for a rent abatement; and
    - $48.00 for the cost of filing the application.

4. The Landlord shall pay the Tenants the full amount owing by December 23, 2023.

5. If the Landlord does not pay the Tenants the full amount owing by December 23, 2023, the Landlord will owe interest. This will be simple interest calculated from December 24, 2023 at 7.00% annually on the balance outstanding.

December 12, 2023
Date Issued

Rebecca Case
Vice Chair, 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.

2023 ONLTB 79666 (CanLII)