



## Order under Section 31 Residential Tenancies Act, 2006

**Citation:** Soares v 2501869 Ontario Ltd, 2023 ONLTB 75531

**Date:** 2023-12-01

**File Number:** LTB-T-062339-22

**In the matter of:** 401, 5308 HIGHWAY 7 W  
WOODBIDGE ON L4L1T3

Tenant

**Between:** Maria Manuela Soares  
Chloe Soares

**And**

2501869 Ontario Ltd

Landlord

Ken Khan

Superintendent

Maria Manuela Soares and Chloe Soares (the 'Tenant') applied for an order determining that 2501869 Ontario Ltd (the 'Landlord') and Ken Khan (the 'Superintendent'):

- 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 October 17, 2023.

The Landlord's Agent, Patrizia Maida, and the first-named Tenant attended the hearing. Gregory Fredericks attended on behalf of the Superintendent, however, did not participate in the hearing.

**Determinations:**

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenant a \$500.00 rent abatement and the \$53.00 filing fee for a total of \$553.00.
2. The Tenant's application made the following allegations:
  - a) On November 17, 2017, the Tenant had alleged clients of a sex worker knocking at the Tenant's door. When reported to the Landlord, the Landlord did not react.
  - b) On March 26, 2018, a repairperson in the employ of the Landlord attempted to enter the rental unit without prior notice or consent.
  - c) On May 4, 2019, a repairperson used the Tenant's electrical connection to conduct repairs in the rental complex without the Tenant's consent.

- d) On May 5, and 31, 2019, the Landlord, or an employee of the Landlord entered the rental unit without notice or consent.
- e) Throughout 2020 and 2021, the Landlord allowed other people to park in the Tenant's assigned parking spot.
- f) On January 14, 2021, neighbours were making noise with power tools throughout the evening. The tenants from the neighbouring unit were also smoking in the hallway of the complex, which allowed the cigarette smoke to enter the Tenant's rental unit. The Landlord was informed of the noise and smoking issue, however, allegedly did not act on the complaint.

3. Section 29(2) of the *Residential Tenancies Act, 2006*, (the 'Act') states:

(2) No application may be made under subsection (1) more than one year after the day the alleged conduct giving rise to the application occurred.

4. The Tenant's application was filed with the Board on April 3, 2021. This means that, pursuant to section 29(2) of the Act, the Board can only issue an order based on events that occurred on or after April 3, 2020. Since events (a) to (d) listed above in paragraph 2 of this order occurred prior to April 3, 2020, the Board does not have the jurisdiction to make any decisions based on those claims. Therefore, the only claims that will be addressed in this order are (e) and (f), which address the interference with the Tenant's parking spot and the noise issues from January 2021.

#### Parking Issue

5. The Tenancy began September 15, 2017. The Tenant testified that initially the rental unit came with the option of using two parking spots, however the Landlord submitted that this was not the case because the rental complex only has enough parking spots for each rental unit to have one parking spot.
6. Both parties agreed that although the lease does not address parking rights, the Tenant does have the right to use one parking spot. The parties also agreed that the Tenant does have a specific spot assigned to her, however the parking spots do not have signs or numbers on them that would specifically identify the spots.
7. The Tenant testified that on June 8, 2020, another resident of the rental complex was using her parking spot to make car repairs. The Tenant stated that the resident had possession of several cars that were parked in the parking lot and would use the parking lot to store and maintain the cars.
8. The Tenant testified that this event occurred once again on June 25, 2020.
9. The Tenant testified that she reported both the June 8<sup>th</sup> and June 25<sup>th</sup> issues to the Superintendent, however the Superintendent allegedly responded that where the resident parked was none of her concern.

10. The Tenant testified that this event would reoccur on a monthly basis, until the winter, however specific dates were not given of when the neighbour used the Tenant's parking spot for car maintenance.
11. The Tenant also testified that the Landlord would permit other people to park in her parking spot while she was at work. The Tenant submitted a photo taken February 18, 2021, which showed the Tenant's parking spot with tire prints in the snow that appear to be coming and going from the parking spot. The Landlord, in her testimony, pointed out that the photos did not prove that anyone had parked in the Tenant's spot and that the tire prints could have been left by a vehicle using the open spot to turn around in the parking lot.
12. The Tenant did not present any evidence of a car specifically parking in her spot, or how a car parking in her spot while she was at work substantially interfered with the reasonable enjoyment of her rental unit.
13. The Tenant is seeking a rent abatement as well as an order from the Board to ensure that the Landlord does not allow other people to park in the Tenant's parking spot.
14. The Landlord testified that the Superintendent was the superintendent of the rental complex when the building was purchased. To create a smooth transition, and avoid disruption throughout the rental complex, the Superintendent's position continued with the current Landlord. The Landlord testified that the Superintendent ceased being employed by the Landlord as of August 2021, however, is still a resident in the rental complex. The Landlord testified that the Superintendent's job was terminated due to the Superintendent's poor communication skills and unprofessional behaviour.
15. The Landlord testified that she had not been made aware of the Superintendent allowing other residents to do automobile maintenance in the parking lot.
16. The Superintendent was not at the hearing; however, he had sent Gregory Fredericks in his place. However, Mr. Fredericks is neither a legal representative, nor was he a witness that had any first-hand knowledge of the issues being brought forward by the Tenant, therefore, no submissions were tendered from Mr. Fredericks.

### Analysis

17. Section 22(1) of the Act states:

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.

18. Based on the evidence before me, I am satisfied that the Landlord substantially interfered with the Tenants' reasonable enjoyment of the rental unit and complex on June 8, and June 25, 2020, by allowing another resident to complete automobile maintenance in the Tenants' parking spot. The Tenant did her due diligence by bringing the issue to the

Landlord's attention by informing the Superintendent of the issue, however the Landlord failed to rectify the issue in a timely manner.

19. I find that for the two events (June 8 and 25), a lump sum rent abatement of \$200.00 is reasonable under the circumstances.
20. Regarding the alleged use of the Tenants' parking spot throughout the winter months, the Tenants have not satisfied the Board that on a balance of probabilities, the Landlord substantially interfered with the Tenants' reasonable enjoyment of the rental unit. The evidence presented was not compelling enough to convince me that someone had parked in the spot. The tire prints in the snow only showed that a vehicle had been there, but not whether it parked there or if the driver of the vehicle had merely used the open spot to turn around in the parking lot.
21. One of the other remedies sought by the Tenant was for the Board to order that the Landlord prevent other people from using the Tenant's parking spot. Although the Tenant has a regular spot in the parking area, the parking spots are neither posted with a sign or a parking spot number. Although the Landlord and the Tenant know the specific spot that is assigned to the Tenant, not every other resident or guest of the rental complex will be aware of the Tenant's assigned parking spot.
22. I find that an easy, inexpensive, solution would be for the Landlord to assign numbers to each parking spot and then assign a numbered parking spot to each Tenant utilizing the spots. This would make it easier for all parties to identify a parking spot they are entitled to and allow for easier enforcement of parking rules in the rental complex.
23. Therefore, the Landlord will be ordered to visibly number the parking spots in the rental complex's parking lot and assign a specific numbered spot to the Tenant.
24. Acknowledging that this order is being issued while we are entering the winter months, where precipitation and temperatures are not conducive to either painting on hardtop, or installing signs, the Landlord will be given until April 30, 2024, to number the parking spots.

#### Noise/Smoking

25. The Tenant testified that on January 21, 2021, a tenant from a neighbouring unit (402) sounded as though they were using power tools such as an air compressor and a metal grinder. The Tenant had testified that she identified these sounds because her job is involved with construction and the sounds were not uncommon for her to hear.
26. It should be noted that this claim on the application was stated as January 14, 2021, and not January 21, 2021, however, due to the length of time from when the application was made to the hearing date, I find the discrepancy to be reasonable under the circumstances.
27. No evidence was submitted by either party that suggested that any of this noise was created due to any renovations going on within the rental unit or in the rental complex.

28. The Tenant stated that the noise would go on for days, however the Tenant did not give a specific duration of the noise issues, despite being prompted to do so at the hearing.
29. The Tenant also testified that cigarette smoke coming from the same neighbouring unit would get into her unit, making it uncomfortable in her unit. In particular, the cigarette smoke would be strongest in the Tenant's washroom. The Tenant testified that she and the superintendent had discovered that there was a hole under the bathroom sink that may have been allowing the cigarette smoke from the neighbouring unit to come into the Tenant's unit. The Tenant did not state whether the Landlord had the hole filled, however, the Landlord did not address the hole in their testimony either.
30. The Tenant testified that she had notified the Landlord of the noise and the cigarette smoke, however, the Landlord stated that the noise was not breaching any noise bylaws because the noise was occurring in the daytime. Because the Landlord felt that the noise did not breach the municipal bylaws, the Landlord felt that they did not have the ability to enforce any action against that tenant. The Landlord also stated that there was no evidence that the neighbouring tenant smoked in the rental unit or in the rental complex.

#### Analysis

31. The Landlord's duty to address substantial interference with the reasonable enjoyment of a tenant by another tenant was affirmed by the Divisional Court in *Hassan V Niagara Housing Authority*, [2000] O.J. No. 5650. The Court held at paragraph 16:

It is not that the other tenant's actions are imputed to the landlord, but, rather, the landlord's legal responsibility to provide the tenant with quiet enjoyment that gives rise to the responsibility on the landlord to take reasonable steps to correct the intrusion of the neighbouring tenant on the tenant's right to quiet enjoyment.

... 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.

32. Based on the evidence before me, I am satisfied that the Tenant informed the Landlord of the noise issues and the cigarette smoke that emanated from the neighbour's rental unit.
33. Based on the evidence before me, I am not satisfied that the Landlord took the appropriate action in dealing with the noise or the cigarette smoke. The Landlord failed to provide any evidence that the Landlord investigated the noise issues.
34. Although the Landlord stated that the noise did not breach the noise bylaws of the municipality, the Landlord did not bring forward any evidence that showed that she had involved a municipal inspector in the investigation of the noise.
35. Furthermore, the benchmark for substantial interference is not set by a noise bylaw itself, but by whether the noise being created by the neighbour is substantially interfering with the Tenant's reasonable enjoyment of the rental unit.

36. I am not satisfied that the Landlord took any reasonably necessary action against the neighbouring unit to deal with either the noise or the cigarette smoke emanating from the neighbour's rental unit.
37. However, I find that the Tenant has not presented any substantial evidence regarding the extent that the noise and smoke issues interfered with the Tenant's reasonable enjoyment of the rental unit. In particular, the lack of any evidence regarding the duration of the smoking and noise issues makes it difficult to ascertain damages.
38. Therefore, I find a lump sum rent abatement of \$300.00 is reasonable under the circumstances.

**It is ordered that:**

1. The total amount the Landlord shall pay the Tenant is \$553.00. This amount represents:
  - \$500.00 for a rent abatement.
  - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by December 15, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by December 15, 2023, the Landlord will owe interest. This will be simple interest calculated from December 16, 2023, at 7.00% annually on the balance outstanding.
4. If the Landlord does not pay the Tenant the full amount owing by December 15, 2023, the Tenant may recover this amount by deducting \$500.00 from the rent for the month of January 2024.
5. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.
6. The Landlord shall visibly designate a number on each parking spot in the rental complex and assign a specific parking spot to the Tenant. The Landlord shall complete this task by April 30, 2024.

**December 1, 2023****Date Issued**

---

**Robert Brown**

Member, 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.