



Order under Section 31 Residential Tenancies Act, 2006

Citation: Zhang v Lu, 2023 ONLTB 71912

Date: 2023-11-28

File Number: LTB-T-007263-22

In the matter of: Basement, 128 Kingston Road Newmarket
ON L3Y5W7

Tenant

Between: Jiao Zhang

And

Fengxing Lu

Landlord

Jiao Zhang (the 'Tenant') applied for an order determining that Fengxing Lu (the 'Landlord'):

- entered the rental unit illegally.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.
- withheld or interfered with their vital services or care services and meals in a care home.

This application was heard by videoconference on July 11, 2023.

The Landlord's Agent (son), Zilan Wu, the Landlord, and the Tenant attended the hearing. The Tenant was supported at the hearing by Amy Long.

Determinations:

Res Judicata

1. The Landlord's Agent stated that there are two previous orders, LTB-L-002518-22/LTB023996-22 and LTB-L-052776-22. The Landlord's Agent stated that the parties discussed the Tenant's issues in mediation which led to order LTB-L-002518-22. The Landlord's Agent stated that rent arrears were waived.
2. The doctrine of res judicata is intended to provide for finality and not permit a party to engage in abuse of process by relitigating a matter that has already been finally determined. There are three well established preconditions that must be met, following which the decision maker must consider whether to exercise its discretion to apply the doctrine:

1. The parties to that decision or their privies are the same in both proceedings; 2. That the same question has been decided in earlier proceedings;
3. The earlier judicial decision was final.
3. I am not satisfied that the doctrine of *res judicata* applies in this instance as all three conditions have not been met. The parties are the same however the previous orders were landlord applications that did not determine the same questions that arise in this application. In this application, the Tenant is seeking remedies for alleged Landlord breaches, the previous applications filed by the Landlord sought remedies for alleged Tenant breaches.
4. Further, order LTB-L-002518-22 which is a consent order reach during mediation states that “the Landlord agreed to waive the current amount owing (\$2,092.00) providing the Tenant voluntarily moves out of the unit on or before November 30, 2022. Therefore, the arrears were waived in exchange for termination of the tenancy, not because of the Tenant’s alleged Landlord breaches. In any event, the order awarded this amount to be paid to the Landlord if the Tenant did not vacate the unit by November 30, 2023.
5. Also, there is a paragraph in order LTB-L-002518-22 that states “the parties have the option to file additional applications.” Therefore, I find it likely that the parties contemplated filing other applications for the issues not determined in that order.

Tenancy Exempt

6. The Landlord’s Agent submitted that the Tenant is renting a room in the basement and sharing the kitchen and bathroom him, and he is the Landlord’s son.
7. Section 5 of the *Residential Tenancies Act, 2006* (the “Act”) states in part:
 - (i) living accommodation whose occupant or occupants are required to share a bathroom or kitchen facility with the owner, the owner’s spouse, child or parent or the spouse’s child or parent, and where the owner, spouse, child or parent lives in the building in which the living accommodation is located
8. The parties originally signed an Agreement to Lease on June 8, 2018 wherein the Tenant leased the basement at this address for the period of one year from June 15, 2018 at the rate of \$1,380.00 per month. According to the Landlord, the Tenant then signed a sublease agreement with a roommate and both of them occupied the basement unit. The basement has two bedrooms, a kitchen and a bathroom.
9. The Landlord’s Agent stated that when the Tenant’s roommate moved out in May 2021, the parties’ changed the agreement. He stated from June 2021 onward the Tenant paid \$640.00 to rent one of the bedrooms in the basement as she could not afford the full rent for the entire basement.
10. The Landlord’s Agent also stated that the Landlord sold her other home and moved to this address in February 2022. The Landlord Agent’s stated that the Landlord occupied the

main level and his intention was to occupy the other bedroom in the basement. According to the Landlord's Agent the Tenant prevented him from fully occupying the other bedroom in the basement.

11. The Tenant stated that she originally lived in the basement unit with her father. She also stated that her father moved out in December 2020 and then she found a roommate. She further stated she gave notice to the Landlord that her roommate and her will move out at the end of May 2021.
12. At the end of May 2021 after the Tenant left the premises, she stated that the Landlord asked for her help and requested that she to return to the unit because the Landlord could not sell house and they wanted someone in the place. The Tenant stated that the Landlord had a business in Vancouver and invited her to go work in Vancouver in the future. The Tenant stated that her relationship was really good with the Landlord.
13. The Tenant stated that she was paying less rent because the Landlord said she could stay for free, but the Tenant insisted she pay something. The Tenant stated she paid \$700.00 at her other place which included internet so she told the Landlord she would pay \$700.00. However, since internet charges were separate, the Tenant stated that she paid \$640.00 for rent to the Landlord and \$60.00 for internet services. The Tenant also believed that she was renting the entire basement for this amount.
14. The Landlord's Agent disputed the Tenant's evidence. He acknowledged that they tried to help the Tenant and offered her the basement bedroom for free for a short period because she was not able to find another place to live because of her dog. However, he stated that when she did not leave the unit at the end of May 2021 as per her notice to vacate, they made the agreement for her to pay \$640.00 a month for just the bedroom as this was what she could afford.
15. There was no dispute that the parties had an original agreement wherein the Tenant rented the entire basement for \$1,380.00. There was also no dispute that after May 31, 2021, the tenancy continued but the rent was reduced to \$640.00. The parties were in dispute as to whether or not the Tenant moved out of the unit for a period of time after May 2021. The Landlord's L1 application, LTB-L-023996-23, included rent owing in the amount of \$1,380.00 for May 2021 and \$640.00 for June 2021, as well as other months owing. Given this, I find on the balance of probabilities that the Tenant never left the premises in June 2021.
16. Given that the Tenant did not move out and that the rent was significantly reduced, I find it more likely than not that the terms of the original agreement changed from renting the entire basement to renting one bedroom with use of the basement kitchen and bathroom. I do not find it believable or reasonable that the Landlord would simply just reduce the rent.
17. However, the Landlord or her son cannot simply occupy the other unoccupied bedroom in the basement after this time, and then rely on subsection 5(i) of the Act to say that the tenancy is exempt from the Act.

18. Based on the evidence before me, I am not satisfied that the intention was that the Tenant would share the basement kitchen and bathroom with the Landlord's son. There was no dispute that in June 2021, the Landlord and her son were not living at the rental unit address when the terms of the parties' existing agreement changed. The Landlord only sold her other home in December 2021, and it was after this date that the Landlord or her son began residing at the rental unit address.
19. Further, there is no dispute that the Landlord has filed recent applications to the Board for other determinations related to the tenancy and received orders wherein it was not argued that the tenancy is exempt from the Act.

T2 application

20. There was no dispute that the Tenant did not serve the Landlord with copies of the supporting evidence that she emailed to the LTB. Therefore, the Tenant's supporting evidence will not be considered. The Landlord's Agent also stated that the Landlord did not receive the T2 schedule 'A', which was only discovered during the hearing. The Landlord's Agent stated that he does not want an adjournment for service and is waiving service of the schedule "A" (full pleadings), as he is able to respond to the Tenant's claims today.
21. There was no dispute that the Landlord's Agent served copies of the Landlord's supporting evidence to the Tenant and LTB via email the morning of this hearing. The Tenant acknowledged receipt and did not require any additional time to review the documents.
22. There was also no dispute that this tenancy terminated when the Tenant vacated the rental unit on January 9, 2023.
23. In this application the Tenant alleges that:
- The Landlord illegally entered her unit when the main door, adjoining door between upstairs and basement; and the wood door (backyard gate) was unlocked on various dates; and
 - The Landlord interfered with or withheld a vital service when the heat was turned off on February 6, 2022 from 6:45 p.m. to February 7, 2022 at 10:30 a.m. and again on February 7, 2022 from 6:45 p.m. to February 8, 2022 at 10:20 a.m.; and
 - The Landlord has threatened to kill her and her dog on various dates; and
 - The Landlord has harassed, coerced, obstructed and interfered with her by yelling, rushing at her, prohibiting her to close the wood door (backyard gate), prohibiting her from reinstalling internet service, checking every room, turning off lights, and throwing away her belongings.
24. As explained below, the Tenant failed to establish on a balance of probabilities that the Landlord or the Landlord's Agent illegally entered her rental unit on the stated dates. The

Tenant also failed to establish on a balance of probabilities that the Landlord shut off the heat on February 7 and 8, 2022.

25. However, the Tenant did establish on a balance of probabilities that the Landlord's conduct on four occasions amounted to harassment and/or threatening behaviour. Therefore, I find that the Tenant is entitled to a rent abatement totalling \$1,120.00.

26. Section 2 of the Act states a "rental unit":

means any living accommodation used or intended for use as rented residential premises, and "rental unit" includes,

(a) a site for a mobile home or site on which there is a land lease home used or intended for use as rented residential premises, and

(b) a room in a boarding house, rooming house or lodging house and a unit in a care home;

27. Section 23 of the Act states:

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

28. Subsection 21(1) of the Act states:

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, withhold the reasonable supply of any vital service, care service or food that it is the landlord's obligation to supply under the tenancy agreement or deliberately interfere with the reasonable supply of any vital service, care service or food.

Emphasis Added

29. Section 23 of the Act states:

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

30. Section 25 of the Act states:

A landlord may enter a rental unit only in accordance with section 26 or 27.

Emphasis added

Illegal Entry

31. Based on the evidence before me I was not satisfied that the Landlord or the Landlord's Agent/son illegally entered the Tenant's rental unit on the dates stated by the Tenant. As per the above finding, I was satisfied that the Tenant's rental unit is one of the bedrooms in the basement. The Tenant did not provide any evidence that the Landlord or the Landlord's Agent entered or attempted to enter her bedroom.

32. Section 25 of the Act requires that a Landlord may only enter a “rental unit” in accordance with the Act. Therefore, I find that the Landlord or the Landlord’s Agent did not breach the Act or enter illegally when they entered the basement common area with or without notice.
33. The Tenant stated that the Landlord illegally unlocked her doors and entered the basement on the following dates: December 10, 12, 2021, January 3, 5, 6-19, 2022, February 14, 23, 2022. She stated that she was at home on some of these occasions and on the other occasions she knew of the entries because on three dates the Landlord left a note and on another date the Landlord installed a new lock the other bedroom door. She also stated that she was aware the Landlord entered the basement because she left a voice recorder in her
34. The Landlord’s Agent stated that he advised the Tenant that he would be moving into the other bedroom in the basement on November 1, 2021 and confirmed this with an email sent to the Tenant on September 30, 2021. He stated that he was not able to access the basement on November 1, 2021 as planned because the Tenant had locked the main door and was occupying the entire basement. He stated that the Landlord then served a written notice advising the Tenant that they need to access the basement main area to access the other bedroom and subsequently unlocked the main door and entered pursuant to this notice.

Harassment/Coercion/Interference/Threats

35. Based on the evidence before me, I find it more likely than not that the Landlord harassed and threatened the Tenant during her tenancy.
36. On December 12, 2021, the Tenant’s testified that the Landlord entered the basement and burst into anger yelling “I need to kill you to death” and that she “wanted to beat us.” The Tenant stated that the Landlord’s husband had to hold the Landlord back as she yelled at the Tenant. The Landlord’s Agent did not refute this incident. Consequently, I find that the Landlord’s conduct and words on this date amounted to harassment and were of a threatening nature toward the Tenant.
37. In addition to this incident, the Tenant described three other times when she was outside on the premises with her dog wherein the Landlord either approached her or said words to her that made her feel threatened. In particular, one time when she was outside, the Tenant stated that the Landlord rushed up to her face-to-face and yelled “you call police, you call police.” Another time, the Tenant stated that the Landlord said, “let your dog come” and then told her if she let the dog come it would be killed.
38. The Tenant also stated that on another date when she was outside on the premises, the Landlord threatened her and her dog and she was afraid to return to her unit. The Tenant stayed at a neighbour’s overnight on this occasion. The Tenant also stated that she called the police with the assistance of her neighbour. She stated that the police attended and told her to contact the LTB for assistance and told the Landlord to not enter the Tenant’s room.

39. Although, the Landlord's Agent denied that he threatened the Tenant or her dog, the Landlord herself did not provide any evidence to refute these incidents. These incidents involved the Tenant and the Landlord.
40. Therefore, based on the evidence before me, I was satisfied that the Landlord engaged in threatening behaviour towards the Tenant on these three occasions. These three incidents amounted to a pattern of harassment towards the Tenant and/or her dog which impacted the Tenant's sense of security at the rental unit.
41. The Landlord's Agent stated that he had to call the police on March 5, 2022 when the Tenant showed up at the Landlord's door at 2:11 a.m. On this occasion he advised the police that he did not want any more face-to-face contact with the Tenant. He stated that the police directed the Tenant and him to only communicate in writing going forward. On March 8, 2022 he stated and submitted a copy of a text message to the Tenant confirming his email address for all future communication. He also stated that same night around 11:12 p.m. the Tenant came back to their door and he again had to call the police.
42. The Landlord Agent stated that he always communicated with the Tenant in writing. He also stated that he advised the Tenant via a notice of entry that Reliance Home Comfort was attending for an inspection. In support of this assertion, he submitted a copy of the report from Reliance Home Comfort which confirmed that an entry for an inspection was refused by Tenant.
43. The Landlord's Agent stated that if the Tenant was so afraid of the Landlord or him why does she keep coming to their door and why would she film the Landlord in the backyard. The Landlord's Agent also stated that he believes that the Tenant was harassing them.
44. On April 28, 2022, the Tenant stated that she recorded the Landlord saying "poison" and "go down" and brought the recording to the police station the next day. However, the police could not hear anything on the recording. The Tenant acknowledged that the recording was not great as the voice was very low. The Tenant further stated that when she went home that day, she did not use the water for one week because she feared being poisoned.
45. The evidence before me was insufficient to find that this incident amounted to harassment or threatening behaviour from the Landlord. The Landlord did not go down to the Tenant's unit. As well, the Tenant confirmed that the police did not act on her assertion of a threat.
46. On May 1, 2022 around 4:50 p.m. when she returned home, she smelled gas, so she opened all the doors and windows. She stated that she then heard a loud knock on the main door and there were policemen, firemen and paramedics in the backyard. She said that they told her someone called saying the basement person needs rescuing. She did not know who called but suspected it was the Landlord.

47. The evidence before me was insufficient to find that the Landlord was responsible for this incident. The Tenant did not provide a copy of a police report confirming where the call came from or any supporting evidence of a gas leak.
48. The Tenant stated that she has a video that she took of the Landlord in the backyard which she emailed to the LTB. She stated that on this day, she was home and heard a noise outside her window and when she looked out, she saw the Landlord in the backyard. According to the Tenant this meant that the Landlord must have unlocked the backyard door (gate) and entered the yard without notifying her. The Tenant stated that the Landlord's words to her during this incident were harassing but acknowledged that the Landlord did not say words like "kill" in this video. The Tenant stated she has other videos but they were too big to send.
49. The Tenant failed to disclose any videos to the Landlord in support of her allegations and therefore this video was not admitted into evidence.

Vital Services - Heat

50. Based on the evidence before me, I was not satisfied that the Landlord withheld or deliberately interfered with the heat at the residential complex on February 7th and 8th, 2022. I find it more likely than not that there was an issue with the heating system given that the Landlord had Reliance Home Comfort scheduled to attend in early March 2022. In any event, the Tenant was able to use a portable heater on these two dates and experienced no impact due to an issue with the heat.
51. In January 2022, the Tenant stated that the Landlord began renovating the house, so they would only be there during the day and leave at night. The Tenant stated that on February 6 and February 7, 2022 after leaving the house, the Landlord turned off the heat. On these occasions the Tenant used a heater. The Tenant confirmed that this was sufficient to maintain the heat in her room.
52. The Landlord's Agent stated that they never turned off the heat on these dates. He stated that the heat sometimes would shut off. He also stated that is why in early March 2022 he called Reliance Home Comfort to come in and inspect.

Remedies

53. For the issues in this application, the Tenant requested a rent abatement of \$1,120.00 and compensation of \$6,255.69 representing her loss of salary for the period of January 3, 2021 to June 10, 2022. She also requested an order for the Landlord to stop threatening her, however since the Tenant is no longer in possession of the rental unit, this remedy will not be considered.
54. The Tenant's request for rent abatement of \$1,120.00 was based on her belief that she overpaid rent for the period of May 2020 to December 2020. However, the Tenant's rent abatement request can be considered for the issues claimed in this application. Given my findings above that the Landlord harassed and threatened the Tenant during the tenancy

on four separate occasions, I find that the Tenant is entitled to the abatement of rent claimed.

55. The Tenant stated that she was scared of the Landlord as the Landlord wanted to kill her dog. Due to this constant worry, the Tenant stated that she had to gradually reduce her working time to the point where she could not leave her rental unit to go to work.
56. The evidence before me was insufficient to find that the Tenant's loss of salary was due to the Landlord's harassing or threatening conduct. Therefore, I am not satisfied that the Tenant is entitled to compensation for loss salary as claimed.
57. Given the Tenant's conduct such as approaching the Landlord in the backyard to record her or attending the Landlord's premises late after midnight, I was not satisfied that the Tenant could not leave the premises to attend work. Further, the Tenant simply a calculation of salary loss, she did not provide any other testimony or supporting documentation quantifying the amount claimed.
58. The Tenant incurred costs of \$48.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$1,168.00. This amount represents:
 - \$1,120.00 for a rent abatement; and
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by December 9, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by December 9, 2023, the Landlord will owe interest. This will be simple interest calculated from December 10, 2023 at 7.00% annually on the balance outstanding.

November 28, 2023
Date Issued

Lisa Del Vecchio
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.