



Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: Khalili v Rodier, 2023 ONLTB 57946

Date: 2023-11-28 **File Number:** LTB-L-026494-22-RV/
LTB-T-053139-22

In the matter of: 209 MONTFORT ST
VANIER ON K1L5P3

Between: Batool Khalili Landlord

And

Jean Rodier Tenant

Batool Khalili (the 'Landlord') applied for an order to terminate the tenancy and evict Jean Rodier (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. This application was resolved by order LTB-L-0246494-24 issued on February 7, 2023. The hearing was held by videoconference on January 16, 2023. Only the Landlord's Legal Representative Victoria Orlandi attended the hearing. As of 9:45 a.m., the Tenant was not present or represented at the hearing.

The Tenant requested a review of the order on February 23, 2023. On February 24, 2023 interim order LTB-L-026494-22-RV-IN was issued, staying the order issued on February 7, 2023. The basis for the review request was not reasonably being able to participate plus a serious error.

The Tenant also applied for an order determining that Batool Khalili (the 'Landlord'):

- 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.

The request to review was heard by videoconference on March 16, 2023. The Landlord's application was completed on June 9, 2023, and the Tenant's application was also heard.

The Landlord's Legal Representative, Victoria Orlandi, and the Tenant attended the first hearing. The Landlord and the Tenant attended the second hearing.

Mira Shabani and Sanae Abteen attended as witnesses for the Landlord at the second hearing.

The Tenant declined speaking with Duty Counsel prior to the second hearing.

Determinations:

Review Request

1. The Tenant requested a review based on not reasonably being able to participate in the hearing and a serious error in the order.
2. The Tenant testified that when he received the Landlord's disclosure, he did not have any other information on the hearing; he did not receive the hearing notice or get the information to access the portal until January 26, 2023, which was after the hearing date. He also did not get an appointment with the legal clinic until after the hearing date. He needs a hearing to present his side, specifically, he vacated with the Landlord's consent on June 4, 2022 but the order has arrears to June 30, 2022, and there are numerous section 82 issues.
3. The Landlord's Legal Representative submitted that the review should be denied because the Tenant had the opportunity to find out when the hearing date was when he received the Landlord's disclosure, the Tenant chose not to. The Landlord's Legal Representative did not dispute that the tenancy terminated on June 4, 2022.
4. The Tenant's request to review is granted. There is no dispute that the tenancy terminated June 4, 2022, not June 30, 2022 as determined in the order. Further, the Tenant disputes the rent indicated by the Landlord; should be \$1,500.00 per month not \$1,850.00. Also, the Tenant took steps after receiving the Landlord's disclosure but did not receive access to the portal or legal advice until after the hearing date. Based on the above, a new hearing on the merits is required.

Arrears Application

5. The Landlord agreed that the Tenant's rent was \$1,500.00 per month, therefore the numbers presented in the March 16, 2023 are amended accordingly as below. The numbers are amended according to the lease signed August 13, 2020 with the previous owner, Navid Fadaze; the lease term was effective September 1, 2020.
6. The Landlord served the Tenant with 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. Although this notice was not valid, based on the information from paragraph 5 above, it is a moot point at this stage as the Tenant vacated June 4, 2022.
7. The Tenant was in possession of the rental unit on the date the application was filed.
8. The Tenant vacated the rental unit on June 4, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit.

9. The lawful rent is \$1,500.00. It was due on the 1st day of each month.
10. The Tenant has not made any payments since the application was filed.
11. The rent arrears owing to June 4, 2022 are \$6,383.24.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
13. The Landlord collected a rent deposit of \$1,500.00 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.
14. Interest on the rent deposit, in the amount of \$7.65 is owing to the Tenant for the period from August 14, 2020 to June 4, 2022.
15. Therefore, after deducting the last month rent deposit/interest and adding the filing fee, the Tenant owes the Landlord \$4,875.64.
16. Any monetary amounts granted for section 82 issues or the T2 application shall be deducted off the amount indicated in paragraph 15.

Section 82 Issues Raised by the Tenant

17. The section 82 issues being raised are: the unlawful rent being charged, and; the Landlord gave a N12 notice for personal use in bad faith. The Tenant also requested to not have to pay the Landlord's application filing fee.
18. The issue of the unlawful rent being charged has been addressed in the L1 application, therefore it is now a moot point as the rent was adjusted accordingly. I do not find the Tenant to be entitled to any further compensation; despite his roommate moving out after the N4 was received, the Tenant remained in the unit without paying anything towards rent. The Tenant testified that he did not pay rent because he needed to save for a new place, which was very stressful. The request for an abatement of rent is therefore denied.
19. The Tenant testified that he withheld paying the rent when the Landlord wanted to charge the higher amount of \$1,850.00. As the Tenant chose to not pay any rent, the Landlord had a lawful right to file the application and the Tenant is required to reimburse this cost. Had Tenant chosen to pay the proper rent of \$1,500.00 per month, then in my mind, the Landlord would not have had a lawful right to file the arrears application; but this is not the case here.
20. Facts determined at hearing: the Landlord served the Tenant a N12 notice of termination for own use, it was dated April 19, 2022 and had as termination date of June 30, 2022. The previous Landlord had served a notice of termination for the purchasers own use, but due to an invalid termination of May 1, 2022, the notice was not valid.

21. The Tenant was requesting \$1,500.00 as remedy, which was the compensation owing from the Landlord for serving the N12 notice. Initially the Tenant testified that he did not receive the proper compensation from the Landlord, but then agreed that he had received the \$1,500.00. As such, this is also a moot point.
22. Therefore, based on the above, the Tenant's section 82 issues are dismissed.

T2 Tenant's Rights Application

23. As explained below, the Tenant proved one of the allegations contained in the application on a balance of probabilities, however no remedy is warranted. Tenant's testimony
24. The Tenant signed a lease with the previous Landlord that began September 1, 2020 for a one year term, the rent was \$1,500.00. About February 2022 the previous Landlord sold to the current Landlord. And the Tenant received a N12 with a termination date of May 1, 2022. Approximately April 19, 2022, the current Landlord served the Tenant a N12 notice for personal use; the notice had a termination date of June 30, 2022. The Landlord did not move in after the Tenant vacated, the house was demolished, and the Landlord built a duplex in its place. There was no reason to demolish the house, it was fine. The Tenant feels cheated because the Landlord did not move in; his reasonable enjoyment of the unit was substantially interfered with by having to move, plus his roommate left almost immediately because of the Tenant's stress and panicking from the entire situation.
25. On April 1, 2022, the Tenant received a text from the Real Estate Agent, that the purchaser was moving in on May 1, 2022 and he had to be out by then or they would call the police. The Tenant considered this to be harassment. The previous owner told the Tenant when he signed the lease that he would be there 10 years, this did not happen; the house was sold, the new owner was to move in but did not, and the house was demolished, and a duplex built in its place. The Tenant feels deceived, everything he went through during the process felt like harassment and all the hard work he put into the house with the previous owner, such as the pine trim, it was all just destroyed.
26. The Tenant relied on pictures of the home when he lived there, pictures of the home when Landlord started renovating, pictures of the home being demolished, and the new house built in its place. The Tenant also pointed to screenshots, texts, and emails to support his testimony.
27. The Tenant is seeking as remedy: abatement \$1,500.00; moving and storage \$3,000.00; repair/replacement costs for pine trim \$2,000.00; Landlord pay a \$1,000.00 fine; rent differential \$7,500.00, and; out-of-pocket expenses \$500.00.

Landlord's testimony

28. The Landlord served the 1st N12 when she had to sell her house in Toronto due to a divorce, it was an emotionally stressful period; her cousin Mitra, who is a Real Estate Agent and lived in Ottawa, suggested she move there. She bought the house in Ottawa believing she would be moving into it, but upon inspection after the Tenant vacated, she discovered a strong smoke smell throughout and mould in the attic, which affected her asthma, and a crack in the foundation. The Landlord referred to her correspondence with the lawyer which detailed her reason for selling the house in Toronto, her intent to move into the Ottawa house, and what she discovered upon inspection. The Landlord also referred to an email to her lawyer on April 11, 2022.
29. The Landlord got a quote to address above noted problems, but it was going to costs \$400,000.00 to \$500,000.00 so she decided to demolish it instead and build a duplex where she could live in one side and her son in the other; her proceeds from the sale paid for half the duplex, and her son got a loan for the other half. It was circumstances beyond her control as to why she ended up demolishing the house and building new, she did not find out about the zoning allowing a duplex until the contractor.
30. The Landlord asked to submit the contractor's quote as a post-hearing submission as she did not have it in evidence; the Tenant disputed this request. The Landlord's request was denied on the basis that all evidence was to be disclosed at least 7-days prior to the hearing date and this requirement was also noted in the interim order issued after the first hearing.
31. The Landlord stayed at an Airbnb when she arrived in Ottawa, as the Tenant was still in the home, and she had left her job in Toronto.
32. The Landlord disputed the remedies the Tenant was seeking. Neither the \$1,500.00 abatement as asked for in the application or the \$2,100.00 asked for at the hearing is justified because she did not intentionally do anything wrong, she intended to move in but circumstances beyond her control made it impossible, plus the Tenant did not pay the rent. Having to pay a fine is not fair because she had intended on moving into the house. The repair/replacement related costs of \$2,000.00 are not her responsibility as any such costs were incurred prior to her purchasing, plus there are no receipts. Having to pay the Tenant's rent differential is unfair because her actions were not intentional, she had intended on moving in, plus the Tenants new place is much bigger. As for out-of-pocket expenses and moving and storage, there are no receipts.
33. Sanae Abteen (SA), the Landlord's son, testified that when his mother bought the house in Ottawa, he was supposed to be moving in with her. The timeline for dealings with Tenant is: March 2, 2022 first N12 given that purchaser/his mother moving into the unit May 1, 2022; April 8, 2022 a N4 for non-payment of rent, this is when things started to get messy; April 19/22 a second N12 given with a June 30, 2022 termination date; the Tenant was given cash for the keys and vacating June 4, 2022.

34. SA also testified that when they looked at the property after the Tenant vacated, they noticed a strong smell throughout, mould, and renovations were required; it was not liveable as it was. The cost to do all the necessary work was too high, therefore after finding out about the zoning, it made more sense for his mother to go the duplex route, which is what she did.
35. Mitra Shabina (MS), the Landlord's cousin and Real Estate Agent, testified that the previous Landlord did not show her the lease between him and the Tenant, he just said it was from a long time ago, he also told her that the rent was \$1,850.00 per month which is why the N4 indicated this amount. The lawyer also said the rent was \$1,850.00. The April 1, 2022 email to the Tenant was sent in frustration, she and the Landlord thought everything had been done correctly for the termination date of May 1, 2022. When the Tenant emailed that the N12 notice for May 1, 2022 was not valid, and that he did not want to move she reacted by saying he had to vacate by that date or the police would be called to have him removed, it was pure frustration that prompted the statement because the deal had closed in February. The Landlord was very stressed during this time, and the Tenant not paying rent added to that. Plus, the Landlord paid the Tenant \$1,000.00 on June 4, 2022, as indicated by the email thread on May 31, 2022.

Analysis

36. This application is based on the rights and obligations set out in section 22 and 23 of the *Residential Tenancies Act, 2006* (Act) which say:
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.
23. A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.
37. The Act does not provide a definition of harassment. The *Ontario Human Rights Code*, R.S.O. 1990, c. H.19, defines harassment as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome".
38. Black's Law Dictionary defines harassment as "*a course of conduct directed at a specific person that causes substantial emotional distress in such person and serves no legitimate purpose*".

39. Harassment in the landlord and tenant context is normally considered to be a course of conduct toward a party that a reasonable person would consider unwelcome and inappropriate.
40. I find that the Landlord did not substantially interfere with the reasonable enjoyment of the rental unit or residential complex by the Tenant. According to the Tenant, the substantial interference was that he had to move because he got notice the Landlord intended on moving in, but instead of doing so, she demolished the house; there was no reason for the house to be demolished. However, the Landlord and SA testified that upon inspection of the house after the Tenant vacated, they found deficiencies that precluded the Landlord and him moving in as had planned; the house was not in a liveable state. Although the contractor's quote was not in evidence, I accept both the Landlord and MA's testimony that it was more practical to demolish the house and build new, especially when the zoning allowed for a duplex to be built. The Landlord paid for half the house and MA got a loan for the other half so he and his family could live there. As such, I find on a balance of probabilities that the Landlord intended on moving in when the N12 notices were given, but circumstances that were revealed after the Tenant vacated ultimately altered this plan; the Landlord did not intentionally do anything wrong. As such, this part of the application is dismissed.
41. I find that the Landlord / Landlord's Agent harassed, obstructed, coerced, threatened or interfered with the Tenant. The Tenant testified that the MS's email to him on April 1, 2022, that threatened to call the police on him if he did not move out by May 1, 2022 was harassment. Although MS testified that the email was sent out of frustration because the Tenant said he was not moving, and both she and the Landlord believed everything had been done properly, MS should have known that such a threat would not be welcome. However, with respect to remedy, the Tenant did not testify as to what he was seeking for the harassment; the applicable remedy in this case would be abatement, but the Tenant testified he was seeking the abatement because he was depressed and stressed over having to move, he quit his job, and his roommate moved out because he was intolerable to live with. As none of these reasons relate to the wording of the text from MS, I find no testimony was given as to a remedy for harassment; therefore, no remedy is awarded. However, it should be noted that the Tenant did not dispute receiving an extra \$1,000.00 from the Real Estate Agent on June 4, 2022 in exchange for handing over the keys; as such, the Tenant has received a form of compensation.
42. As for the Landlord being fined \$1,000.00, I find this remedy not to be appropriate in the circumstances as the threat to call the police was only made once, and it was not acted upon. Further, MA acknowledged it was said in frustration; I believe learning from your error to be sufficient and not deserving of a fine.
43. This order contains all the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The request to review order LTB-L-026494-22 issued on February 7, 2023 is granted. The order is cancelled and replaced with the following.
2. The tenancy between the Landlord and the Tenant is terminated as of June 4, 2022, the date the Tenant moved out of the rental unit.
3. The Tenant shall pay to the Landlord \$4,875.64. 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 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 December 9, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 10, 2023 at 7.00% annually on the balance outstanding.
5. There are no monies owing to the Tenant with respect to the T2 application.

November 28, 2023

Date Issued

Diane Wade

Member, 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	\$6,197.24
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,500.00
Less the amount of the interest on the last month's rent deposit	- \$7.60
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$4,875.64

2023 ONL TB 57946 (CanLII)