



Order under Section 31 Residential Tenancies Act, 2006

Citation: Willems v Pattyn, 2023 ONLTB 74102

Date: 2023-11-27

File Number:
LTB-T-010861-22

2023 ONLTB 74102 (CanLII)

In the matter of: 2, 509 Second St
London ON N5V2B6

Between: Amber Lynn Marie Willems Tenants
Alyssa Bazala

And

Philip Pattyn Landlord

Amber Lynn Marie Willems and Alyssa Bazala (the 'Tenants') applied for an order determining that Philip Pattyn (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.
- withheld or interfered with their vital services.

This application was heard by videoconference on June 13, 2023. The Tenants and the Landlord attended the hearing.

Determinations:

1. As explained below, the Tenants have partially proved the allegations contained in the application. The Landlord must pay the Tenants \$113.00 inclusive of costs.
2. The application was filed February 23, 2022. The Tenants moved into the unit April 28, 2021 and they moved out of the unit on June 30, 2022.

3. At the hearing, the Tenants requested to amend their application to increase remedy 1 on the application for an abatement of rent to \$10,400.00. The Landlord consented to the amendment. The application is accordingly amended to reflect the above change in monetary abatement request.

Tenants' evidence and submissions

4. The Tenants raised the following issues on their T2 application:
 - Falling tree branches
 - Flooding in bathroom
 - Noise from upper-level unit
 - Harassment from the Landlord
 - No/lack of heat in the unit
 - Removal of the fence and gate to the back yard
5. The Tenant AW testified that tree branches were falling from one of the trees on the property onto the driveway and vehicles in August 2021. After multiple requests to the Landlord, a tree service came to remove the tree. She testified that for three months the Tenants parked on the street to avoid damage to their vehicles and this was stressful and inconvenient.
6. AW testified that their bathroom flooded after a significant rainfall on September 21, 2021, October 3, 2021 and December 15, 2021. They had to use towels to wipe up the water and used a dehumidifier provided by the Landlord. She testified that the issue was never properly resolved which caused ongoing inconvenience for the Tenants. She entered a video which was not visible and one photograph of a section of wet floor, dated September 22, 2021, which was part of a text message with the Landlord, notifying him of the water in the bathroom.
7. AW testified that a female occupant moved into the upstairs unit of the rental complex in either August or September 2021. Since January 12, 2022, the upstairs tenant began disturbing the Tenants with excessive noise early in the mornings. She testified that the tenant upstairs would start making very loud noise between 6:00 and 7:00 am with loud music, rolling/dropping what sounded like heavy weights on the floor, jumping on the floor above the Tenants' bedrooms (which was the kitchen in the upstairs unit). She testified that they texted the Landlord numerous times about this issue but eventually, the Landlord stopped responding to them. She testified that they never called police. They were never notified if the Landlord ever served notice on the other tenant. She testified that the noise issue was especially challenging for her because she works until 3:00-4:00 am and usually had just gone to bed when the noise would start. She testified that she is also a full-time student and was getting little to no sleep as a result of the noise issues. Text messages were submitted as evidence of the noise complaints for January 12 and 20, 2022.

8. AW testified that the upper-level unit had exclusive control of the thermostat and that tenant upstairs intentionally kept the heat level too low for them in the basement. She testified that during the winter the unit was usually 14-16 degrees Celsius and that they had to buy heated blankets and space heaters but did not use the space heaters because they realized that the lease did not permit the use of them. She did not have receipts for the space heaters. She testified that despite many request to the Landlord to give them access to the google home heating controls, the landlord did not permit this and there was no resolution to the issue during their tenancy. She testified that even in May 2022 the unit was still very cool. She testified that property standards suggested a lock on the thermostat but this also was never done. One reading from a manual thermometer showed a temperature of 17 degrees Celsius which the Tenant asserts was taken on January 12, 2022.
9. AW testified that the Landlord began to harass the Tenants in February 2022 around the time that they filed the application with the Board. She testified that the Landlord sent her dozens of texts and calls from February 14 - 24, 2022 and used a derogatory term toward AW during their communications by calling her "mental". She testified that the Landlord refused to address the noise and heat issues with the upper-level tenant and told AW to go talk to the upstairs tenant directly. She testified that she became nervous about the many messages from the Landlord at this time and began to avoid him. She testified that from mid-February 2022, the Landlord pressured them to move out of the unit at the end of their term, April 30, 2022.
10. The Tenant AB testified that on April 20, 2022 the unit was very cold and at that time she purchased a temperature gauge but the Landlord dismissed their concerns. She testified that they had sporadic access to the app which controls the heat but they would be kicked on and off of the app, access was intermittent. She testified that the unit was usually below 18 degrees Celsius but that it did fluctuate up and down. She testified that from about February 2022 onward she did not stay at the unit much. She would drop in to pickup what she needed and left. She testified that they were stressed and felt pressured to move. They both found somewhere else to move and gave notices on April 14, 2022 that they would be moving out of the unit June 30, 2022.
11. AB testified that that the Landlord removed a portion of the fence and gate to the backyard in April 2022 which appears to be a span of 6-8 feet in width. Because they had a dog, AW purchased some chain link fence to secure the open space, which cost \$200.00. They took the chain link fence when they moved out of the unit. No receipts were tendered as evidence to support the purchase.

Landlord's evidence and submissions

12. The Landlord PP testified that he owns multiple rooming houses, all of which are fully registered and licensed by the municipality, professionally managed and maintained by licensed contractors, including exterior work and landscaping.

13. PP testified that he found himself constantly mediating between the upper and lower tenants at the rental complex and feels that he did the best that he could in a very frustrating situation. He testified that he felt like he was a mediator/babysitter between the tenants.
14. He testified that the issues began shortly after the upper-level tenant moved in to the unit. That tenant was bitten by the Tenant AW's dog in the backyard of the complex on October 13, 2021 and things deteriorated from there. He testified that he believes the upstairs tenant removed the gate from the property based on communications she had with property standards about the Tenant AW's dog. He testified that the Tenants almost immediately put up some chain link fencing, so he let the issue go, assuming it to have been resolved.
15. PP testified that the tree issue was raised on August 28, 2021 by AW, who wanted the tree removed for more parking space. He responded same day and arranged for a tree service to remove the tree. The service was in queue and took about 2 ½ months for the service to be completed. He tendered an invoice dated November 22, 2021.
16. PP testified that he relayed the noise complaints he received to the upstairs tenant, and he always sent screen shots to each unit about the mutual complaints between them. He did not serve notices on either tenant in the complex because he had attempted to mediate the situation and had no significant evidence against one tenant or the other, but rather it was an issue of tenants not getting along. He further testified that the complaints ceased for some time, so he assumed the noise issues had resolved.
17. PP testified that he stays up on all maintenance needs reported. The water leaking in the bathroom was repaired on October 16, 2021, and a work record was tendered as evidence for this repair and for exterior work completed to resolve the issue.
18. PP testified that the Tenants had access to the heat regulation app at the complex. He referred to the heating app as a Nest Thermostat which digitally detects when the home is occupied and the heat fluctuates based on activity in the unit. He testified that the app can be set on various modes. Everyone in the complex had access to the app. When complaints about the heat came up in January 2022, he checked the app frequently and found that it was consistently registered at 20 degrees Celsius, unless the Wi-Fi was out, in which case the app would not work until the Wi-Fi connection was restored. He testified that on one occasion the app was unavailable for about 20 hours due to a Wi-Fi outage. When the issue of the heat continued, he removed access to all of the tenants on or around April 15, 2022 and set the heat himself at 20 degrees Celsius.
19. He testified that while the upstairs tenant had access to the thermostat, the Tenants had access to the electrical panel in the basement and he received multiple complaints from the upstairs tenant that the Tenants had shut off power to the upstairs unit. PP testified that the

City of London advised him that there was nothing he was required to do because it was tenants not getting along with each other, not a violation of his obligations. He testified that he was never issued an order from the City of London and he relied upon a letter from the City of London to the Landlord, confirming this testimony.

20. PP testified that it was very draining dealing with the Tenants and he did ask them to move out at the end of their lease, being April 30, 2022. He posted a note on their door and communicated by text in mid February 2022 that he did not wish to renew their lease and expected them to move out of the unit. He denied harassing them. He testified that he did use a derogatory term toward AW out of frustration in dealing with so many issues with the Tenants but he did not intentionally harass the Tenants. He testified that his contact with the Tenants in February 2022 was to find out what their application was regarding. He was surprised to receive a notice from the Board that the Tenants had filed an application against him but not a copy of it. In one of the text messages tendered by the Tenants, PP requested that they send him a copy. PP admitted that he reached out to the Tenants over several days as the Tenants were not replying to him.

Analysis:

21. 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”.
22. “Vital Service” is defined in subsection 2(1) of the Act as “hot or cold water, fuel, electricity, gas or, during the part of each year prescribed by the regulations, heat.” The Act also defines as part of vital services heat from September 1 to June 15, in most cases a minimum temperature of 20 degrees Celsius as set out in section 4 of O. Reg. 516/06.
23. The Tenants’ evidence was that there was a lack of sufficient heat in the unit, not that the Landlord withheld the vital service of heat. The evidence was that controls over the thermostat were constantly manipulated between the two units. For the reasons, given, I find that the Landlord did not breach section 21 of the Act and the vital services part of the application is accordingly dismissed.
24. Section 22 of the Act provides that a Landlord shall not substantially interfere with the reasonable enjoyment of the rental unit for all usual purposes by a Tenant.
25. The wording of section 22 of the Act makes it clear that it is concerned with the conduct of landlords. In this case, the conduct of the Landlord which the Tenant claims caused a substantial interference with their reasonable enjoyment of the unit was the Landlord’s failure

to take reasonable and effective steps to address the Tenants' complaints about excessive noise and other conduct by another tenant living in the same residential complex.

26. A 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 (hereinafter "*Hassan*"). The Court held as follows:

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.

27. In other words, a 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.

28. Subsection 23(4) of the Act states that a landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant. There is no definition of "harassment" under the Act but generally speaking harassment is usually considered to be a course of conduct that a reasonable person knows or ought to know would be most unwelcome.

29. In relation to the noise issue, I am not persuaded that the conduct of the Landlord rises to the level of harassment or substantial interference. I find that the Landlord communicated swiftly with all occupants in the complex whenever he received complaints. He testified that it was back and forth of mediating between two tenants who did not get along. It was the Landlord's evidence, also supported by the Tenants' documentary evidence, that the Landlord responded to messages and relayed complaints back and forth to the parties, asking them to respect each other. I find that the Landlord's responses and communications with the Tenants were appropriate attempts to meet the Landlord's obligations, as the Landlord equally has the obligation under section 22 of the Act to both tenants. I accept the Landlord's testimony that the noise complaints ceased and that he took the lack of further complaints to mean that the issue had resolved. The evidence before me was that the noise issue was short term over about 2 weeks in January 2022 and the Landlord responded during these periods. Accordingly I do not find that the Landlord interfered with the Tenants by failing to address noise issues. This portion of the application is dismissed.

30. In relation to the heat issue, I am not persuaded that the conduct of the Landlord rises to the level of harassment or substantial interference. I find that the Landlord's actions to discontinue access to the app for all tenants in April 2022 was an appropriate step to take when the ongoing issue persisted. I was not persuaded by the Tenants' evidence that the unit was colder than 20 degrees. With the exception of one manual thermometer reading in an unknown location and on an undocumented date, there was no evidence to support the Tenants' assertions that the unit was consistently less than 20 degrees. The evidence before

me was that the Landlord requested a screen shot from the Tenants of the temperature reading from the app, which they did not provide. The Landlord provided a letter from the City of London confirming that the Landlord was in compliance with the local property standards. If there was a lack of heat in contravention of the municipal standard, I would expect there to be evidence of this. There was inconsistent testimony from the Tenants about access to the app and temperatures in the unit. I prefer the Landlord's evidence which was more concise and direct, that the unit was maintained at 20 degrees Celsius every time he checked the temperatures. I therefore find the Landlord's resolution to the heat issue appropriate in the circumstances and that the Landlord did not interfere with the Tenants with issues related to heat. Accordingly, this portion of the application is dismissed.

31. I am not persuaded that the Landlord's conduct rises to a level of harassment. The Landlord testified that he requested the Tenants move out of the unit by way of a text message and a notice on the door in mid-February 2022. The Tenants deny receiving the door notice. The Tenants responded to the Landlord's text, asserting their rights and advising that they would not be moving out of the unit on April 30, 2022, that they intended to continue their tenancy on a month-to-month basis. Therefore, I am not persuaded that the Tenants moved out on June 30, 2022 as a result of the Landlord's request from February 2022. I am also not persuaded that the Landlord's texts and calls from February 14-24, 2022 rise to a level of harassment or substantial interference. While it was likely unwelcome to receive so many messages over a 10-day period, I accept the Landlord's testimony that he was seeking information from the Tenants, particularly, a copy of their application. He testified that he believed the relationship to be in good standing and was taken aback to be notified by the Board that the Tenants had filed an application. The Tenants could likely have mitigated the situation by sending a copy of their application to the Landlord. I do not find that this allegation rises to a level of harassment and accordingly, this portion of the application is dismissed.
32. While the Landlord admits to the use of a derogatory term toward AW, I do not think this can reasonably be considered harassing or interfering. The Landlord testified that the term "mental" was used in a state of frustration over so many issues with the Tenants. He also testified that he was exhausted, with a newborn baby at home and he admitted that it was inappropriate to use the term. There was no evidence led to support that there was any impact suffered as the result of this comment and it was not an ongoing issue. Accordingly, this portion of the claim is dismissed.
33. Based on the evidence before me, I am not satisfied that the Tenants led sufficient evidence that the Landlord interfered with the Tenants regarding the tree removal. I am satisfied, based on the evidence before me that the Landlord arranged for tree removal service when the Tenants requested it in August 2021. I accept the Landlord's testimony that the company had them on a wait list which took some time. No evidence was led to support that the Tenants suffered any impact due to the delay of the tree removal and the Tenants testified that there was no damage incurred. Therefore, this portion of the Tenant's application is dismissed.

34. Based on the evidence before me, I am not satisfied that the Tenants led sufficient evidence that the Landlord interfered with the Tenants by removing a gate on the property. The Landlord testified that he did not remove the fence, that he believes the upstairs tenant removed it, but that the Tenants immediately put up a piece of chain link fence which they removed when they moved out of the unit. There was no evidence to support the out-of-pocket costs claimed and the Tenants have possession of the chain link fence in any event. This portion of the application is therefore dismissed.
35. Based on the evidence before me, I am satisfied that the Landlord interfered with the Tenants as a result of a flood in the bathroom on September 22, 2021 and October 3, 2021. The evidence before me demonstrates that the issue occurred after significant rainfalls on September 22, 2022 and October 3, 2021. The evidence was that a contractor attended to address the issue on October 16, 2021. Meantime, the Tenants had to clean up the water with towels on two occasions over a two-week period and had to wait for the issue to be repaired. The inconvenience of water in the bathroom on two occasions in a span of 10 days and the repair taking about 2 additional weeks, in my view rises to a level of substantial interference to which I find that an abatement of 5% is reasonable. I say this because there was no evidence that water leak continually in the bathroom over that period of time, or that the bathroom was in any way inoperable or inaccessible. Rather, there were two isolated incidents similar in nature on the stated dates. Therefore, I find that a 5% rent abatement reasonably represents the interference with the reasonable enjoyment of the unit by the Tenants over the stated 3-week period. There was no evidence led to support that the issue recurred after the repair of October 16, 2021 and therefore, the abatement shall be limited to one month.
36. For the reasons given, there shall be a 5% rent abatement for one month for the flooded bathroom issues between September 22, 2021 and October 16, 2021. The total amount of abatement shall be \$65.00. The balance of the Tenants' application is dismissed.

It is ordered that:

1. The Landlord shall pay to the Tenants \$65.00 which represents an abatement of rent for the flood in the Tenants' bathroom.
2. The Landlord shall pay to the Tenants \$48.00 for the cost of filing the application.
3. The total amount the Landlord owes the Tenants is \$113.00
4. The Landlord shall pay the Tenants the full amount owing by December 8, 2023.

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5. If the Landlord does not pay the Tenants the full amount owing by December 8, 2023 the Landlord will owe interest. This will be simple interest calculated from December 9, 2023 at 7% annually on the outstanding balance.

November 27, 2023

Date Issued

Donna Adams

Member, Landlord and Tenant Board

Head Office: 777 Bay Street, 12th Floor Toronto Ontario M5G2E5

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

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