



Order under Section 31 Residential Tenancies Act, 2006

Citation: Nanikova v Samsair, 2023 ONLTB 71776

Date: 2023-11-27

File Number: LTB-T-017012-22

In the matter of: 522, 39 NEW DELHI DRIVE
MARKHAM ON L3S0E1

Tenant

Between: Alina Nanikova

And

Landlord

Sharon Samsair

Alina Nanikova (the 'Tenant') applied for an order determining that Sharon Samsair (the 'Landlord') entered the rental unit illegally.

This application was heard by videoconference on October 5, 2023.

The Landlord and the Tenant attended the hearing.

Determinations:

1. As I stated at the hearing of this application, and for the reasons that follow, I am satisfied that when the Landlord entered the rental unit on March 18, 2022, she breached s. 25 of the *Residential Tenancies Act, 2006* (the 'Act').
2. With respect to remedy, the Landlord is ordered to pay to the Tenant \$897.53 for abatement of the rent, \$100.00 for compensation for possessions disposed of, and the Tenant's cost of filing the application.

THE LEGAL ISSUE – WHY IS THIS AN ILLEGAL ENTRY?

3. The relevant provisions of the Act are found in sections 25, 26, and 27. Section 25 says that entries into a rental unit are not permitted except in accordance with either section 26 or 27.
4. Section 26 permits entries without formal notice in some circumstances like where the tenant consents at the time of entry, or where there is an emergency that makes immediate entry necessary. Where notice of termination has been given a landlord is only required to make reasonable efforts to inform the tenant of an entry to show the unit to a prospective tenant and formal 24 hours notice is not required. None of the provisions of section 26 apply to the facts here.

5. Section 27 sets out when and how a landlord is to give written 24 hours notice of the intent to enter. There is no dispute that the Landlord did not give notice of entry in accordance with s. 27.
6. What happened here is that the Landlord entered the rental unit to clean it out in preparation for re-renting. It was not wholly unreasonable for the Landlord to think that would be okay as she had received a text message from the Tenant saying she had moved out after the Tenant booked and used the moving elevator on March 12, 2022, and the Tenant cancelled the hydro effective March 14, 2022. (As the Tenant was responsible for hydro under the tenancy agreement, she should not have cancelled it until March 31, 2022.)
7. But the Tenant had given notice to terminate for March 31, 2022, had paid the rent up to March 31, 2022, and still had one set of keys. She had also sent texts messages to the Landlord After March 12, 2022, asserting her right to possession until March 31, 2022, and indicating her intention to return to the unit to finish cleaning after the bulk of her move was done.
8. Therefore, the tenancy had not yet terminated. Despite the Tenant's mixed message behaviour there was no implied agreement to terminate prior to March 31, 2022. The tenancy terminated by valid notice of termination effective March 31, 2022. That means the Tenant legally had the right to possession of the rental unit at the time of entry, and the Landlord should have complied with the requirements for notice of entry contained in s. 27. As a result, the Landlord breached section 25 of the Act on March 18, 2022.

REMEDY

9. The real dispute here is with respect to what the Landlord did or did not do when she entered to clean the unit. The Tenant says the Landlord did not simply clean; she threw away many of the Tenant's remaining possessions. The Landlord disputes the Tenant's description of what remained in the rental unit and denies disposing of all of the possessions the Tenant claims.
10. The Tenant's application seeks abatement of the rent, return of possessions, compensation for disposed of possessions in the amount of \$2,000.00, an administrative fine, and costs.

Abatement of the Rent

11. Abatement of the rent is a contractual remedy. It represents the idea that rent is paid in exchange for a bundle of goods and services and where those goods and services are not being received, the rent should be abated proportional to the difference between what is being paid for and what is being received.
12. Here, the Tenant was paying for the right to privacy and exclusive possession of the rental unit and got neither. She is entitled to some abatement of the rent.

13. In terms of quantum, what the Landlord essentially did on March 18, 2022, was to go back into possession of the rental unit albeit without actually changing the locks. She wrongly assumed the unit was hers again to do with as she wished and acted accordingly. She cleaned it, initiated repairs, and disposed of items she considered to be garbage left behind. In other words, the unit was no longer the Tenant's even though she was paying for it. Given that, it seems to me that a reasonable abatement of the rent would be 100% of the rent charged for the period March 19 to March 31, 2022, which is calculated as follows:

$$13 \text{ days} \times [\$2,100.00/\text{month} \times 12 \text{ months}/\text{year} \div 365 \text{ days}/\text{year}] = \$897.53.$$

14. With respect to the request for abatement, the application includes in that request an amount of \$400.00 which represents a refundable key deposit. The Landlord repaid the key deposit to the Tenant when the final set of keys were returned on March 31, 2022. So that amount shall not be ordered.

The Request for an Order for Return of Possessions

15. With respect to the request for an order for the return of the Tenant's possessions, the Landlord did not retain any of the Tenant's possessions so no order can issue.

Compensation for Disposed of Items

16. The most contentious issue between the parties is with respect to the Tenant's claim for compensation for disposed of items.

17. The Tenant's application sets out a total claim of \$2,000.00 but the break down in the application only totals \$1,995.00 for disposed of or damaged items as follows:

- Wedding skirt \$700
- 2 shelves on the wall \$120
- 2 sets of sound isolation panels \$450
- Lights around the panels \$80
- Bed frame \$300
- Dolly \$100
- Chair \$40
- Carpet for the entrance \$20
- Hangers in the closet \$30
- Filter \$105
- Big toy bear \$50

18. During the course of the hearing the Tenant asserted other items were missing and the majority of her evidence with respect to lost items concerned possessions not listed in the application. As the application was never amended to include those additional items, the Board does not have the jurisdiction to deal with them. The only listed items the Tenant actually led evidence about are the wedding skirt and the wall shelves.

19. The Landlord says she did remove the wall shelves and disposed of them because they were broken and hanging off of the wall. The Tenant does not dispute they were broken and the texts between the parties support that. No evidence was led as to what the value of the broken shelves is, and absent some evidence in that regard I am not prepared to guess. As a result, I decline to exercise my discretion and order any amount for the broken shelves.
20. That leaves the wedding skirt. This item raises questions of credibility and onus.
21. The Tenant says there were boxes left in the den that contained items from her wedding including two wedding dresses. The Landlord says there were empty boxes on the balcony she disposed of, but she did not find any box with wedding clothes and there were no boxes left in the den. Those differences in the parties' testimony is why this is a credibility issue.
22. Because this is the Tenant's application, she has the overall burden of proof. Further, the Landlord cannot prove a negative. So to succeed on a claim for the wedding skirt the Tenant must lead enough evidence to establish that it is more likely than not that the wedding skirt was in the unit on March 18, 2022, and disposed of by the Landlord.
23. In this regard the most helpful evidence before the Board is the contemporaneous text messages exchanged between the parties.
24. On March 18, 2022, the Landlord texted the Tenant saying she had the unit cleaned, is having it painted and the carpets removed. She asks the Tenant to return the rest of the keys. The Tenant replies the same day asking: "what happened with my stuff in the unit?". She also says she cannot yet return the keys because she is expecting important mail and asks the Landlord "Why are you kicking me out already? I got it until April, no?" The Landlord replies it is okay about the keys, and "Your stuff is there".
25. On March 23, 2022, the Tenant returned to the unit and the parties exchanged the following texts:

Tenant: Where is my stuff? I'm here. And nothing is here

Landlord: Please check in kitchen cabinet net (*sic*) to stove

Landlord: Also the coat closet has your comforter

Landlord: Broom in laundry room

Landlord: ??

Landlord: All the boxes on the balcony was (*sic*) empty and broken. Went to the recycling

Landlord: What other stuff are you looking for?

Tenant: 2 shelves on the wall / wedding skirt / weals (*sic*) for the bed/ Etc

Landlord: A package was delivered today and it's in the unit

Landlord: Shelves got broken trying to take down to patch the wall

Landlord: As for wedding skirts I don't know anything about that

Tenant: my vases..

Landlord: 2 Vases in bathroom

26. Arguably, these texts support both parties' version of events. The Tenant's texts specifically refer to the wedding skirt. The Landlord's texts deny seeing anything that could be a wedding skirt.
27. But after that sequence of events there was an exchange about the cleaning company.
28. A few days before March 18, 2022, the Landlord had contacted the Tenant about the Tenant cleaning the unit and told her she had received a quote for \$160.00. The Tenant replied that she could not afford that and would clean the unit herself. So when the Tenant went to the rental unit on March 23, 2022, she assumed the Landlord's cleaning company was responsible for removing things from the unit.
29. After the text exchanges from March 23, 2022 set out above, the Tenant sent a text asking the Landlord what company cleaned the unit, and could the Landlord contact them to find out what had happened to missing items. The Landlord texted backing saying she does not steal and never would and she would "call the cleaning company".
30. In actual fact the Landlord never called the cleaning company because there was no cleaning company. The Landlord had done all of the work of clearing out the unit herself. The Landlord lied to the Tenant about it. When asked at the hearing why she would lie to the Tenant in a text like this the Landlord could not offer any rational explanation. She says she does not know why she did it.
31. I would agree with the Tenant that this problem with the text exchanges about the cleaning company suggests the Landlord was not being entirely truthful when the Tenant started inquiring about possessions the Tenant says she left behind in the rental unit. That casts doubt on the Landlord's testimony that she did not throw anything out except broken shelves and empty boxes.
32. In addition, given that the earliest of the text messages refers to the wedding skirt, I take that as corroboration of the Tenant's evidence that a wedding skirt went missing as a result of the Landlord's clearing out the unit.
33. Therefore, I am satisfied it is more likely than not that the Landlord disposed of the Tenant's wedding skirt.
34. That leaves the question of the amount of compensation the Tenant is entitled to for the wedding skirt. And that issue raises concerns about the Tenant's credibility. I say this for the following reasons.
35. Although the texts and the application refer to "a wedding skirt", at the hearing before the Board the Tenant claimed that what was actually missing was two complete wedding dresses along with multiple expensive items that were in the same boxes as the wedding dresses including a polo shirt, and expensive cologne from Holt Renfrew. She also led evidence with respect to boxes and boxes of brand new cosmetics which she was re-selling for profit, and shoes, boots and a shoe rack.

36. The Landlord says there was no mention of these other items in any communication with the Tenant prior to the Tenant loading documents related to these items into Tribunals Ontario's Portal ('TOP') shortly before the hearing. The Tenant does not deny that or explain why that is so.
37. The Tenant also does not deny that the invoices for the boxes of cosmetics she was suddenly asserting the Landlord disposed of were purchased in 2020 and 2021. When asked about this she asserted that some were sold in the intervening two years but many were still in the unit but she cannot say how many.
38. The Tenant also offers no explanation at all as why none of these expensive items she actually has receipts for and/or photographs of are not mentioned in the texts or in the application.
39. On the other hand, the Tenant led no evidence at all with respect to the other items actually listed in her application like the isolation panels, lights, bed frame, dolly, chair, the carpet at the entrance, hangers, the filter and the toy bear. And no explanation was offered as to why the Tenant would refer to "a wedding skirt" when what she apparently meant was two complete wedding dresses.
40. In other words, the Tenant's own evidence suggests that the Tenant loaded into TOP documents and photographs of things she could prove she once owned that were at one time in the rental unit, because she wanted as much compensation from the Landlord as possible and could offer no corroboration of evidence of value of the items she actually claimed in the application. That suggests the Tenant is also not being truthful about what was in the rental unit at the time the Landlord cleaned it out.
41. What this means is that I do not believe the documents about the value of the two wedding dresses provided by the Tenant are actually related to the wedding skirt the Landlord disposed of. They may be, but the evidence is insufficient to establish it is more likely than not that they are.
42. That means I do not know what the actual or even approximate value of the wedding skirt is. But given that I am satisfied the Landlord actually disposed of a wedding skirt with some value, the Tenant should be entitled to a nominal amount for it which I fix at \$100.00.

Administrative Fine

43. With respect to the request for an administrative fine, I am not satisfied that a fine is necessary or appropriate in the circumstances here.
44. An administrative fine is a remedy to be used by the Board to encourage compliance with the Act and to deter landlords from engaging in similar activity in the future. Administrative fines are not normally imposed unless a landlord has shown a blatant disregard for the Act and other remedies will not provide adequate deterrence and compliance.
45. Although the Landlord breached the Act, her behaviour was not wholly unreasonable given she had some reason to believe the Tenant had moved out and was only intending to

return to clean. In other words, her behaviour is arguably not a “blatant disregard” for the Act. And given all of the circumstances here and the remedies awarded to the Tenant, the evidence does not support the conclusion that an administrative fine is necessary to ensure the Landlord does not repeat the same behaviour in the future. Therefore, I decline to exercise my discretion and order an administrative fine.

The Filing Fee

46. The Tenant incurred costs of \$48.00 for filing the application and is entitled to an order requiring the Landlord to reimburse her that cost.
47. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The Landlord shall pay to the Tenant \$1,045.53 which represents:
 - \$897.53 for abatement of the rent;
 - \$100.00 for the reasonable costs that the Tenant has incurred for property that was disposed of as a result of the Landlord's actions; and
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by December 8, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by December 8, 2023, the Landlord will owe interest. This will be simple interest calculated from December 9, 2023 at 7.00% annually on the balance outstanding.
4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

November 27, 2023
Date Issued

Ruth Carey
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.