Order under the Residential Tenancies Act, 2006

Citation: Barnes v Kopan, 2023 ONLTB 76121
Date: 2023-11-22 **File Number:** LTB-T-073625-22 and LTB-L-028461-22

In the matter of: 1, 15 CAMBRIDGE AVENUE
KITCHENER ON N2B1N5

Tenant

Between: Tina Barnes

And

Landlord

Alexey Kopan

Tina Barnes (the 'Tenant') applied— LTB-T-073625-22—for an order determining that Alexey Kopan (the 'Landlord'):

- Entered the rental unit illegally.
- Substantially interfered with the reasonable enjoyment of the rental unit.
- Harassed the Tenant.
- Interfered with the supply of vital services to the rental unit.

The Landlord applied-- LTB-L-028461-22—for an order that the Tenant pay amounts he claimed were owed by the Tenant.

These applications were heard by videoconference on September 19 , 2022, December 19, 2022 and September 18, 2023. The Landlord and the Tenant attended the hearing. I heard evidence from both the Landlord and the Tenant.

Determinations:

1. The rental unit is on the main floor of a single-family home converted into a duplex.

2. The Tenant occupied the main floor of the residential complex under a tenancy agreement for one year beginning in February of 2021 at a monthly rent of $2,000.00.

3. The Tenant vacated the unit on September 8, 2021. 4. The Landlord re-rented the unit on October 15, 2021.

I. Landlord Application-Dismissed

5. The Landlord's application is based on the assertion that the Tenant owed: (a) $1,644.43 in rent; (b) $7,139.00 to repair damage the Landlord asserted the Tenant caused to the rental unit; and (c) the $201.00 application fee.[1]

6. The Landlord's application is based on the assertion that the Tenant owed: (a) $1,644.43 in rent; (b) $7,139.00 to repair damage the Landlord asserted the Tenant caused to the rental unit; and (c) the $201.00 application fee.[2]

A. Rent Owed by the Tenant—$0

7. The Landlord claimed: (a) rent for April of 2021 ($664.00); and (b) net rent for September and October of 2021 ($1,000.00).

8. The Tenant asserted that she deducted $664.00 from the rent she paid for April of 2021 the cost to dispose of property—construction materials—left at the unit by the Landlord. I note that this is the same property the Landlord claimed that the Tenant 'damaged'.

9. I am satisfied that the Landlord agreed that: (a) the Tenant could dispose of the property the Landlord left at the unit; and (b) the Landlord would pay the disposal cost. As a result, the Tenant owes $0 for April of 2021.

10. The Landlord’s claim for $1,000.00 in rent is based on: (a) the Tenant owing rent for September of 2021 and ½ of October of 2021—$3,000.00; and (b) the Landlord applying a $2,000.00 rent deposit.

11. The Tenant signed a one-year tenancy agreement and vacated the unit before the end of the rental period. This means that she was liable for rent to the earlier of: (a) the end of the period—March of 2022; and (b) the date the Landlord re-rented the unit. The Landlord was,

[1] To the extent that any amendments are required to the L10, I amend the L10 accordingly. The parties argued the application based on the Landlord seeking these remedies as set out in an amendment filed by the Landlord—see DOC-737235.
[2] To the extent that any amendments are required to the L10, I amend the L10 accordingly. The parties argued the application based on the Landlord seeking these remedies as set out in an amendment filed by the Landlord—see DOC-737235.

however, required to mitigate his damages by attempting to re-rent the unit when the Tenant vacated. **[RTA, s. 16]** There was no evidence of any efforts by the Landlord to locate a tenant after the Tenant vacated. For that reason, I am not awarding the Landlord any rent over the $2,000.00 deposit.

B. Damage to the Unit—$0

12. The Landlord's assertion that the Tenant damaged the unit is based on: (a) scratches to the walls; (b) the value of property in the garage of the unit that the Landlord asserts the Tenant destroyed; and (c) the cost of re-seeding and repairing the backyard of the unit based on the assertion that the Tenant damaged the landscaping in the backyard.

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13. A tenant is responsible for the repair of 'undue damage' caused by the wilful or negligent conduct of the tenant. **[RTA, s. 34]**

14. The scratches to the walls of the unit do not, in my view, constitute undue damage. **[See DOC-375579]**

15. The fact that the Tenant threw away property that the Landlord left in the garage does not involve undue damage to the unit—it does not constitute damage at all. Moreover, I find that the Landlord should not have left this property in the garage and consented to the Tenant disposing of the property.

16. The Landlord has not, in my view, established that the Tenant caused undue damage to the landscaping in the backyard. I am satisfied that the Landlord either authorized or acquiesced to the Tenant making any changes that she made to the backyard. The pictures filed by the Tenant indicate that, if anything, the Tenant improved the condition of the backyard.

C. Filing Fee—$0

17. The Landlord is not entitled to be reimbursed the filing fee.

II. Tenant Application—$1,053.00

18. The Tenant asserted that the Landlord: (a) entered the rental unit illegally; (b) substantially interfered with her reasonable enjoyment of the unit; (c) harassed her; and (d) interfered with the supply of vital services to the unit.

19. In terms of a remedy, the Tenant requested[3]: (a) a rent abatement of $5,600.00; (b) a rent differential amount of $8,400.00; (b) moving expenses of $386.22; (c) $711.90 for temporary living accommodations; and (d) $800.00 for improvements the Tenant claims were made to the backyard of the unit. The Tenant also asked that the LTB order: (a) the Landlord to pay an administrative fine; and (b) that the Landlord the complex is a legal duplex.[4]

A. Rent Abatement—$1,000.00

20. The Tenant's request for a rent abatement is based on: (a) $2,000.00 for illegal entry and harassment; (b) $500.00 for one month of not having full access to the garage of the unit; (c) $2,100 (15% for seven months) based on the Landlord actively preventing the Tenant from enjoying the unit; and (d) $1,000.00 representing two weeks of rent the Landlord asserted she owed as a result of vacating the unit before the end of the period of tenancy.

21. An abatement is a monetary award expressed in terms of a portion of past or future rent.

22. A rent abatement is meant to compensate the tenant to the degree that the tenant was deprived of what was bargained for or what is prescribed by legislation or minimum housing standards. It is only when a tenant is completely deprived of all of the benefits of a tenancywhere the rental unit in uninhabitable-that a 100% abatement is appropriate. **[See 22001839 (Re), 2022 ABRTDRS 15 (CanLII)]**

23. As noted by the Vice Chair in *TST-56138-14 (Re)* **[2015 CanLII 3162 (ON LTB)]**, '[a]batement of rent is a contractual remedy based on the principle that if you are paying 100% of the rent then you should be getting 100% of what you are paying for and if you are not getting that, then a tenant should be entitled to abatement equal to the difference in value.'

24. In determining the appropriate abatement on a T2 application, the LTB will consider, among other things:

    (a) what percentage of the 'package' of shelter and services the landlord contracted or was otherwise obliged to provide was not available to the tenant;

[3] To the extent that any amendments are required to the T2, I amend the T2 accordingly. The parties argued the application based on the Tenant seeking these remedies as set out in the amendments filed by the Tenant—see DOC-373235 and DOC-558875.

[4] The assertion by the Tenant that she was required to give 60 days' notice is not technically correct. A tenant must give 60 days' notice to terminate at the end of a rental period: see RTA, ss. 47, and 44(3) and (4).

(b) the length of time the problem existed and the severity of the situation in terms of its effect on the tenant;

(c) whether the tenant is wholly or partially responsible for the issues; and

(d) whether the tenant hindered or interfered with the landlord's efforts to address the problem.

25. The ultimate objective is to grant a fair abatement considering all of the circumstances.

26. In *Biltmore Terrace Apartments* v. *Nazareth* **[[1997] O.J. No. 1881 (Gen Div)]**, the Court said:

It is always difficult to arrive at a proper amount or percentage by way of abatement. There is no magic formula. What is appropriate in each case will depend on the circumstances, including the amount of rent, the age and general condition of the premises, the nature and degree of the no-repair, and its duration, the efforts of the Landlord to inspect, the cooperation or otherwise of the Tenant in that regard, and the efforts made by the Landlord to rectify the defect.

27. Similarly, in *Offredi* v. *751768 Ontario Ltd.* **[1994 CanLII 11006 (ON SCDC)], the Court said that there is no mathematical way** to determine an appropriate abatement.

28. In determining what abatement to award, the LTB will consider the impact on the average tenant or the impact a reasonable person would expect this problem to have on a tenant. If the tenant has a particular susceptibility to the problem, the landlord can only reasonably be liable to the tenant for a more significant abatement if it can be shown that the landlord knew of the particular circumstances of the tenant.

29. Considering the circumstances of this case, I find that an abatement of $1,000.00 is appropriate to compensate the Tenant.

i. Illegal Entry—$0

30. There was a door between the garage and the basement unit. That is how the tenants in the lower unit accessed the electrical panel for their unit. The Tenant locked the door from the garage to the basement unit.

31. The Landlord's evidence was that he asked for 'general' access to the garage and the electrical panel and the Tenant refused. That was the Tenant's right. As noted above, the

tenancy agreement gives the Tenant the garage and, in my view, the Tenant was entitled to require that the Landlord give a notice of entry each time he wished to access the garage.

32. The Tenant's assertion of illegal entry involved a situation where a contractor hired by the Landlord was given an entry code for the garage, but the code had been changed by the Tenant such that the contractor was not able to enter the garage. This, in my view, is not an illegal entry because no one actually entered the rental unit. If I am incorrect, I find the Tenant is not entitled to any compensation based on what happened. There was no interference with the Tenant's privacy or personal security.

ii. Access to the Garage—$500.00

33. The applicable tenancy agreement specifically identifies the garage as included in the unit for which the Tenant was paying. **[DOC-426633]**

34. I find that the Landlord left property behind in the garage and in a shed in the backyard.

35. I am satisfied and find: (a) the Tenant placed significant value on having a garage so that she could engage in woodworking; and (b) the Landlord was aware of the importance of the garage to the Tenant and that by failing to remove his property from the garage he was depriving the Tenant of the full use and enjoyment of the unit for which she was paying him $2,000.00 per month. For these reasons, I am granting the Tenant's request for a $500.00 abatement based on not having full use of the garage for two months.

iii. Substantial Interference/Harassment—$500.00

36. The Tenant's assertions that the Landlord substantially interfered and harassed her are based on the assertions that the Landlord: (a) threatened to sell the house; (b) threatened to bring her to the LTB to recover rent that the Tenant asserted that she did not owe; (c) made false assertions about what the Ontario Building Code permitted or did not permit, etc. The Tenant asserted that she had panic attacks as a result of the e-mail interactions with the Landlord.

37. The RTA does not include a definition of 'harass', but the term has been interpreted to mean a course of vexatious conduct that is known or ought reasonably to be known to be unwelcome. **[See, for example, *Toronto Community Housing Corporation* v *Pac*, 2021 CanLII 146690 (ON LTB)]** I am satisfied that the conduct of the Landlord constituted

harassment and that, in harassing the Tenant, the Landlord substantially interfered with the Tenants reasonable enjoyment of the unit.

38. In terms of a remedy, I think that an abatement is appropriate, but the amount requested—15%—is excessive. In my view, a lump-sum abatement of $500.00 is more appropriate. A

lump-sum reflects, in my view, that the actions and conduct of the Landlord, while they interfered with the Tenant's enjoyment of the unit, were not a daily occurrence.

39. While I appreciate that the Tenant may, as a result of her personal circumstances, have been impacted by the Landlord's communications more than an average tenant—See DOC558876—there was no evidence upon which I could reasonably conclude that the Landlord was aware of the Tenant's particularly circumstances in terms of how she would be impacted by his communications.

iv. Two Weeks of Rent—$0

40. The Tenant's claim for two weeks of rent is effectively addressed by my determination that the Landlord is entitled to retain the Tenant's deposit but to no other rent-a tenant is not entitled to a rent abatement for a period for which the tenant is not required to pay rent.

B. Improvements to Backyard—$0

41. The Tenant's evidence was that she had 'blanket' permission to do work in the backyard but conceded that there was no agreement that she would be paid for any work that she did. The Tenant's assertion is that, since she was forced to move out of the unit, she should be compensated for her efforts, which she asserts increased the value of the Landlord's property.

42. I do not think that a tenant can recover the value of improvements that are voluntarily made to a unit without the promise of compensation or reimbursement. While the LTB has jurisdiction on a T2 application to 'make any order that it considers appropriate' **[RTA, s. 31(1)(f)]**, I do not think that jurisdiction is broad enough to compensate a tenant for work voluntarily done to a rental unit.

C. Rent differential, Moving Expenses and Cost of Accommodations—$0

43. Subsection 31(2) of the *Residential Tenancies Act, 2006* says:

> ***31*** *(2) If in an application under any of paragraphs 2 to 6 of subsection 29 (1) it is determined that the tenant was induced by the conduct of the landlord, the superintendent or an agent of the landlord to vacate the rental unit, the Board may, in addition to the remedies set out in subsection (1), order that the landlord pay a specified sum to the tenant for,*

(a) all or any portion of any increased rent which the tenant has incurred or will incur for a one-year period after the tenant has left the rental unit; and

(b) reasonable out-of-pocket moving, storage and other like expenses which the tenant has incurred or will incur.

44. For the Tenant to be entitled to a rent differential or out-of-pocket expenses, she must have been induced to vacate the unit by the conduct of the Landlord.

45. The LTB has found that a tenant was 'induced' to vacate a rental unit where the conduct of the landlord has made the unit uninhabitable. **[See *TNT-27958-12 (Re)*, 2012 CanLII 30122 (ON LTB)]** In assessing a situation faced by a tenant, the LTB considers how the situation would impact an ordinary tenant.

46. While I am satisfied that the situation at the rental unit was not what the Tenant expected, I am not satisfied that an ordinary tenant would have found the situation so intolerable as to make the unit uninhabitable.

47. Consequently, the Tenant is not entitled to compensation under subsection 31(2).

48. I note that the Tenant did not move to new rental accommodations when she left the unit and would not have been entitled to a rent differential, even if I had found that she was induced to vacate the unit.

D. Administrative Fine—None

49. The Tenant asked that an administrative fine be imposed based on the Assertion that the Landlord's application was retaliatory and amounted to harassment.

50. An administrative fine is a remedy the LTB uses to encourage compliance with the RTA and deter landlords from engaging in similar activity in the future. This remedy is not generally imposed unless a landlord blatantly disregards the RTA and other remedies available under the RTA will not provide adequate deterrence.

51. While the conduct of the Landlord was far from ideal, I see no basis to impose an administrative fine. In my view, the Landlord's application based on unpaid rent was not purely retaliatory. There is, therefore, no basis to make an order intended to act as a deterrent or motivate compliance.

E Other Remedies—None

52. I am not ordering that the Landlord establish that the complex is a legal duplex. That is an issue between the Landlord and the municipality over which the LTB does not have jurisdiction.

F. Filing Fee—$53.00

53. The Tenant is entitled to recover the %53.00 filing fee from the Landlord.

G. Vital Services

54. The Tenant conceded that the Landlord did not *per se* interfere with her hot water supply and her assertions related to maintenance issues with the water system. The Tenant did not, however, file a T6 application asserting that the Landlord had breached subsection 20(1) of the RTA in connection with the water system.

It is ordered that:

1. LTB-L-028461-122 is dismissed.

2. The Landlord shall pay to the Tenant $1,053.00.

3. If the Landlord does not pay the Tenant the full amount owing by December 3, 2023, the Landlord will owe interest. This will be simple interest calculated from December 4, 2023 at 7.00% annually on the balance outstanding.

November 22, 2023
Date Issued

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E. Patrick Shea
Vice Chair, Landlord and Tenant Board

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