



Order under Section 31 Residential Tenancies Act, 2006

Citation: Huang v Gao, 2023 ONLTB 74363

Date: 2023-11-20

File Number: LTB-T-073562-22

In the matter of: 7 Pender Cres
Scarborough ON M1T2M8

Between: Gengxi Huang Tenants
Can Xiao

And

Lanchao Gao Landlord

Gengxi Huang and Can Xiao (the 'Tenants') applied for an order determining that Lanchao Gao (the 'Landlord') and the Landlord's agent harassed, obstructed, coerced, threatened or interfered with them, entered the rental unit illegally, substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household and withheld or deliberately interfered with the reasonable supply of a vital service that the Landlord is obligated to supply under the tenancy agreement. (T2 application).

This application was heard by videoconference on July 6, 2023. The Landlord's superintendent C. Chen, Landlord's legal representative R. Yu and the Tenants attended the hearing.

Determinations:

1. As explained below, the Tenants proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay a fine to the LTB in the amount of \$1,600.00 and the Landlord must pay the Tenants \$45.00 for their costs to file the application.
2. The Tenants moved into the unit May 19, 2019 and they moved out of the unit February 1, 2020.

Illegal entry

3. The Tenant GH testified that the Landlord's Superintendent (CC) who is the daughter of the Landlord, entered the rental unit illegally on a weekly basis. He testified that CC would arrive,

mostly unannounced several times per week to check mail and sometimes visit the men living in the lower level of the rental complex. He testified that most often, CC was dropped off by a person who would pick her up within an hour, to two or three hours after dropping her off. He testified that CC typically entered via the main entrance to the unit and would, on occasion, sit in their living area to wait for her ride to pick her up. He testified that they asked CC several times to give them notice if she was coming or use the side door entrance which leads to the lower level. He testified that her response was to barrage the Tenants with profanity, citing that she can do what she likes as she is the Landlord, and making derogatory comments toward the Tenants about their financial status. The Tenants did not log all dates of entry, however GH had records of CC entering the unit on November 15, 2019 without notice after 8 pm. On November 21, 2019, GH testified that he discovered the Landlord in their unit in the middle of the night, between 2:30 and 3:00 am. The Landlord was at the main entrance of their unit in her pyjamas smoking with the main door open. GH testified that the incident startled him a great deal. They later realized that the Landlord had arrived from China and was sleeping in one of the bedrooms in the lower level of the complex.

4. The Landlord did not attend the hearing and the superintendent CC denied entering the unit without notice.

Substantial interference, harassment, threats

5. The Tenant HG testified that the harassment and interference began in September 2019. On September 17, 2019, CC sent a message to the Tenants demanding that they remove an item out of the sink in their unit and to be more mindful of their electricity usage. He believes that CC had entered their unit unlawfully on this date, otherwise, she would have no way of knowing what was in their kitchen. He testified that they received multiple text messages from CC which were aggressive and insulting in nature.
6. HG testified that when the Landlord showed up in November 2019 she began to harass the Tenants to move out of the unit. She did this verbally and by phone on at least 4 occasions over a two-week period that the Landlord was present at the rental complex. He testified that the Landlord threatened them by stating "I have ways of making you change your mind about moving". This caused the Tenants to live in fear because they were new to Canada and did not fully understand their rights as tenants. Shortly thereafter, construction began in the lower level. The work was done by one of the occupants in the lower level, WJ, who is related to the Landlord and is the on-site property manager. HG testified that the construction started late November with no notice to them and went on for the duration of their tenancy. There was daily noise of saws, banging, drilling, etc., and a lot of dust. Construction occurred daily, all day and often into the evenings. This continued right up to the date the Tenants moved out of the unit. He testified that there was an altercation with WJ when the Tenants complained about the renovation noise to the Landlord and the fact that they had no heat. GH testified that WJ showed up banging on their bedroom door on January 14, 2020, angry at them for calling 311 about the heat issue. GH testified that WJ was verbally aggressive

and they found this intimidating. GH testified that they ultimately decided to move out of the unit because of the harassment, lack of heat and disruption from the renovations.

7. The Tenant CX also testified to the harassment, that CC was very rude and used abusive language toward them. She testified that CC told them to move if they didn't like it there and demanded rent earlier than the due date. She testified that the construction noise was very bothersome, often going into the late evening, after 10 pm. The Tenants entered audio and video evidence of some of the noise they encountered during the renovations.
8. The Landlord's superintendent CC denied mocking the Tenants about their financial status. She testified that she sent reminders about saving energy in the unit but never harassed or used abusive language toward the Tenants. She denied asking for rent before the due date. She also denied refusing to address issues raised by the Tenants. She testified that she relayed all concerns of noise, maintenance, including the heat issues to the property manager. She testified that the Tenants were advised in advance of the renovations starting and that efforts to minimize inconvenience for Tenants included hanging the plastic cloths to keep dust contained in the lower level.
9. The Landlord's property manager, WJ testified that he lives in the lower level of the rental complex. He testified that he started doing minor renovations in November 2019 for the Landlord. He testified that he typically worked between 10 am and 7 pm, 5 or 6 days a week. He testified that he set up plastic sheeting and protective cloth to separate the Tenant's unit from the area under renovation. He testified that his work did not produce significant noise on a regular basis and if there was expected noise on a given day, he would notify the Tenants ahead of time. He testified that one other person worked with him and the work lasted about a month. He denied having any disputes with the Tenants. He testified that once the Tenants questioned him about having heat in the house. It was not an argument, just a discussion and he attempted to address the matter.

Vital services

10. The Tenants testified that the unit's temperature was up and down over the winter and always well below 20 degrees Celsius. On January 14, 2020, they had no heat in their bedroom or kitchen. They had called 311 to complain about this issue as it was not being addressed by the Landlord. GH testified that the issue was with regulation of heat throughout the complex due to inadequate ventilation. The heat was kept lower in an attempt to average out the temperature in the property. Some areas are too warm, and some are too cold. This resulted in the Tenants having insufficient heat in their unit. GH testified that WJ did attempt, but was not able to fix the lack of heat issue.
11. The Landlord's witnesses did not dispute the heating issue in the unit.

Analysis

12. Subsection 21(1) of *Residential Tenancies Act, 2006* (the 'Act') states that a landlord shall not at any time during a tenant's occupancy of a rental unit withhold the reasonable supply of any vital service or deliberately interfere with the reasonable supply of any vital service.
13. "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.
14. Section 22 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 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.
15. Section 23 of the Act states that a landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.
16. Section 25 of the Act established a Tenant's right to privacy and states that a landlord may enter a rental unit only in accordance with section 26 or 27.
17. Pursuant to section 26 of the Act landlord is permitted to enter a rental unit without notice: in emergencies; where the tenant consents at the time of entry; where the tenancy agreement requires the landlord to enter at regular intervals in order to clean; and to show the unit to prospective tenants.
18. Subsection 27(1) of the Act states that a landlord may enter a rental unit in accordance with written notice given to the tenant at least 24 hours before the time of entry.
19. Based on the evidence before me and on a balance of probabilities, I find that the conduct of the Landlord and Landlord's superintendent CC constitutes a breach of sections 22, 23 and 27 of the Act.
20. I do not find that the Landlord has breached subsection 21(1) of the Act, which prohibits the Landlord from withholding or interfering with the reasonable supply of heat in the Tenant's unit. The Tenant's evidence is that there was an issue with the heating/HVAC system which is failing to vent heat evenly throughout the property. I accept the Tenant's evidence that in January 2020, there was insufficient heat in their unit and they called 311. However, based on the Tenants' evidence I find that the lack of heat is not as a result of the Landlord deliberately withholding or interfering with the reasonable supply of heat, but rather, as a result of the failure to maintain the heating system. Accordingly, I do not find there is a breach under subsection 21(1) of the Act and this portion of the claim is dismissed.

21. I find that CC and the Landlord interfered with the Tenants' reasonable enjoyment of the unit, harassed and threatened the Tenants and in contravention of sections 22 and 23 of the Act and that this conduct caused the Tenants to move out of the unit. CC testified that she never used harsh or profane language toward the Tenants, however, the evidence before me contradicts this assertion. Text messages entered into evidence clearly demonstrate a very harsh and aggressive tone and at times, with the use of profanity by CC toward the Tenants. I found the Tenants to be forthright and credible in their testimonies. The Landlord chose not to attend the hearing to refute the Tenants' allegations that the Landlord harassed them and threatened to find ways to make them move. Based on the evidence before me and on a balance of probabilities, I am satisfied that the harassment, threats and interference by the Landlord and CC caused the Tenants to move.
22. There was insufficient evidence led by the Tenants for me to determine that CC demanded rent before the due date. I am also not satisfied that Landlord began construction in an effort to force the Tenants to move. I find that it is more likely a coincidence that renovations began about the same time that the relationship broke down. That said, the evidence before me supports that the Tenants dealt with noise and some level of disturbance for the last two months of the tenancy which I find rises to a level of interference with the Tenants' enjoyment of the unit and their ultimate decision to move.
23. I do not find that WJ harassed or threatened the Tenants in contravention of section 23 of the Act. In reviewing the text messages between the Tenants and WJ, I find that the parties reached a level of frustration on both sides over heating problems and renovations, however, the text messages point to the parties being amicable with each other overall. In fact, the parties confirm several times that they do not have an issue with each other. Therefore I do not find that the communications between the Landlord's property manager WJ and the Tenants rises to a level of harassment or threats toward the Tenants.
24. I find that CC unlawfully entered the rental unit without notice in contravention of section 27 of the Act on November 15, 2019 and the Landlord entered unlawfully on November 21, 2019. I also find that on a balance of probabilities, CC entered the unit unlawfully on September 17, 2019 when she ordered the Tenants to move an item from their sink and to turn lights off. While the above were the only exact dates provided, I accept the testimony of the Tenants that there were many additional unlawful entries by CC during the tenancy.

Remedies

25. The Tenants requested that the Board order an administrative fine against the Landlord in the amount of \$1,600.00 and that the Human Rights Tribunal (HRTO) review this matter.
26. As explained to the Tenants at the hearing, the Landlord and Tenant Board (LTB) is a body separate and apart from the HRTO and the LTB has no jurisdiction to refer matters to the HRTO. The Tenants were urged to seek legal advice in relation to Human Rights.

27. This leaves me to consider the Tenants' request for an administrative fine to be ordered. Administrative fines are described in the Board's Interpretation Guideline 16 which states:

An administrative fine is a remedy to be used by the Board to encourage compliance with the Residential Tenancies Act, 2006 (the "RTA"), and to deter landlords from engaging in similar activity in the future. This remedy is not normally imposed unless a landlord has shown a blatant disregard for the RTA and other remedies will not provide adequate deterrence and compliance. Administrative fines and rent abatements serve different purposes. Unlike a fine, a rent abatement is intended to compensate a tenant for a contravention of a tenant's rights or a breach of the landlord's obligations.

28. I find that this is an appropriate case for an administrative fine to promote deterrence. I say this because the Tenants failed to request any other remedies under this Board's jurisdiction, so there is no monetary award to the Tenants other than reimbursement of their costs to file the application. I find such an order to be unlikely to ensure adequate deterrence.

29. In terms of quantum, the Board's Interpretation Guideline says:

In setting the amount of the fine, the Member may consider:

- the nature and severity of the breach
- the effect of the breach on the tenant
- any other relevant factors.

The amount of the fine should be commensurate with the breach

30. In this case, I find the nature and severity of the Landlord's breach to be substantial. CC gave very inconsistent testimony during the hearing in an effort to circumvent the Act. I find that the Landlord and CC took full advantage of the Tenants' lack of information, being new to Canada and unfamiliar with their rights under the Act. This type of behaviour on the part of landlords must be condemned. Given the above and my knowledge of similar cases before the Board, I find the Tenants' request for a fine in the amount of \$1,600.00 to be reasonable in all of the circumstances.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is \$45.00 for the cost of filing the application.
2. The Landlord shall pay the Tenants the full amount owing by December 1, 2023.
3. If the Landlord does not pay the Tenants the full amount owing by December 1, 2023, the Landlord will owe interest. This will be simple interest calculated from December 2, 2023 at 7.00% annually on the balance outstanding.

4. The Landlords shall pay to the Landlord and Tenant Board an administrative fine in the amount of \$1,600.00 by December 1, 2023.

November 20, 2023

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Donna Adams

Member, Landlord and Tenant Board

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

Payment of the fine must be made to the LTB by the deadline set out above. The fine can be paid by certified cheque, bank draft or money order made payable to the Minister of Finance. If paying in person, the debt can also be paid by cash, credit card or debit card.