Order under Section 31
Residential Tenancies Act, 2006

Citation: Glen v Wellesley Parliament Square, 2023 ONLTB 74984
Date: 2023-11-17
File Number: LTB-T-017310-22

In the matter of: PH15, 280 WELLESLEY ST E
TORONTO ON M4X1G7

Tenant

Between: Jarod Glen

And

Landlord

Wellesley Parliament Square

Jarod Glen (the 'Tenant') applied for an order determining that Wellesley Parliament Square (the 'Landlord'):

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.

This application was heard by videoconference on October 4, 2023.

The Landlord's representative Charlie Bobrowsky and the Tenant attended the hearing.

Determinations:

1. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.

Limitation Period

2. Pursuant to section 29(1) of the *Residential Tenancies Act, 2006* ('the Act') no application can be made alleging substantial interference or harassment by a landlord more than one year after the day the alleged conduct giving rise to the application occurred.

3. The Tenant filed the application on March 26, 2022 and as such I can only consider whether the Landlord breached the Act from March 26, 2021 onwards. Any conduct of the Landlord prior to that date will only be considered for context.

4. The Tenant vacated the rental unit on April 3, 2021 and then nearly a year passed before the application was filed. As such I am limited to considering the Landlord's actions between March 26, 2021 to April 3, 2021.

5. The allegations on the application concerning harassment all concern interactions with the Landlord's Agent that pre-date the limitation period. The Tenant also alleges that he was pressured into signing an N11 agreement to end the tenancy, however that agreement was signed March 24, 2021 which is before the limitation period.

6. The only issue within the limitation period is the claim that the Landlord substantially interfered with the Tenant's reasonable enjoyment by engaging in noisy and disruptive repairs to the penthouse floor of the rental complex where the rental unit is located. As such only that claim will be addressed.

The Evidence

7. There was a fire in the rental complex in July 2020. The fire was the result of arson by a third party and was not the fault of either the Landlord or the Tenant. The fire resulted in smoke damage to the entire penthouse floor of the residential complex.

8. The Landlord's property manager Eri Guxholli ('E.G') testified that the Landlord was concerned that the walls on the penthouse floor had smoke and soot damage and as such all the walls needed to be removed and all of the penthouse floor units needed to be reconstructed. Work on individual units required the Landlord to have temporary vacant possession.

9. E.G was not able to state the exact date that the work began on the penthouse floor but stated that the initial clean up started immediately after the fire, the Landlord received permits for the substantive work, and the work on specific units began in stages after the Landlord received vacant possession of a unit. E.G testified that the work needed to be done expeditiously due to the nature of the work.

10. The Tenant testified that the Landlord advised him late January 2021 that significant repairs would need to be done on the penthouse floor. The Tenant testified that the work began in the surrounding units and hallways of the penthouse floor in February 2021 and continued until he vacated April 3, 2021. The Tenant's unit did not undergo repairs until the Tenant vacated.

11. Notice for the work was provided in piecemeal fashion and the Tenant was not given a definitive comprehensive overview. E.G testified that this was because the Landlord was relying on estimates regarding how long the work would take and the estimates had to be updated as new information from contractors came in.

12. The Tenant testified that the noise pollution caused by the repairs was the worst he has heard in his life. The noise included the sounds of constant banging, sawing, and heavy machinery being operated. The Tenant was unable to say with certainty how often construction was being done. The Tenant testified that it was scheduled on weekdays, but he thought it also happened on weekends as well. The Tenant testified that the construction severely affected his mental health and the Tenant had to take a leave of absence from work as a result.

13. E.G testified that construction workers took measures to minimize the noise, including using tools that damper noise, and limiting the hours of high-level noise.

14. E.G testified that the Landlord had no intention of evicting any tenants based on the construction and that all tenants were offered other units with no changes in their lease terms or in the alternative to be temporarily rehoused while the construction on their units took place. E.G testified that the Tenant was approached with these options at the end of January 2021 but the Tenant did not accept and chose to terminate the tenancy.

15. There was one unit that the Tenant was interested in moving into, but when the Tenant was temporarily unavailable the Landlord gave the unit to another tenant that also needed to be relocated. The Tenant was not satisfied with the other units offered by the Landlord and disputes that the Landlord ever offer to temporarily rehouse him and then allow him back into his unit. However, email correspondence between the parties supports that the Landlord did make that offer. On March 12, 2021 E.G sent an email to the Tenant that said the following:

> "Thank you for understanding that due to the damages caused to the building in the arson fire incidents of july 2020 unfortunately we have to accommodate a number of tenants to alternative units. Either a permanently or b temporarily until your current unit is ready to be re-occupied.
>
> In our discussions as recent as 3 days ago we have outlined the options we are prepared to offer you in return for either releasing the already occupied unit to us or you to be able to move back into unit 3315 upon the remediation work needed to be completed.
>
> When presented with these options even when we showed you the apartments that were newly renovated you had picked one and at that point I wasn't able to reach you to finalize this process. You were made aware that it was not just you that was asked to relocate as the entire ph floor had to be relocated.
>
> Your suggestion was that you would rather move to a different building to which we advised if that's and option you think is more convenient for you then we agreed upon it.
>
> Nowhere in our conversations did I say to you that you have to leave the building, in fact every attempt has been made to ensure co-operation between us to accomplish the facilitation of the remediation work that is required to be commenced. As we have done with your fellow neighbours and continue to meet this goal.
>
> Please feel free to reach out to me to discuss this further as per our last conversation it seemed you were misunderstanding our intent in this process. We would be happy to clarify any further questions."

16. The Tenant responded to that email and indicated that he was never given the opportunity to move back into his unit. However, that offer is explicitly mentioned in the Landlord's email and the email invites the Tenant to reach out to clarify any misunderstandings. As

such I find that the offer was made to the Tenant. E.G testified that the Tenant was the only penthouse floor tenant who terminated their tenancy.

17. Once the parties had agreed that the tenancy would terminate the Landlord offered to provide a moving company for the Tenant. However, the Tenant declined to accept that offer as the moving company had poor reviews and the Tenant found them to be unsuitable.

18. The Tenant submits that he should have been served with an N13 eviction notice as that would have entitled him to compensation and outlined his options for him. However, the Landlord had no intention of evicting the Tenant and therefore an N13 notice would not be appropriate in this case.

Analysis

19. This application is based on section 22 of the Act which says that a landlord shall not substantially interfere with the reasonable enjoyment of the rental unit for all usual purposes by a tenant or members of his or her household.

20. Section 8 of Ontario Regulation 516/06 (the 'regulation') applies to any application alleging a breach of section 22 where the interference complained of is a result of the landlord doing maintenance, repairs or capital improvements.

21. The purpose of section 8 appears to be to encourage landlords to do repairs and make capital improvements. It does this by minimising the chance that tenants will be successful in claiming abatement of the rent for disturbances caused by this kind of work.

22. The first threshold set out in section 8 that tenants must address is section 8(3) which essentially redefines what "substantial interference with reasonable enjoyment" means. It says that when the Board is considering whether or not the disturbance caused by capital improvements or maintenance and repairs constitutes a substantial interference:

> (a) the Board shall consider the effect of the carrying out of the work on the use of the rental unit or residential complex by the tenant or former tenant, and by members of the household of the tenant or former tenant; and
>
> (b) **the Board shall not determine that an interference was substantial unless the carrying out of the work constituted an interference that was unreasonable** in the circumstances with the use and enjoyment of the rental unit or residential complex by the tenant or former tenant, or by a member of the household of the tenant or former tenant.
>
> [Emphasis added.]

23. This provision creates a two-part test. The first part is the subjective impact on a tenant of the work being done by the landlord. The second part of this test is an objective one: was

the work done in such a way that the impact was unreasonable given the nature of what was being done?

24. Regarding the first part of the test, I found the Tenant credible and accept that the construction noise negatively impacted him.

25. The second part of this test means that no matter the impact on a tenant of the work done by a landlord, the Board is barred from making a finding that it substantially interfered with a tenant's reasonable enjoyment unless a tenant can establish the work was done in such a way that the impact was unreasonable.

26. On a balance of probabilities, I am satisfied the work was done in a reasonable manner. This is because the work done was necessary. The Landlord had reasonable concerns about smoke damage inside the walls of the penthouse floor resulting from a fire. The Landlord obtained permits to do the work. While I do have some concerns about the piecemeal notice about the work that was given to the Tenant, E.G's explanation that notices had to be served when new information was received from contractors is reasonable, and the Tenant was aware that the project being undertaken was substantial as the Tenant knew the Landlord was trying to remove all tenants from the penthouse floor. The Landlord offered to temporarily move or transfer the tenancy of any tenant affected by the work. However, the Tenant declined those offers. Finally, I found E.G credible in his testimony that that construction workers took measures to minimize the noise, including using tools that damper noise, and limiting the hours of high-level noise.

27. For those reasons I do not find that the Landlord's actions constituted substantial interference with the Tenant's reasonable enjoyment.

It is ordered that:

1. The Tenant's application is dismissed.

November 17, 2023
Date Issued

Amanda Kovats
Member, 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.