



Order under Section 31 Residential Tenancies Act, 2006

Citation: Parsons v Zikek, 2023 ONLTB 72674

Date: 2023-11-14

File Number: LTB-T-065063-22

In the matter of: 5, 53 GLADSTONE AVENUE
ST THOMAS ONTARIO N5R2L7

Between: Corrina (a.k.a. Trina) Parsons Tenant

And

Jordan Zikek Landlords
Jordan Principe

And

Riley Oickle Landlords'
Agent

Corrina (a.k.a. Trina) Parsons (the 'Tenant') applied for an order determining that Jordan Zikek and Jordan Principe (the 'Landlords') and Riley Oickle (the 'Landlords' Agent'):

- altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys.
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.

This application was heard by videoconference on December 19, 2022 and January 27, 2023.

The Tenant, the Landlords and the Landlords' Agent attended the hearing. The Tenant was represented by Nikisha Evans. The Landlords and the Landlords' Agent were represented by Lindsay Branje.

Fred Sharland and Diane Ingram attended as witnesses for the Tenant.

Jeremy Schooley attended as a witness for the Landlord.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities.

2. Therefore, the Landlords must pay to the Tenant **\$15,445.59** for out-of-pocket expenses, costs and general damages.

3. The Tenant's application makes the following allegations:

- Reason 2 – Changed Locks

“The Landlords and the Landlords’ agent changed the locks to my rental unit without giving me replacement keys that denied me access to return after a month.”

- Reason 3 – Substantially interfered with reasonable enjoyment.

“The Landlords’ and their agents’ actions of denying me access to return to my home subsequently substantially interfered with my reasonable enjoyment of my home that resulted in me being made homeless. Their actions compromised my health and safety and caused financial hardships. I was deprived of the basic necessity of shelter.”

- Reason 4 – Harassed, Coerced, Obstructed, Threatened, or interfered.

“The Landlords and their agent coerced me to sign an N11 to leave my unit for one month to perform renovations and later denying me access to return.”

Tenant's Evidence

4. The Tenant moved into the rental unit on December 1, 2018. The monthly rent was \$550.00 inclusive of utilities. She is supported by ODSP and identifies as a person with disabilities, suffering from PTSD, anxiety and addiction.
5. The Tenant testified that on December 21, 2021, an employee of the Landlord, Adam Kitcher, attended her rental unit with the Landlords’ Agent on FaceTime.
6. During discussions with them the Tenant says she was offered \$3,000.00 to move out ('cash for keys') but declined because she did not want to move out because her rent was affordable, and she had nowhere else to go. She was told that renovations were needed, and she would have to move out. She asked to stay in the basement of the building (described as a crawl space) while the renovations were completed but instead, they agreed that the Landlord would pay for her to move into a local hotel and store her belongings in a storage facility for a month. She told the Board that terms of their agreement were noted in pencil on the agreement form and the word 'termination' was crossed out.
7. With these terms in place the Tenant was persuaded to sign the N11 and vacate the rental unit on January 15, 2022. The Tenant requested a copy of the form and although one was promised to her, it was never provided.

8. The Tenant moved out of the rental unit on January 15, 2022, and into a local hotel. After two weeks in the hotel the Landlords' Agent notified her that he had no more funds on his credit card and would not be able to pay for her to stay.
9. When he stopped paying, she was forced to leave the hotel and was given three days to leave. The Landlords also stopped paying for her storage after January 2022.
10. The Tenant testified that on or about February 15, 2022, one month after she vacated her rental unit, she went back to her unit expecting the renovations to be completed. When she tried her key, it did not work. She then called the Landlords' Agent to get the new keys to her unit, he told her to have her lawyer call his lawyer. After that she had no further contact with the Landlords' Agent.
11. After leaving the hotel, the Tenant had nowhere else to go other than to stay with her ex-partner who had a history of violence. When it became unsafe for her to stay there, she bought a tent and set up wherever she could, including at one point the backyard of the residential complex. The Tenant says she continuously checked in on the progress of her unit and spoke to the contactor on site. The Landlords eventually called the police to have her removed from the property. Later the Tenant set up again at the property, expecting her unit would be completed soon; however, one day when she returned, she found her tent and belongings had been removed.
12. The Tenant testified that she was forced to move around throughout the winter and spring and experienced both physical and sexual violence against her while being homeless.
13. At this point the Tenant began seeking help from a legal clinic. She says she was never given the names or contact information for the Landlords and had no way to contact them to see what was happening with her unit. In an attempt to find them she went to city hall to do a title search to find out who the Landlords were. Once she found the names, she contacted the first-named Landlord above and was told that he was not available. The next day she tried again and was told he was no longer at that number.
14. On June 24, 2022 the legal clinic sent a letter to the Landlords by registered mail outlining the Tenant's circumstances since vacating her rental unit. The letter said in part:

“... Ms. Parsons was told by Mr. Oickle that the unit will be renovated, and she will have right to first refusal of which Ms. Parsons stated she noted on the N13 notice. She further stated she requested a copy of the notice of which Mr. Oickle promised but never gave her. She was unable to contact you her new landlord because your contacts were never given to her.”

“Further, Ms. Parsons was not given compensation due to her when a N13 notice is served on a tenant. I am requesting all documents as to why Ms. Parsons needed to leave her home for renovations and not allowed to enter her home six months later. Further, I demand that Ms. Parsons be returned to her home immediately.”

“Mr. Zikek and Mr. Principe, your actions have made Ms. Parsons homeless which is not only a violation of the Residential Tenancies Act, 2006 but also a breach of the Human Rights Code.”

15. The Landlords did not respond to the request stated in the above letter.
16. In October 2022 the Tenant got sick from sleeping outdoors and with the help of the street outreach team she was connected with a worker from the Canadian Mental Health Association (CMHA), placed in a hotel and connected to St. Georges Place where she was assigned a temporary recovery bed. From there she was connected with Diane Ingram – CMA, System Navigation Housing Department with the Housing Prevention Program.

Witness Testimony

17. Diane Ingram is with the Housing Department with CMA. She testified that Ms. Parsons had previously diagnosed mental health issues and told the Board that due to her declined health caused by the conditions she was faced with her medication had to be increased. Ms. Ingram told the Board that the Tenant was currently placed in a group home with a fully funded bed. She indicated that the timeframe that someone is typically given is 60-90 days, however, the Tenant would be allowed to stay until alternative accommodations were found for her.
18. Fred Sharland, a tenant of 53 Gladstone testified that he accepted the Landlord’s offer for “cash for keys” of \$3,500.00. He told the Board that he was paid half upon signing the agreement and would be paid the remaining half when he moved out. He told the Board that when he moved out the Landlords did not pay him the remaining half.

The Evidence of the first-named Landlord

19. The Landlord Jordan Zizek testified that he and Jordan Principe purchased the 4 unit building at 53 Gladstone in St. Thomas on January 5, 2022.
20. He told the Board that he lives in Niagara Region and is an engineer by trade. He stated that he has never been to the property and has never spoken to or met the Tenant.
21. The Landlord stated that this is his second investment property. The property at 53 Gladstone required extensive renovations and although he had no intention for tenants to move back in, he did not serve any eviction notices. It was his testimony that he gave instructions for his Agent to negotiate with the Tenants and he was not made aware of any dispute or agreement with the Tenant prior to receiving the letter. He told the Board that he purchased the building and intended to get vacant possession before initiating the work.
22. The Landlord acknowledges receiving the letter from the legal clinic, but claims he dismissed it because it was not accurate as it referenced him serving an N13 notice, which he did not. However, he told the Board in hindsight he should have responded.
23. When asked under cross-examination when he received the letter that stated the Tenant was homeless, he acknowledged receiving it in June and re-rented her unit in September.

Landlords' Agent

24. Riley Oikle testified that he is a friend of the Landlords and while he is not a partner, he is a real estate consultant who acts as a property manager with a financial interest in the property.
25. He told the Board that they were notified by the City that the building had major issues and needed extensive renovations. It is important to note that a work order or notice was not provided as evidence and Riley Oikle was unable to produce one when asked at the hearing.
26. The Landlords' Agent told the Board that he was given approval from the previous Landlord to have discussions with the Tenants prior to Jordan Zizek and Jordan Principe taking possession of the property. He began discussions with the Tenant on December 15, 2021, and the Landlords took possession on January 5, 2022.
27. He stated that tenants were offered a 'cash for keys' deal and others accepted. He further stated that he was given legal advice to providing an N11 to tenants and no other notices were served.
28. He testified that he sent Adam Kitcher, an employee, to the Tenant's rental unit with the N11 agreement. He explained that while Adam was with the Tenant in her unit he was in Toronto and called on FaceTime. Adam worked for them for a few months and was not at the hearing to provide testimony or be cross-examined.
29. He told the Board that during the conversation with the Tenant he explained that the city required that the unit be repaired, and they came to an agreement to fix her unit. He acknowledges that the Tenant declined the cash for keys but denies that there was ever an agreement for her to move back in. He stated that the agreement was they would pay for her moving costs, accommodations and storage for two weeks. He said she was happy to leave because of the poor condition of the unit. He said he witnessed the Tenant signing the notice in pen and said that no notations were made in pencil. When asked to produce the original N11 notice at the hearing, he submitted that he disposed of it because he didn't think he needed to keep it.
30. They agreed to have the Tenant's items packed and submitted that the Tenant inspected her belongings prior to them being moved to the storage facility.
31. He testified that the storage costs were \$248.59, and the hotel costs for two weeks was \$1,797.84. He also added that because the Tenant was smoking in her hotel room, they had an added damage cost of \$250.00. He denies telling the Tenant that she had to leave the hotel after two weeks because of money, but rather that was what was agreed to.
32. It was his submission that he had no knowledge of the letter sent by the legal clinic and was very surprised when an application was filed because the compensation paid to the Tenant was far in excess of one month's rent.

33. He told the Board that his phone number was given to the Tenant, but only a postal office box was provided as an address.
34. He confirmed that the renovations were completed at the end of August and although the layout stayed the same, the unit was gutted and completely redone, and the locks were changed. The Tenant's unit was re-rented on September 1, 2022, for \$1,375.00 a month.

Jeremy Schooley – Landlords' witness

35. Jeremy Schooley testified that he was the contractor who completed the renovations. He began renovations in January of 2022 and completed late September early October. He told the Board the Tenant's unit was in complete disrepair and the worst of the four units.
36. He testified that the Tenant showed up at the property on a few occasions and put up a tent, he told the Board that he made the Landlords' Agent aware of her visits. He was unsure what occurred after that but confirmed that the Tenant's tent and belongings were gone. He was unable to recall the dates, but recalls it being the May long weekend.

Analysis

37. In a recent decision, *Pinto v. Regan and White v. Regan, 2021 ONSC 5502*, which was about two separate Tenants who signed a N11 agreement to terminate the tenancy on the basis that the Landlord required the rental unit for major renovations; no N13 notice of termination was served, and the Tenants were each compensated. The landlord obtained an eviction order pursuant to s. 77 of the Act. The landlord then refused the tenants' requests to move back into the rental unit after the renovations were complete and both tenants filed set aside motions.
38. Although the *Pinto* decision is about the legal test for setting aside a valid N11 and eviction order based on it, the fact situation that the Court was addressing is very similar to the one here. Part of the Court's reasoning was that the Member on the set aside motion had a duty to consider the validity of the N11s in question. It found that the Board has a duty to scrutinize the real substance of the transactions that took place between the participants and to decipher the "essential facts ... on the day each N11 was signed."
39. The Court then states at paragraphs 38 and 39:

The facts on each appeal suggest that the respondent's intention to obtain vacant possession of each unit on a permanent basis without having to give notice to each appellant under s. 50 was behind each transaction. The real substance of those transactions was not considered by the Member on either motion. Nor did the Member consider if the respondent was acting in good faith when he interacted with each appellant to obtain their signatures on the N11.

The Supreme Court of Canada in *Bhasin v. Hrynew, 2014 SCC 71, [2014] 3 S.C.R. 494*, established the organizing principle of good faith applicable to all contracts. This principle requires the performance of contractual duties and obligations honestly, not capriciously or arbitrarily, and with regard to the legitimate contractual interests of the other party: see

Bhasin, at paras. 63 and 65. The relationship between a tenant and a landlord is contractual in nature and requires that they discharge the obligations they owe to one another in good faith. This duty of good faith includes how the parties conducted themselves toward each other at the end of that relationship.

40. Altogether in considering all of the circumstances, I am sufficiently persuaded to find on a balance of probabilities in favor of the Tenant for the following reasons.
41. The Landlord testified that he purchased the building with the full intention to have vacant possession in order to do major renovations and had no intention for any of the tenants to move back in. While the Landlord claims that he was unaware of his requirement in this circumstance to serve a notice under section 50 of the Act ignorance of the law is not a defence. A landlord is a businessperson, a professional who is selling a product to a customer. At a minimum he or she should be aware that there is law applicable to the relationship and make some effort to become familiar with it and to follow it.
42. I find it very unlikely that the Landlord who admittedly owns another investment property, his partner and their Agent who is a real estate consultant all had no knowledge of their obligations under the Act. The Landlords and their Agent made it very clear that their desire was to negotiate with all of the tenants to move out so they could have vacant possession in order to renovate and ultimately re-rent the units.
43. In this circumstance, the Landlord could, and should have served the Tenant with a notice of termination pursuant to subsection 50(1)(c) of the Act. This notice of termination would then trigger the Landlords' obligation to file an application with the Board and the parties would have an opportunity to appear at a hearing. It would then have been up to the Board to decide whether to terminate the tenancy after hearing evidence and submissions for and against each side.
44. More importantly, a tenant is entitled as a right to move back into a renovated rental unit at the same rent once extensive renovations are complete. (See s. 50(3) of the Act). Further, landlords and tenants cannot agree to waive their rights and obligations under the Act.
45. On the day the N11 was signed the Landlord's Agent was not physically present when the Tenant signed and claims to have made notations with respect to the terms of her moving out. Although he had an employee attend the Tenant's unit, the employee was not present at the hearing to be cross-examined. Therefore, I find that the best evidence with respect to what took place is that of the Tenant. Furthermore, the Landlord did not dispute that a copy was not given to the Tenant when requested and the Landlord or his Agent were unable to produce the original copy of the N11 agreement when asked at the hearing to do so.
46. The very nature of binding agreements means that the terms of the agreement are negotiated in advance, with each party having sufficient time and information to be able to make a conscious, informed choice about whether to enter into the contract. It is inherently unfair to ambush the other party with a previously unseen contract and require or expect that party to sign it without delay, without all of the information necessary to make an

informed choice, and without ensuring the other party has the opportunity to seek advice if they wish to.

47. It is also important to note that while the Landlord said that they didn't pay Mr. Sharland the remaining money that was owed to him because he moved out later than agreed, it is relevant and similar fact evidence that illustrates the Landlords do not intend to honour agreements made with tenants.
48. From the evidence and testimony before the Board I am satisfied that the Landlords and the Landlords' Agent effectively ambushed the Tenant by providing her with an unexpected agreement form and when she didn't accept their 'cash for keys' they gave false and misleading information to the Tenant, and these statements are what led the Tenant to sign the agreement. The Tenant was adamant that she had no intention of ending her tenancy and believed that the Landlords would honour their agreement to pay for her accommodations and storage for one month while the renovations were being completed and then allow her to return to her unit. She had every reason to believe that she would move back into her rental unit at that time.
49. It only stands to reason that the Tenant's version of events are true, as she had nothing to gain by refusing the 'cash for keys' of \$3,000.00 and rather accepting two weeks in a hotel with nowhere to go thereafter.
50. Furthermore, the Landlords' actions after the Tenant moved out of the rental unit further validate their intentions and complete disregard for their actions and the consequences of those actions to the Tenant. The Landlords must have known that the Tenant was homeless given that she returned to the rental unit on several occasions asking when "her" unit would be done, and then began living in a tent behind the residential complex. If that was not made obvious to the Landlords, then they most definitely were aware after receiving correspondence from the legal clinic which clearly stated the Tenant's circumstances as a result of their actions. Nevertheless despite knowing they proceeded to change the locks once the renovations were finished and re-rented the unit for a much higher rent.
51. Given the above, I am satisfied that by persuading the Tenant to move out of the rental unit under false pretenses, without proper notice and denying her right of refusal, the Landlords substantially interfered with the Tenant's reasonable enjoyment of the rental unit.
52. I am also satisfied that the Landlords' behaviour constitutes bad faith and there was no valid agreement to terminate. Pursuant to s.37 a tenancy can only be terminated in accordance with the Act. As there was no valid agreement to terminate, no valid notice to terminate, no Board order terminating the tenancy or declaring the Tenant abandoned the unit, the tenancy continued. Therefore when the Landlords changed the locks on the rental unit and did not give the Tenant replacement keys permitting her to return to the unit once the renovations were done, they breached sections 22 and 23 of the Act. Any reasonable landlord knows or ought to know such behaviour would be most unwelcome to any reasonable tenant. As the Landlords have breached their obligations under the Act, the Tenant's application is granted.

Remedies

53. With respect to remedy, the Tenant's application seeks that the Landlords allow the Tenant to move back into the rental unit; and asks for an order for an administrative fine; replacement costs for property that was disposed of; moving and storage expense; out-of-pocket expenses and general compensation.

Replacement of Personal Belongings

54. When the Tenant vacated her rental unit with the understanding that she would return after the renovations, she left behind patio furniture (\$200.00), a shower head (\$75), a bathroom vanity light (\$75.00) and a portable dishwasher (\$300.00). After her personal items were packed and moved to storage, the Landlords disposed of the above items belonging to the Tenant. Although the Tenant was unable to supply receipts for these items and given her homelessness, I believe these are reasonable replacement cost for the items listed. Therefore, I find that the Landlords must pay the Tenant **\$650.00**, which is the reasonable cost for the Tenant to replace property that was disposed of by the Landlords.

Out-of-pocket Expenses

55. The Tenant claims out-of-pocket expenses in the amount of **\$5,300.00** for groceries, restaurant meals, clothing, a tent, bedding and basic necessities. Some receipts were provided, however given that the Tenant was homeless for the better part of a year and had nowhere to store or cook food these are reasonable expenses. The Landlords must pay the Tenant this amount.

Moving and Storage Expenses

56. Pursuant to section 31(2)(b) of the Act a tenant is entitled to reasonable out of pocket moving, storage and other like expenses which the tenant has incurred or will incur where the Board determines that the tenant was induced buy the contact the landlord to vacate the rental unit.
57. The evidence here clearly establishes that but for the Landlords' actions the Tenant would not have moved out of the rental unit when she did. The Landlords paid for the first two weeks of the storage unit and for each subsequent month the Tenant has had to incur those monthly costs from February 2022 to January 2023, so I am satisfied that the Tenant is entitled to an order for storage costs totalling **\$3,442.59**.

General Damages

58. The application request **\$6,000.00** for compensation for general damages. Evidence was led by the Tenant that because of the actions of the Landlords and the Landlords' Agent she became homeless for the better part of a year. During this time she experienced physical and sexual abuse, deteriorated physical health and her ongoing challenges with her mental health became significantly worse as a result. Based on all of the evidence before me, I have no doubt that the Tenant suffered emotional distress as a result of the

Landlords' actions. Therefore, I am of the view that an order for general damages is appropriate.

59. The Tenant provided testimony that gave details regarding the difficulties she experienced while living in a tent in backyards, near railway tracks, and anywhere else she could find. The Tenant explained how traumatic and humiliating it was for her losing her home and somewhere safe to live. The Tenant's mental health suffered during this time causing her to go back on medications for anxiety, PTSD and depression. The stress caused by their treatment towards her, losing her home, many of her belongings, and the trauma and abuse she endured has greatly impacted her recovery efforts which is still ongoing.
60. Given the impact on the Tenant resulting from Landlords' actions, the damages claimed in the application are modest and more than justified. As the Board cannot order compensation in excess of that claimed, an order shall issue for **\$6,000.00** for damages arising from the breach.

Restore Tenant into Possession

61. The Board does not have jurisdiction to put a tenant back into possession when the unit has been re-rented. The rental unit was occupied by new tenants on September 1, 2022. Therefore, this remedy will not be granted.

Administrative Fine

62. The Board's Guideline 16 suggests that the purpose of a fine is to encourage compliance with the Act and to deter landlords from engaging in similar activities in the future. It goes on to say, "this remedy is most appropriate in cases where the landlord had shown a blatant disregard for the Act and other remedies will not provide adequate deterrence and compliance."
63. I find that the actions of the Landlords in this case do demonstrate a blatant disregard for the Act and therefore an administrative fine for deterrence is appropriate. In arriving at an appropriate amount, the Guideline suggests that the Board consider the nature of the breach, its impact on the tenant and other relevant factors.
64. In considering the factors described in Guideline 16, I conclude that it is appropriate to order the Landlord to pay an administrative fine of \$15,000.00. This amount takes into consideration the impact of the Landlords actions on the Tenant. The Landlords knew the Tenant was vulnerable and had limited financial resources, yet they proceeded with their bad faith eviction knowing she would be left homeless. Furthermore, the Tenants homelessness was brought to the Landlords' attention by the legal clinic before they re-rented the unit.
65. Given that the Landlords are and will continue to profit from their breach, I have taken into consideration that before the Tenant vacated the rental unit the rent the Tenant was paying was \$550.00 and they have re-rented the unit for \$1,375.00, this means that the Landlords are profiting \$860.00 monthly. From the time the unit was re-rented (September 1, 2022) to the date of the hearing (January 27, 2023) the Landlords have profited \$13,760.00 and

stand to profit for the foreseeable future. Therefore, I find that an appropriate fine in this case would be \$15,000.00.

66. The Tenant incurred costs of \$53.00 for filing the application and is entitled to an order requiring the Landlords to reimburse her for those costs.

67. This order contains all of the reasons for my decision within it. No further reasons shall be issued.

It is ordered that:

1. The total amount the Landlords shall pay the Tenant is **\$15,445.59**. This amount represents:
 - **\$650.00** for the reasonable costs that the Tenant will incur to replace property that was disposed of as a result of the Landlord's actions.
 - **\$3,442.59** for storage expenses that the Tenant has incurred up to the hearing date.
 - **\$5,300.00** for the estimated reasonable out-of-pocket expenses the Tenant has incurred.
 - **\$6,000.00** for general damages.
 - **\$53.00** for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by November 25, 2023.
3. If the Landlords do not pay the Tenant the full amount owing by November 25, 2023, the Landlords will owe interest. This will be simple interest calculated from November 26, 2023 at 7.00% annually on the balance outstanding.
4. By November 25, 2023 the Landlord shall also pay to the Board and administrative fine of \$15,000.

November 14, 2023
Date Issued

Natalie James
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.

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.