



## **Order under Section 31 Residential Tenancies Act, 2006**

**Citation:** McConnell v Zucaro, 2023 ONLTB 75897

**Date:** 2023-11-10 **File Number:** LTB-T-077291-22(TEL-10615-20)

**In the matter of:** Jasper Room, 1467 Byron Street Whitby  
ON L1N4S6

Tenant

**Between:** Ken McConnell

**And**

Tony Zucaro

Landlord

Ken McConnell (the 'Tenant') applied for an order determining that (the 'Landlord'): •

entered the rental unit illegally.

- 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.
- withheld or interfered with their vital services or care services and meals in a care home.

This application was heard by videoconference on January 11, 2020.

The Landlord and the Tenant attended the hearing.

At the hearing, the application was amended to remove the allegations of harassment, illegal entry, and withholding of vital services, which the Tenant elected not to pursue at the hearing. The application was also amended to add remedies for additional moving costs and replacement costs incurred after the application was filed.

**Determinations:**

1. In their application, the Tenant alleges that the Landlord:
  - Punched holes in the Tenant's door while the Tenant was inside the unit
  - Locked the Tenant out of the unit and garage and removed some of the Tenant's belongings before the Tenant was permitted to return to the unit.
  - Prohibited the Tenant from accessing his belongings in the kitchen and bathroom
2. The Tenant was seeking a rent abatement of \$500.00, costs to replace missing items, and moving and storage costs.
3. The unit is a room in a residential complex. The Tenant shared a kitchen with 3 other tenants. The Tenant also had use of one half of the garage which he used for storage.
4. At the time of the incidents alleged in this application, the parties were awaiting a Board Order determining whether the Tenant would be evicted pursuant to section 94 of the *Residential Tenancies Act, 2006* (the 'Act').
5. It is not disputed that the relationship between the Landlord and the Tenant had deteriorated significantly during the Tenant's time at the rental unit. The Landlord testified that he was frustrated by the Tenant's refusal to leave the unit until ordered to leave by the Board. The residential complex had been rezoned to comprise a 3-bedroom unit and a 10 bedroom rooming house, and at the time the application was filed, the Landlord and his family and the Tenant were the only occupants of the residential complex.
6. It is not disputed that on April 7, 2020, the Landlord banged on the Tenant's door because the Landlord thought that he smelled smoke, and that the Landlord continued to punch the door until he had punched holes in the door. The Landlord yelled at the Tenant and asked the Tenant why he was still in the unit, and used profane and threatening language with the Tenant. The Tenant submitted video evidence of the incident and photographs of the damage the Landlord testified that he punched the door in frustration.
7. The Tenant testified that he was frightened by the Landlord's actions, and concerned for the safety of his daughter, who stayed with him on a part-time basis. The Tenant left the rental unit the following day and took many of his belongings with him, but left larger furniture including beds and cabinets in the unit.
8. Therefore, based on the evidence before me, I find that the Landlord substantially interfered with the Tenant's reasonable enjoyment of the rental unit. I further find, on a balance of probabilities that the Tenant moved out of the unit as a result of the Landlord's actions.

9. The Tenant requested an abatement in the amount of \$500.00, which I determined is reasonable under the circumstances.

### *Illegal Lockout*

10. The Tenant testified that he returned to the unit on April 11, 2020 to retrieve more of his belongings and discovered that he could not access his unit. The Tenant had not had access to the garage since March 19, 2020, when he alleged that the code had been changed and he no longer had his fob. The Landlord testified that the Tenant had an access code for the residential complex and a fob for the garage at all times and was not locked out. The Landlord acknowledged that he changed the code to the garage to prevent the Tenant's friends from accessing the garage, and did not respond to the Tenant's emails about not being able to access the garage.
11. The Landlord denies changing the code to the residential complex. The Landlord testified that he discovered that the Tenant had left the unit when the Landlord came to change the door "a few days" after the Tenant left and that the Tenant had taken some things, but had left "junk" behind for them to deal with including beds and shoes. The Landlord testified that the Landlord and his wife had done some cleaning of the unit. The Landlord did not recall having contacted the Tenant about retrieving his belongings.
12. Here, the testimony of the parties is contradictory. I prefer the Tenant's evidence, which was internally consistent. Both parties acknowledged that their relationship had deteriorated, and that the Landlord testified that he wanted the Tenant out and was happy that the Tenant left. However, the Landlord's testimony with respect to his own actions was vague and contradictory. While the Landlord claimed that the Tenant had not taken any action, such as calling the Rental Housing Enforcement Unit, to retrieve his belongings, the Tenant filed an application with the Board on April 22, 2020, 11 days after he returned to the unit and could not enter the building. In my view, it is more likely than not that the code to the residential complex had been changed by April 11, 2020. Therefore, I find, on a balance of probabilities that the Tenant no longer had access to the rental unit as of April 11, 2020.
13. I make no finding with respect to the termination date of the tenancy, as Board Order TEL-05858-19 appears to determine the termination date, and I am bound by the previous order.

### *The Tenant's Belongings*

*Storage Unit*

14. The Tenant testified that a storage unit which was left in the rental unit was broken and placed at the curb after April 11, 2020. The Tenant submitted photographs of the storage unit in his unit and at the curb into evidence. The Landlord testified that he did not remember moving the unit to the curb and did not know what happened to it, although he did not know who else could have accessed the Tenant's unit and removed the storage unit. Based on the evidence before me, I find, on a balance of probabilities that the Landlord removed the storage unit, and left it at the curb for disposal. The Tenant requested \$200.00, which I determined to be the reasonable cost to replace the storage unit.
15. In their Interim Order TEL-10615-20 dated July 20, 2020, the member ordered that the Tenant could access the rental unit "as described in the application" on July 23, 2020 between the hours of 8 am to 8 pm to retrieve their possessions, and that the Tenant could be accompanied by police.

*Kitchen and Bathroom*

16. It is not disputed that the Tenant was allowed entry to the garage and his room, and that the Landlord blocked access to the kitchen, where some of the Tenant's remaining items were stored. The Landlord testified that at the July 17<sup>th</sup> hearing, the Tenant had indicated that he only needed access to his room and the garage and that there was no need for the Tenant to access the bathroom or kitchen. The Landlord blocked the rooms off to prevent "sabotage."
17. The Tenant claimed that he had \$200.00 in food, and a slow cooker that he valued at \$80.00 in the kitchen. The Tenant was also seeking \$250.00 for his shaving equipment and toiletries which were stored in the bathroom. I find that this is a reasonable cost to replace the items. The Tenant is entitled to \$535.00 for the items in the kitchen and garage.

*Garage*

18. The Tenant testified that he had tools on a rack in the garage that were missing. The Landlord claimed that the Tenant had previously removed many valuable items from the garage, including his tools. The Tenant claimed that he had removed some items from the garage, but left his hand tools on a peg board in the garage, and that the peg board was

missing when he accessed the garage on July 23, 2020. The Tenant was seeking \$300.00 as the replacement cost of his hand tools.

19. The Tenant also claimed a total of \$280.00 for a computer and gaming consoles, which were missing from the garage.
20. As I noted above, the Landlord's testimony was not consistent with respect to the handling of the Tenant's items when the Tenant did not have access to the garage and the residential complex. I found the Tenant's evidence to be internally consistent with respect to the missing items, and the replacement costs to be reasonable, and I found no reason not to believe the Tenant's testimony. Therefore, I determined that the Tenant is entitled to a total of \$580.00 for the items in the garage.

*Moving expenses*

21. The Tenant testified that he paid \$800.00 to store his items between April 8, 2020 when he started to move out of the unit and August 8, 2020, when the Tenant received the Board Order for eviction. The Tenant also paid \$127.81 to rent a truck. The Tenant provided receipts for these expenses.
22. The Landlord objected to the claim for storage expenses as the invoice was from the Tenant's employer whose main line of business was not storage. However, the Tenant testified that his items were stored, and provided an invoice for the storage at \$200.00 per month, which I find to be the reasonable. Therefore, the Tenant is entitled to \$927.81 for moving expenses.
23. The Tenant also claimed \$336.00 for lost wages, but the Tenant did not provide any testimony or other evidence in support of this claim. Therefore, I did not have sufficient information to make a finding with respect to lost wages.

*Costs*

24. The Tenant incurred a cost of \$50.00 to file the application, and the Tenant is entitled to the reimbursement of this cost.

**It is ordered that:**

1. The total amount the Landlord shall pay the Tenant is \$2,787.81. This amount represents:
  - \$500.00 for a rent abatement.
  - \$1,310.00 for the reasonable costs that the Tenant has incurred to replace property that was disposed of as a result of the Landlord's actions.

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- \$927.81 for all OR part of the moving, storage or other like expenses that the Tenant has incurred.
  - \$50.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by November 21, 2023.
  3. If the Landlord does not pay the Tenant the full amount owing by November 21, 2023, the Landlord will owe interest. This will be simple interest calculated from November 22, 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 10, 2023**

**Issued**

**Date**

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Kathleen Wells

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.