



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

**Citation:** Al Sulis v Khan, 2023 ONLTB 72045

**Date:** 2023-11-07

**File Number:** LTB-T-017094-22

**In the matter of:** 2422 BRIDLE RD  
OSHAWA ON L1L0E1

**Between:** Ali Al Sulis  
Zahra Al Mohsen Tenants

**And**

Sajid Khan Landlord

Ali Al Sulis and Zahra Al Mohsen (the 'Tenants') applied for an order determining that Sajid Khan (the 'Landlord'):

- 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 October 16, 2023.

The Landlord, the Landlord's Legal Representative, Sharda Bickram Singh, the Tenants, and the Tenants' Legal Representative, Mitchell Kent, attended the hearing.

### **Determinations:**

1. As explained below, the Tenants did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
2. The parties agreed that the tenancy terminated on March 31, 2021 and there was no last month's rent deposit.
3. At the onset of the hearing, I informed the Tenants' Legal Representative that I had concerns with the remedies claimed on the T2 application as the remedies sought was identical to the remedies sought in the Tenants' T5 application not before me. The Tenants' Legal Representative requested to withdraw the other remedies and proceed with only the claim for property the Landlord allegedly disposed of. The Tenants understood

they cannot request the same remedy in their T5 application. I granted the request as there was no prejudice to the Landlord. No change to the substance of the allegations in the application was made and no new evidence was submitted. The application proceeded with the Tenants' claim for costs to repair or replace the Tenants' property that was damaged, destroyed or disposed of because of the Landlord.

### *Tenants' Evidence*

4. The Tenant, Ali Al Sulis ("AAS"), testified that the Landlord requested the Tenants to move out of the rental unit as the Landlord wanted to move into the rental unit.
5. On March 30, 2021, the Landlord sent painters to the rental unit to paint. The painters included the Landlord's cousin, Ali.
6. On March 31, 2021, due to the odor of the paint fumes, AAS testified that the Tenants returned the keys to Ali and vacated the unit. The Landlord subsequently contacted the AAS requesting payment for damage, utilities and to remove the Tenants' belongings left in the rental unit.
7. After vacating the rental unit, AAS testified the Tenants' family moved to a house they purchased in Regina, Saskatchewan. The Landlord submitted into evidence a listing of the house purchased by the Tenants indicating that the sale date was February 11, 2021.
8. AAS testified he asked a neighbour, Cindy, to assist with the removal of the Tenants' belongings from the rental unit. The Tenants submitted into evidence text messages between the move out date and April 19, 2021 between AAS and the Landlord and AAS and the Landlord's cousin regarding arrangements with Cindy to pick up the Tenants' belongings. Cindy did not appear as a witness before the Board.
9. The Tenants submitted into evidence pictures from April 19, 2021 that showed some of the Tenants' belongings on Cindy's driveway.
10. The Tenants submitted into evidence a list of items they lost. AAS provided verbal testimony on the items lost and their estimated monetary value.
11. The Landlord submitted into evidence emails between AAS and the Landlord. AAS acknowledged an email from himself to the Landlord indicating he cancelled movers on April 28, 2021 and did not reschedule. AAS acknowledged he did not respond to the Landlord's email on July 16, 2021.
12. AAS testified the Tenants sold the house in Regina and returned to Ontario in May 2021. He testified the Tenants were unable to pick up their belongings from the Landlord due to COVID restrictions and lack of help and transportation and had not contacted the Landlord again after returning to Ontario.

*Landlord's Evidence*

13. The Landlord testified that he found out about the Tenants' move out from his cousin, Ali, on March 31, 2021. The Landlord testified the Tenants did not advise the Landlord they were vacating, nor did they indicate they would leave behind any belongings when they vacated.
14. As per AAS's instructions to make arrangements with Cindy, the Landlord testified that some of the Tenant's belongings were placed on Cindy's driveway. The Landlord submitted into evidence a text message from the Landlord to AAS on April 18, 2021 advising AAS that their items were on Cindy's driveway and asking AAS when he will pick from the sofas and mattresses still in the unit.
15. The Landlord submitted into evidence a list of the Tenants' belongings the Landlord still has in his possession at the rental unit as of the hearing date. The Landlord testified that the items are stored in the areas of the rental unit that current tenants have no access to and that the items are in the same condition as they were in when left by the Tenants.

*Analysis*

16. Based on the evidence before me, I am not satisfied, on a balance of probabilities, that the Landlord substantially interfered with the Tenants' reasonable enjoyment of the rental unit and disposed of the Tenants' belongings.
17. Subsection 41(1) of the *Residential Tenancies Act, 2006* (the 'Act') stipulates: A landlord may sell, retain for the landlord's own use or otherwise dispose of property in a rental unit or the residential complex if the rental unit has been vacated in accordance with,
  - (a) a notice of termination of the landlord or the tenant;
  - (b) an agreement between the landlord and the tenant to terminate the tenancy;
  - (c) subsection 93 (2); or
  - (d) an order of the Board terminating the tenancy or evicting the tenant.
18. Subsection 41(5) of the Act further states that: A landlord and a tenant may agree to terms other than those set out in this section with regard to the disposal of the tenant's property.
19. Based on the evidence before me, I am satisfied that the Landlord acted reasonably by making arrangements to deliver the Tenants' belongings to Cindy in April 2021 as instructed by AAS. The Landlord continued to ask AAS via email on April 26, 2021, April 28, 2021, and July 16, 2021 to remove the Tenants' property to no avail.
20. While I understood AAS cancelled movers on April 28, 2023 due to COVID precautions, I find it unreasonable the Tenants did not reschedule or contact the Landlord to make

arrangements to pick up their belongings after April 28, 2021, especially since the Tenants returned to Ontario in May 2021.

21. The Tenants claimed an extensive list of items that were lost and submitted that there were still items missing after the Landlord submitted that a number of items were still in his possession. However, the Tenants did not provide any receipts, invoices, or pictures of the items that were allegedly disposed of or donated.
22. The Tenants' Legal Representative submitted that it was unreasonable for the Tenants to take pictures of or have receipts for their belongings. In my view, it would be reasonable for a tenant, prior to vacating, to take pictures of the rental unit especially if belongings were being left in the unit. While I understand the Tenants cannot provide the exact cost and receipt for every item claimed, I find it unreasonable that the Tenants were unable to provide a receipt or verification for any of the items claimed or provide prices of comparable items.
23. Based on the evidence before me, I find that the Landlord acted with reasonable and with due diligence with respect to the Tenant's property which they failed to remove when they vacated the rental unit. The Landlord made arrangements and returned some of the Tenants' belongings to Cindy as agreed upon in April 2021 and contacted AAS again in July 2021. There is no evidence before me that the Tenants and the Landlord had agreed for the Landlord to store the Tenants' belongings for an indefinite period. The Tenants made no efforts to contact the Landlord to advise of their intentions or to retrieve their belongings. As such, the Tenants' application is dismissed.
24. The Landlord was agreeable to the Tenants retrieving the balance of their belongings. The Tenants' Legal Representative undertook to contact the Landlord or the Landlord's Legal Representative to make such arrangements.

**It is ordered that:**

1. The Tenants' application is dismissed.
2. The Tenants shall retrieve any and all of their property that is in the possession or control of the Landlord on or before November 16, 2023.

**November 7, 2023**

**Date Issued**

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Vicky Liu

Member, 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.