



Order under Section 31 Residential Tenancies Act, 2006

Citation: SOUTHGATE-NICHOLLS v BREIRE, 2023 ONLTB 71388

Date: 2023-11-03

File Number: LTB-T-072660-22

In the matter of: B, 75 BYRON AVENUE KITCHENER
ON N2C1Z7

Tenant

Between: MIKE SOUTHGATE-NICHOLLS

And

Landlord

KYLE BREIRE

MIKE SOUTHGATE-NICHOLLS (the 'Tenant') applied for an order determining that KYLE BREIRE (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 and harassed, obstructed, coerced, threatened or interfered with the Tenant. (T2 Application)

The Tenant also applied for an order determining that the Landlord collected or retained money illegally. (T1)

This application was heard by videoconference on October 16, 2023.

The Tenant's agent, Zoe Brown, the Tenant, the Landlord's Legal Representative, Peggy Frost, and the Landlord attended the hearing.

Zoe Brown (ZB) has power of attorney for property for the Tenant. ZB filed the application on behalf of the Tenant and represented the Tenant at the hearing.

Determinations:

1. As explained below, the Tenant did not prove the allegations contained in the T2 application on a balance of probabilities. Therefore, the application is dismissed. **T2**

Application

Relevant facts

2. The residential complex is a house. The rental unit is the main floor. The tenancy agreement also gave the Tenant exclusive access to a workshop attached to the house. The Landlord occupies the basement.
3. The parties do not dispute the following facts that are relevant to the application:
 - April 14, 2021: The Tenant was arrested and removed from the rental unit by police.
 - April 15, 2021: ZB attended the rental unit, met with the Landlord and removed some of her belongings from the rental unit. ZB told the Landlord that she would attend the unit again on the weekend to remove additional items.
 - April 16, 2021: ZB texted the Landlord to attend the property. The Landlord informed ZB that he spoke to his paralegal and would not be able to let her in the unit or enter again himself until he posted 24-hour notice of entry on the door, which he was planning to do that evening.
 - April 17, 2023: ZB attended the rental unit to gather the mail. In the mail was a notice of termination from the Landlord and a note on the Tenant's door advising that the locks had been changed and the Tenant was to contact the Landlord for the keys.
 - April 24, 2021: ZB sent the Landlord's representative an email, stating that she had the Tenant's permission to enter the rental unit to remove his belongings from the unit and that the Tenant's representative would be sending a letter to confirm that permission. The Landlord's legal representative arranged for ZB to receive a key to the rental unit that evening. ZB entered the rental unit before the Landlord received confirmation from the Tenant's representative that ZB had the Tenant's permission to remove his belongings. Therefore, when ZB entered the rental unit that evening, the Landlord called the police to have her removed.
 - April 25, 2021: The Tenant's legal representative provided confirmation that the Tenant consented to ZB removing his belongings from the rental unit. The Landlord then told ZB that she could come the following day because there had been a break-in in the unit the night before.
 - April 26, 2021: ZB got access to the rental unit to remove the Tenants belongings.
 - April 30, 2021: The parties signed an N11 with a termination date of April 30, 2021 and the tenancy terminated pursuant to that agreement.

4. In the application, the Tenant alleges that:

- The Landlord entered the unit illegally on April 15, 2021, when ZB requested to go into the unit to retrieve a few of her personal belongings from the rental unit.
- The Landlord changed the locks on April 17th, 2021 and did not provide the Tenant with a key.
- The Landlord obstructed and interfered with the Tenant by failing to allow ZB to remove personal belongings of the Tenant within a reasonable time period.

Illegal entry

5. Based on the evidence before me, I am not satisfied on a balance of probabilities that the Landlord entered the rental unit illegally. On April 15, 2021, ZB attended the property to retrieve some of her personal belongings and the Landlord went into the unit to grab them and ZB stood at the door. ZB has power of attorney for the Tenant's property. Since ZB consented to the Landlord entering the rental unit for the purpose of removing ZB's belongings from the unit, and the Landlord entry the unit for this limited purpose, I cannot find that this was an illegal entry. Accordingly, this claim is dismissed.

Changing the locks

6. Based on the evidence before me, I am not satisfied on a balance of probabilities that the Landlord changed the locks without giving them to the Tenant. When the police attended the rental unit on April 15, 2021, they broken down the door to enter the unit and arrest the Tenant. The police subsequently secured the rental unit before they left on April 15, 2021. In order to ensure that the unit was secure, the Landlord changed the locks. The Landlord posted a note on the rental unit door to advise the Tenant, if he returned to the unit, that the locks had been changed and that he could get a copy of the new key from the Landlord. When ZB attended the rental unit on April 17, 2021 she saw this note on the rental unit door.
7. It subsequently took the Landlord and his legal representative several days to confirm ZB's relationship to the Tenant and that the Tenant gave her permission to remove his property from the unit. Once both the Landlord's representative and the Landlord were satisfied that ZB was authorized by the Tenant and had the Tenant's consent to enter the rental unit and remove the Tenant's belongings, ZB was given a key to the rental unit. I find that it was reasonable and appropriate for the Landlord to have denied ZB access to the rental unit as neither the Tenant nor ZB had provided him with the Tenant's written consent proof to allow ZB to enter his rental unit and remove his belongings until April 25, 2021. The Landlord had no legal obligation to provide ZB with access to the rental unit prior to receiving

confirmation on April 25, 2021 that the Tenant had authorized her to do so. ZB was given access to the unit the following day. Accordingly, this claim is dismissed.

Obstructed or Interfered with the Tenant

8. ZB alleges that the Landlord obstructed or interfered with her ability to access the rental unit on behalf of the Tenant. The evidence before me establishes that the Tenant did not provide the Landlord proof that ZB had permission to enter the rental unit until April 25, 2021 and ZB was given access to the unit the following day. There is no evidence to suggest that the Landlord obstructed or interfered with ZB's access to the rental unit on or after April 26, 2021. The Tenant himself was never denied access to the rental unit.
9. ZB further alleges that the Landlord failed to secure the rental unit resulting in the loss of some of the Tenant's belongings. However, the evidence establishes that after the police broke down the door to the rental unit, the police secured the unit and then the Landlord further secured the unit by changing the locks. There was insufficient evidence before me to prove that the Landlord was responsible for items going missing from the rental unit between April 15, 2021 when the Tenant was arrested and April 26, 2021 when ZB removed the Tenant's remaining belongings from the unit. For example, there were no pictures of the unit and its contents from before April 26, 2021 to compare with the photographs from April 26, 2021. On the other hand, there was evidence that the police removed certain items from the rental unit when the Tenant was arrested and that there were several break-ins into the rental unit after the Tenant was removed. The Landlord is not responsible for these events.
10. Newspaper articles submitted by the Landlord indicate that police seized a number of items from the Tenant's unit that police believe were stolen. No evidence was presented by ZB establishing that the Landlord failed to secure the rental unit following the Tenant's removal by police
11. As the applicant, ZB bears the burden of proof. I find that ZB has failed to sufficient establish that the Landlord obstructed or interfered with her access to the rental unit or that the Landlord is responsible for any loss of items.

T1 Application

12. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. The Landlord did not illegally retain the Tenant's rent deposit.
13. The parties do not dispute that at the beginning of the tenancy, the Landlord collected a rent deposit from the Tenant. However, the parties disagree about what happened to the deposit and if/how it was used.

14. The Landlord testified that the Tenant did not pay his rent for November 2020 and instead the parties agreed that the Landlord would apply the rent deposit to the Tenant's rent for that month. The Tenant testified that he did pay his rent for November 2020 in cash, he paid all his rent during the tenancy and that the Landlord is still holding his rent deposit, which should be returned to him.
15. Based on the evidence before me, I prefer the Landlord's evidence that the parties agreed the rent deposit would be applied to November 2020's rent and it has, therefore, already been used. The Landlord's evidence was specific and it was corroborated by a detailed rent ledger that he submitted. The ledger shows the Tenant's other rent payments, including several payments that were made in cash. On the other hand, the Tenant did not have any evidence to support his claim that he paid the rent for November 2020 (ex: his bank statement or a bank withdrawal slip). Accordingly, the Landlord is not ordered to pay the Tenant the rent deposit.
16. However, it was undisputed that the Landlord did not pay the interest on the last month's rent deposit. Accordingly, the Landlord shall be ordered to pay the Tenant \$67.74, which represents interest on the deposit up to October 31, 2020, which is the last day of the rental period before the rent deposit was used. This amount is calculated as follows:
- The rent deposit was \$1,600.00. It was collected September 1, 2018. Interest is owing for the period September 1, 2018 to October 31, 2020.
 - Interest owing for September 1, 2018 – August 31, 2019: \$28.80
 - Interest owing for September 1, 2019 – August 31, 2020: \$35.30
 - Interest owing for September 1, 2020 – October 31, 2020: \$5.88
 - Total interest owing is \$69.98 **It is ordered that:**
1. The Tenant's application about Tenant's Rights (T2) is dismissed.
 2. The total amount the Landlord shall pay the Tenant is \$122.98. This amount represents interest owing on the last month's rent deposit (\$69.98) and the cost of filing the application (\$53.00).
 3. The Landlord shall pay the Tenant the full amount owing by November 28, 2023.
 4. If the Landlord does not pay the Tenant the full amount owing by November 28, 2023, the Landlord will owe interest. This will be simple interest calculated from November 29, 2023 at 7.00% annually on the balance outstanding.
 5. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

November 17, 2023

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Teresa Hunt

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.