



Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: Atkins v Roberts, 2023 ONLTB 72945

Date: 2023-11-01

File Number: LTB-T-012775-22-RV

In the matter of: Basement, 58 MATCHETT CRES
LINDSAY ON K9V0G7

Between: Christine Atkins Tenant

And

Brittany Roberts Landlord

Review Order

Christine Atkins (the 'Tenant') applied for an order determining that Brittany Roberts (the 'Landlord':

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household;
- harassed, obstructed, coerced, threatened or interfered with the Tenant;
- withheld or interfered with the Tenant's vital services or care services and meals in the care home;.

This application was resolved by order LTB-T-012775-22 issued on April 19, 2023. No one appeared on behalf of either party.

On May 9, 2023, the Tenant requested a review of the order.

On May 10, 2023, interim order LTB-T-012775-22-RV-IN was issued.

This application was heard in by videoconference on May 31, 2023.

The Landlord and the Landlord's Legal Representative, C. Francey and the Tenant and the Tenant's Legal Representative, J. Miske attended the hearing.

Determinations:

Request to review

1. The Board's records indicate that neither party was sent a copy of the Notice of Hearing for the hearing scheduled on April 6, 2023.
2. As such, the Tenant's request for review is granted.



Merits of the original application

3. The Tenant filed the T2 application on March 4, 2022. The Tenant moved out of the unit on June 11, 2021. Pursuant to subsection 29 (2) of the Residential Tenancies Act, 2006, I can only consider the time period of March 4, 2021 until the Tenant vacated the unit on June 11, 2021.
4. The Tenant alleges that the Landlord substantially interfered with her reasonable enjoyment of the unit, harassed her, and interfered with vital services.

Tenant's evidence

Substantial Interference

5. The Tenant testified that she moved into the unit, which is a basement apartment, on May 1, 2019. The monthly rent was \$1,300.00.
6. In April 2021, the Landlord informed the Tenant that house sold, and the new owners would be occupying the main floor unit and intended to maintain the tenancy with the basement tenants.
7. On June 11, 2021, before the sale of the home was finalized, there was a fire at the unit that originated in the upstairs unit. Due to the fire, and the structural damage caused by the fire, the Tenant vacated the unit on that day.
8. The Tenant stayed in a hotel after the fire.
9. The Tenant had conversations with the Landlord after the fire at the end of June or early July where the Landlord advised the Tenant that unit was not registered as a legal basement apartment, therefore her insurance company was unwilling to restore the basement to a self-contained unit, and the Landlord was not in the financial position to do that on her own.
10. The Tenant testified that the Landlord also informed her that the sale of the house fell through due to the home no longer having a self-contained basement unit and buyers requiring the rental income from the basement tenants.
11. The Tenant testified that she never received a proper notice of termination from the Landlord, and when she vacated the unit on June 11, 2021, due to the fire, she was under the impression that she would be moving back in once the repairs from the fire were completed.
12. The Tenant testified that the Landlord completed renovations to the home, and it sold in February 2022.
13. The Tenant testified that the Landlord withheld her mail. She testified that she received a text message in July 2021 from the Landlord advising her that her insurance company told her that no one can be at the house, so if the Tenant was going there to retrieve her mail, she would have to stop. The Landlord explained that she would get the Tenant's mail for her. The Landlord asked the Tenant to get her mail directed to a post office. The Tenant advised the Landlord that she was still a tenant and she would not be redirecting her mail.



14. The Tenant's position is that the tenancy did not terminate in accordance with the Act. The Landlord never served the Tenant with any notice to terminate the tenancy, and as a result, the Landlord substantially interfered with the Tenant's reasonable enjoyment of the unit.

Harassment

15. The Tenant testified that she received text messages from the Landlord and that she felt harassed by them.
16. She provided the following examples:
- On August 14, 2021- from the Landlord "I would like to get things settled with you guys, I have the N11 form to give you and sign it, I'll give you your last month's rent and part of Junes.
 - On August 15, 2021, from the Landlord " Hey Christine, can we get together and finalize our agreement"

Interference with vital services

17. The Tenant withdrew the portion of the T2 relating to vital services, advising that the box was mistakenly checked off on the application.

Landlord's evidence

18. The Landlord testified that the damages from the fire were extensive, and there was no one living in the house while it was being rebuilt. She testified that the upstairs unit was gutted to the studs.
19. The Landlord's insurance company informed her that because the basement apartment was illegal, she would have to take on the cost associated with making it a legal registered unit. The Landlord testified that she did not have the financial means to do that, so the unit was returned to a single unit dwelling.
20. The Landlord testified that she was told by the city that the basement unit was illegal as there was no vent for the stove.
21. The Landlord testified that she tried to arrange an agreement with the Tenant, but the Tenant ignored her.
22. The Landlord's Legal Representative submits that the tenancy terminated on June 11, 2021 because the contract became frustrated by virtue of the *Frustrated Contracts Act*.

Analysis

Is the tenancy frustrated?

23. Section 19 of the Act speaks to the issue of frustration of contract:



Frustrated contracts

- 19.** The doctrine of frustration of contract and the Frustrated Contracts Act apply with respect to tenancy agreements
24. There are different types of frustration: where the rental unit is either completely destroyed or extremely damaged that would make repairs very protracted; and where an intervening event was not contemplated (unforeseeable), by the parties, and was not the fault of either party.
25. I do not agree with the Landlord's position that this tenancy was frustrated. I say this because the unit was not completely destroyed. The fire originated in a bedroom on the main floor of the house, the house was not completely burned to the ground. The house was in fact restored and sold in February 2022. Secondly, a fire is not an unforeseeable event. Both the Landlord and the Tenant had insurance for exactly this possibility.
26. The fact that the Landlord alleges that it was cost prohibitive to restore the basement unit to a legal dwelling does not change the finding that the tenancy was not frustrated. The Landlord did not submit any evidence to convince me that this was the case. She testified that the only thing that made the basement unit illegal was that there was no vent over the stove. She did not submit any quotes from contractors relating to making the basement unit a legal dwelling and did not submit any financial statements to provide context to her allegation that this was cost prohibitive.
27. Based on the evidence and submissions of the parties, I find on a balance of probabilities, that this tenancy was not frustrated.
28. Pursuant to section 37(1) of the Act, a tenancy may be terminated only in accordance with this Act. Moreover, the Act sets out restriction on a landlord's ability to recover possession on the unit. Specifically, section 39 of the Act states as follows:
- A landlord shall not recover possession of a rental unit subject to a tenancy unless,
- (a) the tenant has vacated or abandoned the unit; or
- (b) an order of the Board evicting the tenant has authorized the possession
29. Based on the evidence and testimony of the parties, I find on a balance of probabilities that the Tenant did not abandon or vacate the unit. The evidence from both sides establishes that the Tenant left the unit because of the fire. The Tenant expected to return to the unit once the unit was repaired. The Tenant advised the Landlord in July 2021 that she was still a Tenant at the unit when there were discussions back and forth about the mail. The Tenant still had keys to the unit, the Landlord was still in possession of the Tenant's last month's rent deposit. There is no dispute that the Landlord did not obtain an order from the Board terminating the tenancy.
30. The Landlord advised the Tenant in August 2021 that she would not be restoring the basement unit as her insurance company would not be covering the cost to do so. If the Landlord intended on essentially demolishing the unit, the appropriate notice should have



been served. No such notice was given to the Tenant. As such, I find that the tenancy was not terminated in accordance with the Act and that constitutes a substantial interference.

Remedies

31. The Tenant is requesting a rent abatement. The Tenant is requesting the remainder of June's rent back, from the day she moved out of the unit until the end of June. This amount works out to \$812.06. I find that the Tenant is entitled to the rent back for the period of June 12, 2021 to June 30, 2021. This is calculated at the per diem rent of \$42.74 x 19 days.
32. The Tenant is also seeking the return of her last month's rent deposit. The Tenant included this under her request for abatement, and I find in the circumstances, it is an appropriate remedy. The Tenant is entitled to \$1,300.00 plus interest calculated from May 1, 2019. The total amount is \$1,344.39. Although the rent deposit and interest owing are not considered an abatement, I find that subsection 31 (1) (f) of the Act allows me to make such an order.
33. The Tenant is seeking increased rent that she had to pay for a period of 1 year. The Tenant testified that she moved into a Motel after she left the unit due to a fire. The fire is what caused the tenant to vacate the unit. It was not the actions of the Landlord that caused the Tenant to have to leave her unit in June, however it was the Landlord's actions that prevented the Tenant returning to the unit. I find that the Tenant is entitled to 10 months of increased rent, this totals \$5,645.00.
34. The Tenant is seeking moving costs in the amount of \$900.00. I decline to award this amount. The tenant submitted 2 emails from friends that say that the Tenant paid them \$450.00 to assist her with her move. I find this amount to be disproportionately high for help from friends. I find \$200.00 is appropriate in the circumstances.
35. The Tenant is seeking \$1,500.00 representing general damages. The Tenant bases this amount on the stress of moving, and other inconveniences related to the move. I decline to award this amount. The fire in the unit is what caused the Tenant to leave. This was not the fault of the Landlord. The actions of the Landlord subsequent to the fire is what constitutes substantial interference, but I cannot connect the stress of the move to the actions of the Landlord, when in actuality, it was the fire that caused the Tenant to move.
36. The Tenant is seeking \$1,000.00 in costs representing her legal fees. Generally, the Board makes cost awards when the behaviour of a party during the proceedings warrant it. This is not the case in this circumstance, therefore there will be no award for costs relating to the Tenant's legal fees.

It is ordered that:

1. The request to review order LTB-T-012775-22 issued on April 19, 2023 is granted.
2. Order LTB-T-012775-22 issued on April 19, 2023 is cancelled and replaced by the following:
3. The total amount the Landlord shall pay the Tenant is \$8,537.39. This amount represents:



1. \$2,644.39 for a rent abatement.
 2. \$5,645.00 for increased rent the Tenant has incurred.
 3. \$200.00 for moving, storage or other like expenses that the Tenant has incurred.
 4. \$48.00 for the cost of filing the application.
4. The Landlord shall pay the Tenant the full amount owing by November 19, 2023.
5. If the Landlord does not pay the Tenant the full amount owing by November 19, 2023, the Landlord will owe interest. This will be simple interest calculated from November 20, 2023 at 7.00% annually on the balance outstanding.

November 8, 2023
Date Issued

Emily Robb
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.