



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

Citation: CUERVO-LORENS v ZHANG, 2023 ONLTB 42881

Date: 2023-10-31 **File Number:** LTB-T-073742-
22(CET-94007-20)

In the matter of: 429 LADYCROFT TERRACE
MISSISSAUGA ON L5A0A7

Tenant

Between: RALPH CUERVO-LORENS

And

Landlord

XUAN ZHANG

And

Landlord's
Agent

BARRY WANG

RALPH CUERVO-LORENS (the 'Tenant') applied for an order determining that XUAN ZHANG (the 'Landlord') and Barry Wang (the 'Landlord's Agent'):

- entered the rental unit illegally.
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household, and
- harassed, obstructed, coerced, threatened or interfered with the Tenant.

This application was heard by videoconference on October 12, 2022. It was heard together with LTB-L-081875-22 (HOL-07041-20) which involved different parties and issued separately.

The Landlord, the Landlord's Agent and the Tenant attended the hearing.

At the hearing, the parties agreed to amend the application to adjust the Tenant's requested abatement amount to \$7,020.00, and to remove remedies related to a separate proceeding in

another jurisdiction. The application was also amended to add an additional allegation of illegal entry and an additional allegation related to Landlord's applications.

Determinations:

Preliminary Matter:

Naming of Parties

1. The Tenant acknowledged that the Landlord meets the definition of Landlord under the *Residential Tenancies Act, 2006* (the 'Act'), but argued that the unit was actually owned by another person who lived outside the country, and the Tenant was concerned that any order would not be enforceable. The Landlord and the Landlord's real estate agent, Barry Wang (the 'Landlord's Agent') acknowledged that they were the named parties in the application and understood that they would be responsible for any amount ordered against them in the order. The Tenant accepted the assurances of the Landlord and the Landlord's Agent, and the hearing proceeded on its merits.

T2 application

2. In their T2 application, the Tenant alleges that the Landlord and the Landlord's Agent:
 - Entered the rental unit illegally,
3. The Tenant further alleges that the Landlord substantially interfered with the Tenant's reasonable enjoyment of the unit by
 - Failing to honour the tenancy agreement, and
 - Serving multiple eviction notices.
4. These allegations also formed the basis of the Tenant's allegation that the Landlord and the Landlord's Agent engaged in a pattern of harassment of the Tenant.
5. I am bound by the findings in Board Order HOL- 05817-19-RV, issued on December 27, 2019. The order was voided by the Tenant. Therefore, I have not made findings with respect to the lawful monthly rent, arrears owing to January 14, 2020, and the last month's rent deposit. However, I have considered the parties' testimony with respect to the Tenants rent payments as they relate to the Tenant's allegations with respect to the lease and service of eviction notices.
6. The Tenant vacated the unit on April 14, 2021.

7. The sale of the property closed on April 16, 2021.
8. The rental unit is a house with an attached garage.

Illegal Entries

August, 2019 – February, 2020

9. In their T2 application, the Tenant alleges that the Landlord's Agent entered the unit illegally on multiple occasions.
10. The Tenant testified that when the Landlord informed the Tenant that they planned to list the property for sale, the Tenant asked that the Landlord's Agent to serve the Tenant with notices of entry by email at least 24 hours prior to entering the unit. The Tenant argued that posting a notice of entry on the door to the unit was not "effective notice," as he might not see the notice. The Tenant testified that the Landlord's Agent mostly complied with the Tenant's request, but identified 6 occasions that the Landlord's Agent entered the unit after posting a notice of entry to the door between August, 2019 and February 2020.
11. The Tenant submitted copies of the notices of entry and email communications between the Landlord's Agent and the Tenant into evidence.
12. The Landlord's Agent testified that they posted Notices of Entry in accordance with the *Residential Tenancies Act, 2006* (the 'Act') and that written notice was provided to the Tenant at least 24 hours before each entry. Each Notice of Entry notes reason for entry and the time that the notice was posted.
13. While Landlord may choose to accommodate Tenants' requests with respect to entries to the unit, the Landlord has a right to enter the unit on 24 hours written notice in accordance with Section 27 of the Act, which reveals:

27 (1) A landlord may enter a rental unit in accordance with written notice given to the tenant at least 24 hours before the time of entry under the following circumstances:

1. To carry out a repair or replacement or do work in the rental unit.
2. To allow a potential mortgagee or insurer of the residential complex to view the rental unit.
3. To allow a person who holds a certificate of authorization within the meaning of the *Professional Engineers Act* or a certificate of practice within the meaning of the *Architects Act* or another qualified person to make a physical inspection of the rental unit to satisfy a requirement imposed under subsection 9 (4) of the *Condominium Act, 1998*.
4. To carry out an inspection of the rental unit, if,
 - i. the inspection is for the purpose of determining whether or not the rental unit is in a good state of repair and fit for habitation and complies with health, safety, housing

and maintenance standards, consistent with the landlord's obligations under subsection 20 (1) or section 161, and

ii. it is reasonable to carry out the inspection.

5. For any other reasonable reason for entry specified in the tenancy agreement.

(2) A landlord or, with the written authorization of a landlord, a broker or salesperson registered under the *Real Estate and Business Brokers Act, 2002*, may enter a rental unit in accordance with written notice given to the tenant at least 24 hours before the time of entry to allow a potential purchaser to view the rental unit.

Contents of notice

(3) The written notice under subsection (1) or (2) shall specify the reason for entry, the day of entry and a time of entry between the hours of 8 a.m. and 8 p.m.

14. Rule 3.2 of the Board's Rules of Procedure provides:

3.2 A notice of entry under section 27 of the RTA may also be served by posting it on the door of the rental unit.

15. In the present case, it is not disputed that the Landlord served the 6 notices of entry in question in accordance with the above provisions of the Act and the Board Rules. Therefore, based on the evidence before me, I find, on a balance of probabilities, that the Landlord or the Landlord's Agent did not enter the Tenant's unit illegally between August 2019 and February 2020.

February 14, 2021 entry

16. It is not disputed that the Landlord's Agent entered the unit without notice to serve an N12 Notice of Termination on February 14, 2021. The Tenant was not at home, and discovered that the Landlord and the Landlord's Agent had entered the unit, when he returned home. The Tenant alleges that this entry was concerning to him because he had not been informed, and that the Landlord's Agent was aware of the Tenant's concerns about the security of his possessions and his confidential documents.

17. Therefore, I find that the Landlord's Agent entered the rental unit illegally on February 14, 2021, and in view of the impact of the illegal entry on the Tenant, I determined that a rent abatement of \$500.00 is appropriate under the circumstances.

Lease

18. The Tenant entered a tenancy agreement with the Landlord on June 24, 2018 for a term ending July 14, 2019. The Tenant submitted a copy of the lease into evidence. The Tenant paid by post-dated cheques and provided the last month's rent deposit and 11 post-dated cheques to the Landlord. The Landlord testified that the Tenant requested to pay by postdated cheque.
19. In May, 2019, the Landlord contacted the Tenant by email to negotiate a new one-year lease beginning in July, 2019 at an increased rent. The Tenant submitted email communications with the Landlord and the Landlord's Agent into evidence.
20. In their response to the email, the Tenant argued that the Landlord could only increase the rent by the guideline amount in accordance with the Act, and informed the Landlord that he would agree to a one-year extension of the lease, with at a rent increase of 1.8%, the Board's guideline rent increase.
21. The Landlord responded to the Tenant by agreeing to a 1.8% increase, stating that the new rent would be \$2,350.00. The Landlord did not mention a renewal period in her response, and no new lease was signed. The Tenant provided the Landlord with 5 postdated cheques in the amount of \$2,350.00 dated July 15, 2019 through November 15, 2019, and promised to provide the remaining cheques as soon as he received new cheques from his bank.
22. The emails reveal that after the Tenant gave the cheques to the Landlord, he informed the Landlord that the rent increase was closer to 2.2%, and the Landlord confirmed that they had made a calculation error. The Tenant sent an email to the Landlord on June 18, 2019, asking the Landlord to destroy the cheques, and stating that he would replace them with new cheques at the correct rent once he received new cheques from his bank.
23. It is not disputed that the Tenant did not pay the June 15, 2019 rent. The Tenant testified that he thought that his last month's rent deposit should be applied to the June rent because the previous lease ended on July 14, 2019. The Tenant's documentary evidence reveals that the Landlord and the Landlord's Agent repeatedly requested that the Tenant pay their June rent.
24. The Landlord's Agent sent a clarifying email to the Tenant on June 27, 2019. It outlined that the tenancy would continue on a month-to-month basis, the Landlord would hold the last month's rent deposit until the last month of the tenancy, that the Landlord would pay the interest on the last month's rent deposit, and that rent was due for June 15, 2019. The rent increase would be applied to the September 15, 2019 rent.

25. The Tenant did not respond to the Landlord's Agent's June 27, 2019 email or follow-up emails, and the Landlord served the Tenant with an N4 Notice of Termination for the outstanding rent for June 15 on July 8, 2019.
26. On July 12, 2019, the Landlord's Agent notified the Tenant of the Landlord's intention to sell the property, and the Tenant responded by insisting that he had a one-year lease, did not consent to the sale, and would not cooperate with any showings of the property.
27. After a series of emails, and attempts by both parties to negotiate the termination of the tenancy, the property was listed for sale, and the Landlord's Agent began showing the property in August, 2019.
28. The basis of the Tenant's allegations of substantial interference and harassment is that the parties had agreed to a one-year lease for the period from July 15, 2019 to June 14, 2020, and that the Landlord had attempted to sell the house during a period when the Tenant had a right to occupy the property.
29. It is not disputed that no new lease was signed. The Tenant argues that there was an agreement in place, while the Landlord argues that the Tenant's original lease remained in place on a month-to-month basis. I therefore turned my mind to whether there was a meeting of the minds, or a verbal agreement with respect to the terms of a new lease for the period between July 15, 2019 and July 14, 2020.
30. Based on the evidence before me, including the testimony of both parties and multiple emails dated prior to July 15, 2019 detailing the dispute about the lease renewal between the parties, I cannot find that there was a meeting of the minds with respect a new lease. With the exception of a guideline rent increase, there were no changes to the Tenant's 2018 lease. Therefore, I find, on a balance of probabilities, that no new lease was in effect and the tenancy continued on a month-to-month basis after July 14, 2019.
31. With respect to the listing of the house, the Landlord is not required to seek or attain the consent of the Tenant to list the property. And, in keeping with the principle that covenants run with the land, if the property is sold, the tenancy continues, unless the Purchaser

requires the use of the unit for personal use, and the provisions of Section 49 of the Act are met. Section 49 reveals:

49 (1) A landlord of a residential complex that contains no more than three residential units who has entered into an agreement of purchase and sale of the residential complex may, on behalf of the purchaser, give the tenant of a unit in the residential complex a notice terminating the tenancy, if the purchaser in good faith requires possession of the residential complex or the unit for the purpose of residential occupation by,

- (a) the purchaser;
- (b) the purchaser's spouse;

- (c) a child or parent of the purchaser or the purchaser's spouse; or
- (d) a person who provides or will provide care services to the purchaser, the purchaser's spouse, or a child or parent of the purchaser or the purchaser's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile home park or land lease community in which the rental unit is located. 2006, c. 17, s. 49 (1); 2021, c. 4, Sched. 11, s. 31 (1).

and...

(3) The date for termination specified in a notice given under subsection (1) or (2) shall be at least 60 days after the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term. 2006, c. 17, s. 49 (3).

32. I found above that the tenancy was on a month-to-month basis as of July 15, 2019, and therefore the Tenant was entitled to 60 days notice should a purchaser require the property for personal use. While the Landlord entered an agreement of purchase and sale in February 2020, the sale did not close, and the Landlord did not serve an N12 Notice of Termination on the Tenant until February, 2021, pursuant to a subsequent agreement of purchase of sale, which closed on April 16, 2021. The Tenant did not lead evidence that there had been any discussions between the Landlord and Tenant about a further lease renewal in for the period between July 15, 2020 and June 14, 2021.
33. As noted above, the Tenant remained in the unit until April 14, 2021. Therefore, I find that the Tenant has not proved that the Landlord and the Landlord's Agent failed to honour the Tenant's lease with respect to the listing and sale of the unit.
34. For the reasons above, I find, on a balance of probabilities that the Landlord and the Landlord's Agent did not substantially interfere with the Tenant by failing to honour the tenancy agreement. I further find, on a balance of probabilities that the Landlord and the Landlord's Agent did not harass the Tenant by failing to honour the tenancy agreement.

Eviction Notices

35. The Tenant alleges that the Landlord served the Tenant with an excessive number of eviction notices. The Tenant testified that the Landlord served the Tenant with 4 N4 Notices of Termination between July 8, 2019 and November 18, 2019, and one N5 Notice of Termination on November 18, 2019.

N5 Notice

36. The Landlord served the Tenant with an N5 Notice of Termination on November 18, 2019 alleging that the Tenant had damaged the interior of the garage door. The Tenant could void the notice by repairing the damage or paying the Landlord \$2,000.00

37. The Tenant did not dispute that he damaged the door or that he did not void the N5 notice within 7 days of the Notice being served. The Tenant testified that he had informed the Landlord that he would repair the damage.
38. It is not disputed that the Tenant completed the repair in March, 2020, prior to the application being heard, and that the Landlord sought the application filing fee at the hearing.
39. The Tenant alleges that the amount sought by the Landlord was excessive for the repair needed, and that as he had repaired it prior to the hearing, the Landlord should not have proceeded with the hearing for the filing fee.
40. Landlords are entitled to enforce their legal rights through the service of notices of termination and the filing of applications. In the present case, the Tenant testified that he damaged the door, and did not repair it for several months after the N5 notice was served. The Landlord incurred a cost for filing the application, the Tenant had not paid the filing fee at the time of the hearing, and the Landlord was entitled to seek reimbursement for the filing fee.
41. Therefore, based on the evidence before me, I find, on a balance of probabilities, that the Landlord and the Landlord's Agent did not substantially interfere with the Tenant with respect to the serving of the notice or with respect to the hearing process. I further find that the Landlord and the Landlord's agent did not harass the Tenant with respect to the N5 Notice or L2 application.

N4 Notices

42. The Tenant testified that he was confused by the N4 notice he received on July 8, 2019, for the rent owing on June 15, 2019, because he believed that the Landlord should have applied the last month's rent to the June rent.
43. The Landlord served the Tenant with the 2nd N4 Notice of Termination with a termination date of August 19, 2019, claiming rent for June, 2019 and July, 2019. The Tenant alleges that he did not believe that the Tenant was in arrears because he had given the Landlord post-dated cheques for July 2019 to November 2019.
44. The Tenant testified that in August, 2019, the Tenant checked his bank statements and discovered that the cheques had not been cashed, at which point the Tenant began to withhold rent. The Landlord served the Tenant with 2 subsequent N4 notices.
45. The Landlord filed an L1 application which initially heard on November 8, 2019, and was dismissed as abandoned. The Landlord filed a review of the order, the review was granted, and the application was resolved by Board Order HOL-05817-19-RV on December 27, 2019. The Tenant paid the amount owing into the Board to void the order on January 10, 2020. The Tenant's request to review the December 27 order was denied.

46. I do not find the Tenant's testimony that he was confused by the July N4 Notice to be credible. As noted above, the Landlord and the Landlord's agent had repeatedly communicated with the Tenant by email that the rent was due for June 15, 2019, and that the last month's rent was being held until the last month of the tenancy, prior to the issuance of the July 8, 2019 N4 Notice.
47. As noted above, the Tenant's own evidence reveals that the Tenant had requested that the Landlord destroy the post-dated cheques for July to November, 2019, and that he would replace the cheques with new cheques with the correct rent. The Landlord testified that she had destroyed the cheques at the Tenant's request. In the Landlord's Agent's June 27, 2019 email to the Tenant, the Landlord's Agent outlined the amount of rent charged for each of the 12 post-dated cheques that the Tenant had agreed to provide, including the amounts requested for the months of July – November, 2019. The Tenant did not replace the cheques, did not provide the Landlord with any further post-dated cheques, and refused to pay the rent by e-transfer, when it was suggested by the Landlord.
48. The Tenant testified that he began to withhold rent in August, prior to receiving the September and November N4 notices.
49. The Landlord's Agent testified that the Landlord served monthly N4 notices as they were not familiar with Board processes or the Act. While it is the Landlord's responsibility to familiarize themselves with the Act that governs the business in which they are engaged, I am not satisfied that the service of 4 N4 notices rises to the level of substantial interference or harassment in the circumstances of this case. I say this because while the Tenant alleges he was confused by the notices, the N4 notices were consistent in that each subsequent notice changed only by reflecting the additional rent owing, the Tenant was aware that the Landlord was seeking payment for the June, 2019 rent and by the Tenant's own admission, he knew that the Landlord had not cashed the incorrect cheques, and began withholding rent in August, 2019.
50. For the reasons above, I find, on a balance of probabilities that the Landlord and the Landlord's Agent did not substantially interfere with the reasonable enjoyment of the rental unit or residential complex by the Tenant with respect to the 2019 N4 Notices. I further find that the Landlord and the Landlord's Agent did not harass the Tenant with respect to the 2019 N4 Notices.
51. I considered the Tenant's allegations individually and found above that the Landlord and the Landlord's agents did not harass the Tenants with respect to the individual allegations of honouring the lease and the service of notices. I also found above that the Landlord and the Landlord's Agent did not enter the rental unit illegally between August, 2019 and February 2020. Therefore, I find that the Landlord and the Landlord's Agent did not harass, obstruct, coerce, threaten or interfere with the Tenant with respect to the individual allegations, or collectively with respect to the Tenant's allegation of a pattern of harassment.
52. This order contains all of the reasons in this matter and no further reasons will issue.

Remedies

1. The Tenant is entitled to a rent abatement of \$500.00 for the illegal entry on February 14, 2021.
2. The Tenant paid an application filing fee of \$53.00, and the Tenant is entitled to reimbursement of this cost.

It is ordered that:

1. The total amount the Landlord and the Landlord's agent shall pay the Tenant is \$553.00. This amount represents:
 - \$500.00 for a rent abatement, and
 - \$53.00 for the cost of filing the application.
2. The Landlord and the Landlord's Agent shall pay the Tenant the full amount owing by November 11, 2023.
3. If the Landlord and the Landlord's Agent do not pay the Tenant the full amount owing by November 11, 2023, on November 12, 2023, the Landlord and the Landlord's Agent will owe interest. This will be simple interest calculated from 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.

October 31, 2023,

Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Date

Kathleen Wells

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.