



Order under Section 69 Residential Tenancies Act, 2006

Citation: Vladimir Milenkovic v Angelo Scauzillo, 2023 ONLTB 43274

Date: 2023-10-19 **File Number:** LTB-T-074603-22 (TST-13835-20)

In the matter of: 104, 8 Newholm Road
Toronto Ontario M8Y3M4

Between: Angelo Scauzillo and Newholm Holdings Inc. Landlord

And

Vladimir Milenkovic Tenant

Vladimir Milenkovic (the 'Tenant') applied for an order determining that Angelo Scauzillo (the 'Landlord') harassed, obstructed, coerced, threatened or interfered with the Tenant, 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 the Tenant's household and withheld or deliberately interfered with the reasonable supply of a vital service, care service, or food that the Landlord is obligated to supply under the tenancy agreement.

The Tenant further applied for an order determining that the Landlord failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards.

This application was heard by videoconference on July 27, 2021, May 5, 2022, July 27, 2022, and August 19, 2022.

The Tenant, the Tenant's Representative, Sandra Milenkovic, the Landlord, and the Landlord's Legal Representative, Roseanne Regina, attended the hearing.

At the July 27, 2022 instance of the hearing, the Landlord testified that the building had been sold. The hearing was adjourned to put the successor Landlord on notice of the proceedings and to allow the Tenant the opportunity to amend the application to include the successor Landlord. Kevin Anderson attended the August 19th hearing date as the legal representative for the successor Landlord. At the hearing, the Tenant testified that all outstanding maintenance issues had been resolved and that the Tenant did not wish to proceed against the successor Landlord.

Therefore, the application was not amended to include the successor Landlord.

Determinations:

1. The unit is a one-bedroom apartment in a multi-residential complex with 28 units. The apartment is on the second floor, above a parking garage with two spaces, to which the Tenant has exclusive access. Additionally, the Tenant is assigned an outdoor parking spot in the parking lot. The parking charges for all 3 spots are included in the Tenant's rent.
2. It is not disputed that at the hearing of a previous L2 application, the member ruled that the 2-spot parking garage beneath the Tenant's apartment is part of the Tenant's unit. The application was resolved with an order on consent, Board Order TSL-08983-19.
3. It is not disputed that the Landlord first saw the Tenant's lease which had been signed with a previous landlord on the hearing date of the L2 application in September, 2019.
4. The Tenant moved into the residential complex in 1986, and signed his current lease in 1991.
5. As of the hearing date, the Tenant was still in possession of the rental unit.
6. The lawful rent is \$1,155.00. It is due on the first day of each month.

T6 Application

7. In their T6 application, the Tenant alleges that the Landlords breached their maintenance and repair obligations with respect to a plumbing issue in the Tenant's kitchen that left the Tenant without hot and cold running water to the kitchen between July 9, 2019 and October 7, 2019. The Tenant also alleges that the Landlord failed to repair damage to the kitchen cupboards caused by the plumbing repair from October 7, 2023 until March 17, 2020.
8. Section 20 of the Act hold the landlord responsible for providing and maintaining the rental unit in a good state of repair.
9. In *Onyskiw v. CJM Property Management*, 2016 ONCA 477 (CanLII), the Court of Appeal determined that a contextual approach should be adopted when considering a landlord's potential breach of subsection 20(1) of the Act and a breach will not be found if the landlord's response to a maintenance issue was reasonable in the circumstances.
10. I must also apply subsection 30(2) of the Act, and consider whether the tenant, or former tenant, advised the landlord of the alleged breaches before applying to the Board, and the parties' duty to mitigate found in section 16 of the Act.

Water

11. On July 8, 2020, the Landlord attended the rental unit with the building superintendent, to conduct an inspection. The Landlord testified that there was a significant amount of clutter in the unit, and that, as part of the inspection, the Landlord checked the taps in the kitchen and found that there was no water coming from the taps.
12. The Tenant testified that the problems with the water in his kitchen had begun approximately 2 years earlier, and he had not informed the Landlord. Following the inspection on July 8, 2020, the Tenant made his first of several maintenance requests for repairs to the water in his kitchen.
13. It is not disputed that repairs were made to the kitchen sink pipe on July 30, 2023, and that the pipe under the sink began to leak. The Tenant immediately informed the Landlord that there was a leak. The Landlord's investigation revealed that there was a more significant problem with badly damaged and rusted vertical pipes in the walls of the building, and that the risers to the Tenant's unit and to the units above needed to be replaced.
14. The repair was completed on October 9, 2019. The Landlord explained that the nature of the repair was substantial, and that they had some difficulty securing the services of a contractor for the repair. The Landlord testified that he was very concerned about the repair as it directly impacted two other units, and that did what they could to assess the work required and have the repair completed as quickly as possible.
15. Based on the evidence before me, I find, on a balance of probabilities, that there was a maintenance and repair issue with respect to the water in the kitchen, I further find that the Landlord became aware of the problem on July 8, 2020. In my view, the Landlord's actions were reasonable under the circumstances, and therefore, I find that the Landlord was not in breach of Section 20 of the Act with respect to the water supply to the Tenant's unit.

Kitchen Cabinets

16. It is not disputed that the holes made by the plumbers to access the water pipes were not repaired by the Landlord until March 17, 2020, and that the Tenant had notified the Landlord of the problem immediately after the pipes were repaired.
17. Based on the evidence before me, I find, on a balance of probabilities, that there was a maintenance and repair issue with respect to the holes in the kitchen cupboards. I further find that the Landlord was aware of the problem. I find that the Landlord's actions were not reasonable under the circumstances. Therefore, I find that the Landlord was in breach of his maintenance and repair obligations with respect to the holes in the kitchen cupboards. I find that the holes limited the Tenant's ability to use the cupboards above and below the kitchen sink, and that the Tenant is entitled to an abatement.

18. I determined that an abatement of 1% for the period between October 9, 2019 and March 17, 2020, or \$62.27. ($\$1,155.00 \times 12 / 365 \times 164 \text{ days} \times 1\%$) is appropriate under the circumstances
19. The Tenant further testified that the inside of the cabinets were not sanded or repainted until after the Landlord sold the property and the new Landlord took possession. I find that any remaining issue with respect to the painting of the inside of the kitchen cupboards is cosmetic in nature and, as the area in question is inside the cupboard, the impact on the Tenant is negligible. Therefore, the Tenant is not entitled to an abatement for the painting of the inside of the kitchen cupboard.

T2 application

20. In their T2 application, the Tenant alleges that the Landlord withheld vital services from the Tenant.

Vital Services

21. The Tenant alleges that the Landlord withheld the Tenant's supply of water to the kitchen between July 9, 2019 and October 9, 2019, the period after the Landlord discovered that the kitchen taps were not working, and the completion of the repairs.
22. It is not disputed that the Tenant had hot and cold running water to the unit throughout the timeframe in question, with the exception of when the water was turned off to effect the repairs. As noted above, the Tenant did not inform the Landlord that there was a problem with the water in the kitchen prior to the Landlord discovering the problem on July 8, 2019. I found above that the Landlord's actions in conducting the repairs were reasonable under the circumstances.
23. Therefore, I find, on a balance of probabilities, that the Landlord did not withhold or interfere with the Tenant's vital services. The Tenant is not entitled to an abatement for the allegation relating to vital services.

Illegal Entries

24. Section 27 of the Act provides:

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.

July 6, 2019 entry

25. It is not disputed that the Landlord entered the garage on July 6, 2019 without prior notice to the Tenant.
26. The issue of the Tenant's right to the exclusive use of the garage was adjudicated previously and was resolved by Board Order TSL-08983-19, which was resolved on consent.
27. The Landlord testified that at the time of the entry, he considered the Tenant's garage spaces as common use, and that he had never believed that the Tenant was entitled to 3 parking spaces. The Landlord did not have a copy of the Tenant's lease at the time, as he had not received a copy when he purchased the property, and the Tenant had not provided his copy of the lease. As such, the Landlord did not believe he was required to give a notice of entry to the garage on July 6, 2019.
28. The Landlord had purchased the building at least 7 years prior to the July 6, 2019, during which time the Tenant had use of both spaces in the garage, and had not been charged for parking in addition to his rent. In my view, the Landlord knew or should have known that the Tenant had exclusive use of the garage at the time, and was entitled to notice of entry.
29. Therefore, I find, on a balance of probabilities that the Landlord entered the garage illegally on July 6, 2019. The Tenant testified that he was concerned by the noises that he heard in the garage, but that he was not present in the garage at the time. Based on the Tenant's testimony, I determined that the Tenant is entitled to an abatement of \$100.00 for the entry to the garage.

March 2020 Notice of Entry

30. The Tenant's Representative argued that on March 17, 2020, the Landlord entered the unit pursuant to notice of entry to conduct a fire alarm inspection while the Tenant was out of town, and that the Tenant did not receive notice until after the inspection had been completed. The Tenant did not dispute that the notice had been served in accordance with the Act, and the Landlord testified that and that he was not aware that the Tenant was out of town at the time.
31. Based on the evidence before me, I find, on a balance of probabilities that the Landlord did not enter the unit illegally on March 17, 2020.

Other Notices of Entry

32. The Tenant introduced multiple other notices of entry for inspections and repairs to the unit, asserting that there were various deficiencies in the notices relating to the time of service and the need for the Landlord to access the unit. It is not disputed that in all of these instances, the Tenant permitted the Landlord to enter the unit.
33. Section 26 of the Act provides:

- 26** (1) A landlord may enter a rental unit at any time without written notice,
- (a) in cases of emergency; or
 - (b) if the tenant consents to the entry at the time of entry.

34. Therefore, I find, on a balance of probabilities, that the Landlord did not enter the rental unit illegally after July 6, 2019. The Tenant is not entitled to a rent abatement for the notices of entry between July 8, 2019 and July 27, 2021.

Substantial Interference and Harassment

35. The Tenant alleges that the Landlord substantially interfered with the Tenant's reasonable enjoyment of the rental unit and engaged in a pattern of harassment including the above noted alleged illegal entries, and that the Landlord:
- 1) issued multiple eviction, and other notices to the Tenant,
 - 2) attempted to move the Tenant's outdoor parking space without the Tenant's consent
 - 3) had a loud discussion about the Tenant's rent payment history in the residential complex within earshot of other Tenants.

Eviction Notices:

36. The Landlord issued a total of 2 voidable N5 notices of termination in 2020. The first had a termination date of February 20, 2020, was in relation to the Tenant leaving junk mail in the hallways. The Tenant testified that the table where junk mail was normally placed near the mailbox had been moved to make room for the Christmas tree and he had merely placed papers where other tenants had done. The Landlord testified that the Tenant ceased the alleged conduct and the notice was voided.
37. The second voidable N5 notice had a termination date of April 20, 2020 and was based on the Landlord's allegation that the Landlord was unable to inspect the fire safety equipment in the Tenant's garage. It is not disputed that the Tenant did not void the notice. The Landlord took no further action with respect to the issue.
38. Landlords are entitled to enforce their legal rights through the service of notices of termination and the filing of applications. It is not disputed that there was a basis for the service of both N5 notices, and I am not satisfied that the service of 2 N5 notices constitutes either substantial interference or harassment.

Notices of Entry

39. The Tenant alleges that the Landlord conducted excessive inspections of the unit as part of a pattern of harassment between July 2019 and July 2021. I found above that the Landlord did not enter the unit illegally after a single instance on July 6, 2019. As noted above, the Landlord is entitled to enter the unit to conduct maintenance and inspections, including those related to fire safety. The notices in question include a fire inspection, maintenance to the smoke detectors, as well as 4 inspections of the premises in relation to the state of the rental unit and compliance with a Board Order and N5 Notice.
40. Given that it is not disputed that the Tenant has not cleaned the garage, I cannot find that the number of notices of entry is unreasonable under the circumstances.
41. Based on the evidence before me, I find, on a balance of probabilities that the Landlord did not harass the Tenant by issuing excessive notices of entry.

Other Notices:

42. The Tenant alleges that the Landlord sent him a notice threatening to put the Tenant's stored items in the garbage on October 23, 2019. The Landlord testified that the form was sent to all tenants as part of an effort to clear out storage lockers which were no longer in use. The form specifies storage lockers in two specific locations and does not mention garages. As the Tenant pointed out in his written response to the Landlord, the form is not

applicable to the Tenant's use of his garage for storage, and I am satisfied that the service of the form does not constitute harassment of the Tenant.

43. The Tenant also alleges that the Landlord harassed the Tenant by providing a form for the Tenant to sign to confirm details of the tenancy once the building was sold. The Tenant alleges that the form contained inaccuracies and the Tenant did not sign the form, or request changes to its contents, and the Landlord did not make any further requests with respect to the form. Even if this allegation was within the time period of the application, it does not, in my view constitute harassment of the Tenant.

Parking:

44. The parking issue has been a source of contention for both parties over many years.
45. As noted above, it is not disputed that The Tenant is entitled to the use of 3 parking spaces, two in a two-space garage underneath the Tenant's unit which the Tenant uses to store construction supplies, and one assigned outdoor spot in the parking lot.
46. It is not disputed that there is a shortage of tenant parking at the residential complex.
47. In accordance with the Board Order, the Landlord offered the Tenant several options for storage space to use instead of the two indoor spaces. The Tenant did not agree to any of the Landlord's suggestions for storage and the Landlord made no further attempts to gain possession of the two parking spaces.
48. It is not disputed that on January 21, 2021, the Superintendent informed the Tenant of the Landlord's intention to move the Tenant's outdoor parking spot from a reserved spot in the parking lot to a spot directly outside the Tenant's garage door. It is not disputed that when the Landlord was informed that the spot outside the garage door was not appropriate as it was part of a fire lane, the Landlord did not proceed with moving the Tenant's parking space.
49. I am not satisfied that this incident reflects harassment of the Tenant. The Tenant retains all three of his parking spots in their original locations. The Tenant's entitlement to his parking spots was previously adjudicated, and the Tenant is under no obligation to cooperate with the Landlord in the Landlord's attempts to parking issues for other Tenants. Likewise, the Landlord is entitled to seek solutions to resolve the parking problem at the residential complex.

Other allegations

50. The Tenant also alleges that on one occasion, the Tenant found another car parked in the Tenant's parking space, and the Superintendent did not address the situation, but told the

Tenant to call 311. The Tenant also testified that he pays his rent in cash and that he has on at least one occasion, had difficulty finding the Superintendent in the building to pay his rent. I am not satisfied that either of these allegations constitute harassment.

Threat of Eviction

51. While the Tenant may believe that the Landlord had sought to evict him, the Landlord's actions and the evidentiary record do not support this view. The Landlord's 2019 L2 application was resolved by an order on consent, continuing the tenancy. Although the Tenant was ordered to restore his unit, including the garage, to an ordinary state of cleanliness, the Tenant did not comply with this order with respect to the garage. The Landlord testified that he did not wish to evict the Tenant, he wanted the Tenant to clean the garage. The Landlord did not file an L2 application pursuant to the April, 2020 N5 Notice with respect to the state of the garage, although the Tenant had not voided the N5 Notice.
52. The Tenant also alleges that the Landlord threatened to evict the Tenant and engaged in a loud discussion about the Tenant's payment history in a conversation in the Tenant's unit in July, 2021. The Landlord testified that he told the Tenant that he did not want to evict the Tenant, and had raised the Tenant's history of late payment of rent to illustrate that the Landlord had not taken the opportunity to evict the Tenant, when he could have done so. The Landlord testified that the door was closed, the Tenant testified that the door was open. The Tenant did not allege that anyone overheard the conversation. Based on the evidence before me, and given the Landlord's internally consistent oral testimony, I find that the Tenant did not prove that the Landlord threatened to evict him, or publicly embarrass him.
53. Therefore, based on the evidence before me, I find, on a balance of probabilities that the Landlord did not substantially interfere with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household.
54. I further find that the Tenant's allegations do not either individually or as a whole support a finding that the Landlord harassed the Tenant. Therefore, I find, on a balance of probabilities that the Landlord did not harass, obstruct, coerce, threaten or interfere with the Tenant.
55. The Tenant paid \$50.00 for the cost of filing the application, and the Tenant is entitled to reimbursement of these costs.
56. The total amount owing to the Tenant is \$212.27.
57. This order contains all of the reasons in this matter and no further reasons will issue.

It is ordered that:

T6 application

1. The Landlord shall pay to the Tenant a rent abatement of \$62.27 for the holes in the kitchen cupboards.

T2 application

2. The Landlord shall pay to the Tenant a rent abatement of \$100.00 for the illegal entry of the garage on July 6, 2019.
3. The Landlord shall pay to the Tenant \$50.00 for the application filing fee.
4. The total amount owing to the Tenant is \$212.27.
5. The Landlord shall pay the Tenant the full amount owing by October 30, 2023
6. If the Landlord does not pay the Tenant the full amount owing by October 30, 2023 the Landlord will owe interest. This will be simple interest calculated from October 31, 2023 at 7.00% annually on the balance outstanding.
7. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

October 19, 2023

Date Issued

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.