



Order under Section 31 Residential Tenancies Act, 2006

Citation: McQuaig v Hale, 2023 ONLTB 66155

Date: 2023-10-18

File Number: LTB-T-048685-23

In the matter of: 763 Main Street West
North Bay Ontario P1B2V6

Tenant

Between: Adam McQuaig

And

Brannyn Hale

Landlord

Adam McQuaig (the 'Tenant') applied for an order determining that Brannyn Hale (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.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.

This application was heard by videoconference on August 22, 2023. The Landlord, the Landlord's representative, S. Bailey and the Tenant attended the hearing.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must:
 - Pay to the Tenant \$1,453.00, which represents damages resulting from the Landlord's breaches of the Act and costs.
 - Pay an administrative fine of \$1,000.00 to the Board.
2. The crux of the Tenant's application surrounds events that took place on June 6, 2023. Where it is undisputed that the Landlord changed the key combination to the lock of the Tenants rental unit, prohibiting him from retaining entry to the rental unit. The Landlord

acknowledged that he moved the Tenant's belongings out of the rental unit on June 6, 2023.

3. The Landlord also acknowledged that there was no order of the Board evicting the Tenant from the rental unit, no notice of termination was served on the Tenant, and there was no written agreement terminating the tenancy. The Landlord testified that he changed the locks and moved the Tenant's belongings out of the rental unit due to safety concerns for his family.
4. The Landlord also submitted that there was a verbal agreement and that the Tenant had an intent to leave June 1, 2023.
5. Based on the evidence adduced at the hearing, I find that the Landlord entered the rental unit illegally, in contravention of 26 and 27 of the Act, and altered the locking system in contravention of section 24 of the Act.

ANALYSIS & REMEDIES

Illegal Entry:

6. Section 25 of the Act states that a landlord may only enter a rental unit on in accordance with the Act.
7. Section 26 of the Act states in part, that a landlord may enter a rental unit at any time without written notice in cases of an emergency or if the tenant consents at the time of entry.
8. Based on the evidence it does not appear that the Tenant consented to the entry by the Landlord on June 6, 2023, as it was undisputed that he was at work at the time the Landlord entered the rental unit and removed his belongings. The Landlord may have also had his own reasons as to why he accessed the rental unit and the items were removed, however they do not amount to an "emergency" that the Act generally contemplates (fire, flood, something requiring immediate attention). The Landlord did not serve a notice of entry and therefore, I find that he entered the rental unit illegally.

Illegal Lockout:

9. Section 24 of the Act states:

A landlord shall not alter the locking system on a door giving entry to a rental unit or residential complex or cause the locking system to be altered during the tenant's occupancy of the rental unit without giving the tenant replacement keys.

10. Section 39 of the Act states:

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.

11. The simplest characterization of what happened in this case is that the Landlord engaged in self remedy and did not follow due legal process. The Landlord may have had his motives in wanting to evict the Tenant, however the Board and the Act have processes in place, none of which include changing the locks on the Tenant, removing their belongings from the rental unit, and essentially rendering them homeless.

12. In tenant applications the most common remedy awarded is abatement of the rent. Abatement is a contractual remedy which is designed to address the idea that if a tenant is paying rent for a bundle of goods and services and not receiving them, then the rent should be abated in an amount proportional to the difference between what is being paid for and what is being received. The unit was obviously not abandoned as the Tenant was sleeping in the unit the night before June 6, 2023, and there was no order of the Board authorizing possession. Therefore, I find that the Landlord illegally evicted the Tenant.

Remedies:

13. The Tenant, in their application seeks a rent abatement of \$1,400.00 which equates to 100% abatement for one month.

14. The difficulty that arises in the context of a breach of privacy rights under the Act is that abatement of the rent is not a good fit as a remedy. I say this because a single breach such as the one here may only deprive the tenant of his or her right to privacy for one day, which given what abatement represents, would seem to limit the available remedy to abatement of the rent for one day. In an average tenancy such a remedy results in an amount that seems to me to be woefully inadequate. For example, in the case here an abatement of one day would be only \$46.03. Furthermore, awarding abatement for breach of privacy fails to get at the full impact of the breach, which often results in lingering feelings of violation that can continue indefinitely into the future.

15. However, the Divisional Court in *Mejia v. Cargini*, [2007] O.J. No. 437, found that the phrase “any other order that it considers appropriate” in the remedies section of the Act (which is now found in paragraph 31(1)(f)) means that the Board has the power to award “damages for the breach of contract of lease”. For the reasons stated above it seems to me that in breach of privacy cases, approaching remedy as a matter of damages arising from a breach of the tenancy agreement is more logical and appropriate than describing the remedy as abatement of the rent.

16. The leading case with respect to breach of privacy is *Wrona v. Toronto Community Housing Corp.*, [2007] O.J. No. 423 (Ont. Div. Ct.). In that case the Tenant was provided

with notice but the notice failed to meet the mandatory requirements of what is now section 27 in that the time of entry was a window of several hours rather than a specific time. The Court awarded the tenant \$1,000.00 for a single illegal entry. As Wrona is the leading case from the higher courts of Ontario with respect to privacy rights, I believe the remedy awarded by the Court in that case is the starting point for determining the appropriate amount to award the Tenant in this case.

17. In Wrona there had been at least one previous application brought to the Tribunal by the tenant about the same issue. In other words, there was a history of dispute between the parties about what constituted a legal entry. Here there was no prior application between the parties. The other significant difference between the two cases is that in Wrona the tenant was provided some notice to the entry, albeit the notice was invalid. In the present case the Tenant was provided no advance notice and came home from work to find the locks changed and his stuff removed from the rental unit. Later that night he went to stay at a family trailer.
18. Based on the precedent established by Wrona, the differences between the two cases, my knowledge of previous applications before the Board, and the evidence of impact on the Tenant of the Landlord's actions, I am of the view that a reasonable amount for damages arising from the Landlord's illegal entry and illegal lockout of the rental unit is \$1,400.00.

Other Remedies:

19. On consent of the parties, the Tenant no longer seeks recovering possession of the rental unit, to recover their possessions, or for the Landlord to pay costs associated with damaged, destroyed, or disposed of property. As such the application is amended to remove these claims.
20. The Tenant, in their application also sought out-of-pocket expenses in the amount of \$3,500.00. Which represents an anticipated first and last month's rent in a new rental unit. However, the Tenant did not adduce any evidence to support this claim. Did not provide a lease agreement to a new place nor proof that they paid a landlord first and last at another property. If a party is claiming an out-of-pocket expense, I find it only logical that they would retain proof of same and rely on it as evidence at the hearing. As this was not done this claim is dismissed.
21. Finally, the Tenant requests that the Board imposes an administrative fine on the Landlord. The Board's Guideline 16 suggests that the purpose of a fine is to encourage compliance with the Act and to deter landlords from engaging in similar activities in the future. It goes on to say "this remedy is most appropriate in cases where the landlord has shown a blatant disregard for the Act and other remedies will not provide adequate deterrence and compliance."

22. On this point the Landlord stated that they had mutually agreed on a date for the Tenant to move out and it appeared as though the Tenant was take an additional grace period and that the Tenant was a long-term friend that he knew from high school and was helping him out by letting him stay in the rental unit.
23. The Act does not create different “classes” of tenants. The relationship of the parties in this case may be relevant in some degree, but not with respect to the rights afforded under this Act. Some fundamental principles of this Act are security of tenure, and to prevent tenants from unlawful evictions [Emphasis added], which is exactly what happened here. There was also some acknowledgement of substance abuse issues that the Tenant was working through at the time and so that could also increase the vulnerability of this individual. The Landlord also asserted that he has been a landlord for at least 13 years in Ontario, and so given this length in time I would expect a greater level of understanding of the Act and a course of conduct that demonstrates a respect for our processes.
24. I am not satisfied that the remedies sought by the Tenant and granted in this order would sufficiently deter the Landlord from engaging in similar activity in the future. It is a very serious breach of the Act to change a tenant’s locks illegally. This is behaviour that warrants an administrative fine.
25. At the hearing the Landlord’s representative relied on two Board decisions; TNT-54848-12 and NOT-00793-12 that speak to quantum of an administrative fine. I am not bound by other Board decisions- however I find that some of the considerations and factual matrix are present in this case. As well as there are a considerable amount of other decisions issued by the Board which award \$1,000.00 as an administrative fine, in these circumstances. Therefore, I find it appropriate to award the same \$1000.00 fine in this case. Further, if there are such actions by the Landlord in the future, it should result in a substantially greater fine.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$1,453.00. This amount represents:
 - \$1,400.00, which represents damages arising out of the Landlord’s breaches of the Act.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by October 29, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by October 29, 2023, the Landlord will owe interest. This will be simple interest calculated from October 30, 2023 at 6.00% 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.
5. The Landlord shall pay to the Landlord and Tenant Board an administrative fine in the amount of \$1,000.00 by October 29, 2023.

October 18, 2023

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Curtis Begg

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.