



Order under Section 31 Residential Tenancies Act, 2006

Citation: Blatchford v Danam Limited, 2023 ONLTB 66151

Date: 2023-09-27

File Number: LTB-T-061646-23

In the matter of: 807, 1651 VICTORIA PARK AVE SCARBOROUGH
ON M1R1P9

Tenants

Between: Crystal Angelina Blatchford
Kenneth James Blatchford

And

Landlords

Danam Limited
Sawera Property Management

Crystal Angelina Blatchford and Kenneth James Blatchford (the 'Tenants') applied for an order determining that Danam Limited and Sawera Property Management (the 'Landlords'):

- 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.
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.

This application was heard by videoconference on September 25, 2023.

The Tenants Crystal Angelina Blatchford and Kenneth James Blatchford and the Tenants' Legal Representative George Brown and Landlord's Agent Mohammad Sabir and the Landlords' Legal Representative Ian Gardener attended the hearing.

Determinations:

1. As explained below, the Tenants proved the allegations contained in the application on a balance of probabilities.

2. Crystal Blatchford is the daughter of the late Melissa Blatchford. Kenneth Blatchford is the father of the late Melissa Blatchford.
3. Melissa Blatchford was a Tenant of the rental unit. She passed away in the rental unit on June 25, 2023.
4. The rental unit is a two-bedroom apartment with one bathroom. There are 67 residential units in the residential complex.
5. It was not disputed the Landlords changed the locking system to the rental unit on July 25, 2023 and have not provided Crystal Blatchford or Kenneth Blatchford with a replacement key. The unit has not been re-rented to another tenant and the Tenants' property remains inside.
6. The Tenants' position is the Landlords has violated section 24 of the *Residential Tenancies Act, 2006* (the Act). This section reads as follows:

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.

7. The Landlord's position is the Applicant Tenants are not in fact Tenants and as such they rely on section 91 of the This section states:

If a tenant of a rental unit dies and there are no other tenants of the rental unit, the tenancy shall be deemed to be terminated 30 days after the death of the tenant.

8. The Tenants submitted a copy of the lease agreement into evidence. It is dated November 30, 2006 and lists Melissa Blatchford, Kenneth Blatchford and Crystal Blatchford as Tenants. At the time the lease was entered into, Crystal Blatchford was 12 years of age.
9. The Tenants also submitted rental statements from the Landlords dating back as far as October 1, 2020. The most recent rental statement submitted by the Tenants is from January 9, 2023. All of these statements, generated by the Landlord, list Melissa Blatchford, Kenneth Blatchford and Crystal Blatchford as Tenants.
10. Kenneth Blatchford testified that he does not live in the rental unit. His evidence was he has paid the monthly rent to the Landlords numerous times over the years and submitted evidence of these payments. His evidence was that in 2019, as a result of an unrelated Landlord application to the Board, he paid the monthly rent for 12 straight months. Mr. Blatchford testified that the most recent rent payments to the Landlords were made by him via e-transfer. The Tenants have not paid the monthly rent since the Landlords changed the locks to the unit.

11. Mr. Blatchford testified that since the Landlord has changed the locks to the rental unit, his grand daughter Crystal has stayed with him at times.
12. Crystal Blatchford testified that before her mother Melissa passed away, they lived together in the rental unit. She testified she has lived in the rental unit since she was 12 years old.
13. Ms. Blatchford testified that her late mother Melissa, suffered from bipolar disorder and substance abuse. Her evidence was that once she turned 19 years of age, she would sometimes stay elsewhere because she needed breaks from her mother.
14. Ms. Blatchford's evidence was she suffers from social anxiety disorder and agoraphobia and often spent entire 24-hour periods within the rental unit. Her evidence was she has spent up to six weeks straight inside the rental unit without going out.
15. Ms. Blatchford testified that since was 18 years of age she has always had a key to the rental unit.
16. Ms. Blatchford's evidence was that once her mother passed away, she asked the Landlords for an updated lease because she believed her mother needed to be removed from the agreement. She testified the Landlords asked her to complete a "Resident Information Update" form on either July 16 or 17th of 2023. Ms. Blatchford testified she completed the document and emailed it to the Landlord on July 18, 2023 advising the Landlords they would be keeping the unit but giving up the storage space they had.
17. Ms. Blatchford testified she received no response from the Landlords and the locks to the rental unit were subsequently changed on July 25, 2023. During the period between the passing of her mother and the changing of the locks, Ms. Blatchford had not been staying in the unit as it needed to be cleaned and aired out. Ms. Blatchford testified that since the locks were changed by the Landlords she has had to stay with friends and family.
18. On September 22, 2023, the Landlords gave Ms. Blatchford access to the unit and she retrieved some documents at that time.
19. Ms. Blatchford estimated she spent approximately 70% of her time in the rental unit between 2013 and 2023. It was less if Crystal and her mother Melissa were fighting. In this case, Ms. Blatchford would stay with friends.
20. Ms. Blatchford testified her mother looked after issues with the tenancy and dealt with the Landlords. Ms. Blatchford contributed to the household expenses by paying for the internet and groceries.
21. Ms. Blatchford and Mr. Blatchford both testified that neither of them has ever given the Landlords any notice to terminate the tenancy.

22. Mohammad Sabir testified he has been the property manager of the building since 2021. His evidence was he had never met Crystal Blatchford prior to Melissa passing away. It was his evidence he met Crystal Blatchford when she attended the rental office inquiring about the lease.
23. Mr. Sabir testified the building has 36 cameras and he has never seen Crystal Blatchford in any of the footage from the cameras.
24. Mr. Sabir testified only one access fob had been issued and that was given to the late Melissa Blatchford.
25. Mr. Sabir was asked why the rental statements have the names of Crystal and Kenneth Blatchford on them if they are not Tenants. He responded that he is not involved in creating the rental statements as that is the responsibility of the Landlord. He acknowledged that in managing the property, he does adhere to the Landlord's records.
26. Eddie Chung testified he is the son of the owner of the property. His evidence was he has managed the property for 15 years. Mr. Chung testified he had never met Crystal Blatchford until after Melissa Blatchford passed away.
27. Mr. Chung stated that he knows everyone that lives in the building and did not think it was possible Crystal Blatchford could live in the building without him being aware of it. Mr. Chung acknowledged he is not at the property 24 hours a day and lives off site.
28. Ferenc Harkai testified that he is the superintendent at the residential complex and has been for about 4 and half years. His evidence was he has never seen Crystal Blatchford before and only knows of her because of this application. Mr. Harkai also testified to the numerous cameras located at the property and stated he had also never seen Crystal Blatchford in any camera footage.
29. Mr. Harkai's evidence was he does the maintenance for the building and approximately three years ago spent three weeks repairing the flooring in the rental unit. His evidence was during this work, he never met or saw Crystal Blatchford.
30. The Landlords submitted a number of declarations from other tenants that live in the residential complex. Each of them states the late Melissa Blatchford lived in and rented the rental unit. These declarations provide no valuable information since it was not disputed that Melissa Blatchford was a Tenant of the rental unit. Even if the declarations had included additional information, I would give them little weight against the viva voce evidence of those that testified at the hearing. I note that Mr. Chung signed a declaration as did Mr. Harkai. Both of these people testified at the hearing for the Landlord and as such I considered their evidence as presented orally.

Analysis

31. The Landlords did not dispute that they changed the locks to the rental unit on July 25, 2023.
32. Based on the evidence presented I find it more likely than not the Applicants are Tenants of the rental unit. I do not accept the Landlord's argument that because employees of the Landlords have not seen Ms. Blatchford at the residential complex this means she does not live there. There are reasons why these people did not see Ms. Blatchford. Firstly, they are not at the property 24 hours per day. Secondly, no evidence was presented that an exhaustive examination of their camera footage was undertaken. No date range or extended time period was examined or testified to. Lastly, Ms. Blatchford suffers from a condition that keeps her inside for weeks at a time. I did not find the Landlords' evidence supported a finding that Ms. Blatchford is not a Tenant.
33. The Landlords' own documents show both Ms. Crystal Blatchford and Kenneth Blatchford as Tenants. The lease agreement has them both named, and the rental statements issued by the Landlords also show them named as Tenants. I find this evidence to be far more convincing than the Landlords' undated and generalized assertions. No reasonable explanation was provided by the Landlords as to why Crystal and Kenneth Blatchford were included on the rental statements if they were not in fact Tenants of the rental unit. No evidence was submitted of any conversations between the Landlords and the late Melissa Blatchford showing she was the sole Tenant of the unit.
34. While it is clear Mr. Blatchford has not lived in the rental unit, he is also listed as a Tenant on the lease agreement. He was also named on the rental statements. I am satisfied he was not a Tenant in possession of the rental unit however I am also satisfied he has paid the monthly rent and has a right to occupy the rental unit as contemplated by section 2(1) of the Act. At the very least, I am convinced Mr. Blatchford paid rent to the Landlord on behalf of Melissa and Crystal Blatchford.
35. I accept the evidence of Ms. Blatchford that she has lived in the rental unit since she was 12 years of age. While she was a minor at the time the lease agreement was entered into, the agreement directly related to Ms. Blatchford's housing and as such I find it valid under section 3(4) of the Act.
36. Additionally, Ms. Blatchford has lived in the rental unit, exercising her rights as a Tenant well after turning 18 years of age. I find no amendment to the lease agreement was required since her name was already on it as a Tenant. It would make no logical sense to add her name to the lease a second time.
37. Ms. Blatchford also submitted a "Resident Information Update Form" to the Landlords after her mother passed away. The Landlords gave no evidence as to why they failed to take into account the lease agreement, the rental statements or this updated form when they

decided to change the locks that give access to the rental unit. In my view, simply relying on never having seen Crystal Blatchford at the complex is an insufficient exercise of the Landlords' responsibility when their documents are taken into account.

38. Based on all of the evidence presented at the hearing, I am satisfied the Tenants have proved their application on a balance of probabilities. The Landlords altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys and in so doing substantially interfered with the Tenants' reasonable enjoyment of the rental unit.
39. At the hearing, the Tenants did not raise the issue of an illegal entry although it was claimed on the application. I heard no evidence relating to a notice of entry or the absence of it. As such, I did not consider this claim.

Remedies

40. The Tenants requested an order allowing them to move back into the rental unit and continue the tenancy. Based on the reasons stated above, I find the Tenants were illegally locked out of the rental unit and the rental unit is still vacant. The Landlord will be ordered to allow the Tenants to move back into the rental unit and is prohibited from renting the unit to anyone else.
41. The Tenants also sought \$1,200.00 in general damages. Ms. Blatchford was left without her home and had to resort to staying with friends and family. She had no access to her belongings until September 22, 2023. I find adapting to these sudden changes while grieving the death of her mother are worthy of the amount requested and the Landlords will be ordered to pay the Tenants \$1,200.00 in general damages.
42. The Tenants incurred costs of \$48.00 to file the application and are entitled to reimbursement of those costs.

It is ordered that:

1. The total amount the Landlords shall pay the Tenant is \$1,248.00. This amount represents:
 - \$1,200.00 in general damages.
 - \$48.00 for the cost of filing the application.
2. The Landlords shall pay the Tenants the full amount owing by October 15, 2023.
3. If the Landlords do not pay the Tenants the full amount owing by October 15, 2023, the Landlords will owe interest. This will be simple interest calculated from October 16, 2023 at 7.00% annually on the balance outstanding.

4. If the Landlords do not pay the Tenants the full amount owing by October 16, 2023, the Tenants may recover this amount by deducting \$1,200.00 from the monthly rent for October 2023. If the monthly rent for October 2023 has already been paid by the date of this order, the Tenants are authorized to deduct \$1,200.00 from the monthly rent for November 2023.
5. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.
6. The Landlords shall immediately allow the Tenants to recover possession of the rental unit and provide the Tenants with keys to the doors of the rental unit and the residential complex.
7. The Landlords shall not re-rent the unit to anyone else.
8. If the Landlords do not allow the Tenants to recover possession of the unit, the Tenants may file this order with the Court Enforcement Office (Sheriff) so that the order may be enforced.
9. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give possession of the unit to the Tenant.

Date Issued

John Cashmore
Member, Landlord and Tenant Board

September 27, 2023

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.

The part of this order allowing the Tenant to recover possession of the unit and prohibiting the Landlords from re-renting the unit to anyone else expires and cannot be enforced if:

- a. The Tenants do not file this order on or before October 12, 2023 with the Court Enforcement Office (Sheriff) which has territorial jurisdiction where the rental unit is located, or
- b. The Tenant files this order with the Court Enforcement Office (Sheriff) but the order has not been enforced on or before November 12, 2023.