



Order under Section 31 Residential Tenancies Act, 2006

Citation: Katipunan v Foundry Georgian, 2023 ONLTB 60194

Date: 2023-09-06

File Number: LTB-T-002985-23

In the matter of: Suite 05, 08-208 GEORGIAN DR BARRIE
ON L4M7B7

Tenant

Between: Kathleen Katipunan

And

Foundry Georgian

Landlord

Kathleen Katipunan (the 'Tenant') applied for an order determining that Foundry Georgian (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.
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.

This application was heard by videoconference on June 26, 2023.

The Landlord's Legal Representative, Francisco Gomez, the Landlord's Property Manager, Skylar Swales (SS), the Tenant's Legal Representative, Jessie Miske, and the Tenant attended the hearing.

At the hearing, the following witnesses testified:

Patrick Katipunan (PK), Tenant's husband, on behalf of the Tenant

Sophia DiSanto (SD), Community Ambassador for the Landlord, on behalf of the Landlord

Shannon Binder (SB), Assistant Manager, on behalf of the Landlord

Determinations:

1. The Tenant moved into this rental unit on May 1, 2019 and moved out on April 30, 2023. The Tenant's primary address is in Peterborough. The Tenant rented this unit as she works in Barrie so when the weather is bad, she would not have to drive to work from

Peterborough. The Tenant's unit is located on the 3rd floor, room 5 of this complex. The Tenant's monthly rent was \$760.00 including parking.

2. The Landlord's Agent, SS, maintained that the residential complex is currently a student residence wherein the residency is only granted where the tenant provides a letter of acceptance to a college or university. However, SS confirmed that the Tenant is not a student and was given residency in May 2019, which was before SS and her team were managing the property. There was no dispute that the Tenant has resided in the rental unit since 2019 and has never been or purported to be a post-secondary student.
3. In this application, the Tenant alleges that:
 - on September 1, 2022, that the Landlord's Agent attempted to coerce her into signing an N11 Agreement to Terminate the tenancy;
 - on September 1, 2022 and January 5, 2023, the Landlord deactivated the Tenant's key fob access to the rental unit;
 - on January 5, 2023, the Landlord's Agent illegally entered the Tenant's rental;
 - on January 5, 2023, the Landlord's Agents harassed her guest; and
 - these incidents substantially interfered with the Tenant's reasonable enjoyment of the rental unit.
4. For the reasons outlined below, I find that the Tenant has proven an illegal entry, harassment, and substantial interference with reasonable enjoyment, and I have accordingly granted a rent abatement totalling \$760.00.

Coercion

5. Based on the evidence before me, I do not find that the Landlord coerced the Tenant on September 1, 2022. Although, the versions of the Tenant and SB's encounter at the Landlord's office on this date varied, there was no dispute that the Tenant left the Landlord's office with her reactivated key fob and did not sign an N11 (Agreement to End the Tenancy). Therefore, I was not satisfied that the Landlord would not provide the Tenant her key fob without the Tenant signing a N11 form.
6. Section 23 of the *Residential Tenancies Act, 2006* ("Act") states:

A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.
7. The Tenant stated that when she attended the Landlord's office on September 1, 2022 to have her key fob reactivated, SB initially said that she will need to sign a new contract, but when SB heard that the Tenant was coming from work, SB advised her that if she is not a student, then she doesn't qualify to live here. The Tenant stated that SB told her that she should be signing a N11 form and can only give the Tenant access to her room door and that the Tenant can call her roommates to give her access to the main door. The Tenant further stated, just to get the key fob, that she told SB she will sign the N11 form.

8. SB stated that she didn't recall a specific date but was present in the office when the Tenant had attended the office to ask about an N11 form. SB also stated that the Tenant had come in after the Landlord had advised her to end her tenancy as she did not meet the rental criteria, and the Tenant advised she wanted to discuss this with her paralegal first. SB further stated that she gave the Tenant a copy of the N11 form to discuss with her paralegal. SB stated that she did not have any dealings with the Tenant with respect to her key fob.

Deactivated Key Fob

9. Based on the evidence before me, I was not satisfied that the Landlord altered the locking system on the Tenant's unit without providing a replacement key to the Tenant on September 1, 2022 and January 5, 2023. I find it more likely than not that the Tenant's key fob deactivations were the result of computer and/or technology glitches. The Tenant acknowledged that there was also another time in December 2022 when her key fob stopped working and she had to have it reactivated. There was no dispute that each time the Tenant's key fob stopped working, the Landlord reactivated it.

10. 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.

Emphasis Added

11. There was no dispute that the Tenant was able to get her key fob reactivated on September 1, 2022 when she attended the Landlord's office. Although, the Tenant was not able to get her key fob reactivated on January 5, 2023 as the office closed at 6:00 p.m., she was given access to her rental unit from the Security personnel when requested. There was no dispute that the Tenant's key fob was reactivated once she attended the Landlord's office on January 8, 2023.
12. SS testified that on August 27, 2022, all key access fobs were automatically deactivated by the program. She stated that the previous management when activating the fobs had set an end date on the fobs, which they now know was not necessary. However, because of the end date, all the fobs deactivated on August 27, 2022. She stated that notice was immediately sent to all tenants to attend the main office to have their key fobs reactivated.
13. SS stated that she was not aware of any staff member deactivating the Tenant's key fob on January 5, 2023. SS stated that the key fobs can only be deactivated on the main computer in the office. When she reviewed the Tenant's key fob record, she was not able to identify any reason for the deactivation on this date. She stated that sometimes there are just glitches with these fobs.

Illegal Entry

14. Based on the evidence before me, I find that the Landlord's Agents illegally entered the Tenant's rental unit on January 5, 2023. There was no dispute that the written notice of entry provided to the Tenant was for the Landlord to access the common area only to leave a newsletter. There was also no dispute that the Landlord's Agents did not receive consent from the Tenant at the time of entry.
15. Section 26 of the Act states:
 - 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.
16. The Tenant stated that her husband regularly visits her at the rental unit and stays overnight. On January 5, 2023, the Tenant stated she was working at her office in Barrie and her husband came to pick her up to drive home to Peterborough. She stated that her husband was at the rental unit waiting for her to finish work. The Tenant stated and provided a copy of a Notice of Entry for January 5, 2023 she received from the Landlord via email that advised the Landlord would only require access to the entryway to deliver the January newsletter.
17. PK stated that he had just got off work in Toronto on January 5, 2023, so while waiting at the rental unit he fell asleep. PK stated that he was awoken by the door being unlocked and opened by the Landlord's Agents, SS, SD and one other person. He was only wearing a T-shirt and underwear. PK stated that SS demanded who he was and if he lived there and when he replied "no" SS called him an intruder and told him to leave. PK stated he was barely awake and trying to get dressed, so he asked for some privacy, so they closed the door but SS reopened the door within a couple minutes and again demanded that he leave immediately.
18. SS stated that the complex is currently an all female residence for post-secondary students. She stated that their policy is that guests are only allowed in a rental unit when the tenant is present. A copy of this policy was not provided into evidence. SS stated that on January 5, 2023, the Landlord had received a written complaint from another tenant in the complex stating that the Tenant's husband is living in the Tenant's unit. SS was attending the complex that day to deliver Newsletters for which a Notice of Entry was provided, so she thought she would investigate this complaint.
19. SS stated that when they knocked on the Tenant's door, they could hear someone inside but no one answered the door SS stated that she decided to open the Tenant's door using their master key but did not enter the unit. SS confirmed that she did not contact the Tenant prior to opening the door to the Tenant's unit.

20. SD stated that she went with SS and Youvela, a past employee of the Landlord, on January 5, 2023 to see if the Tenant's husband was living in the Tenant's unit. SD stated that they saw his shoes outside the door, knocked but no one answered, so SS opened the door and asked him to leave.
21. Given the above, I was satisfied that on January 5, 2023 the Landlord's Agents illegally entered the Tenant's rental unit. The Notice of Entry provided by the Landlord for January 5, 2023 confirmed that access would only be needed to the entryway, common area, not the Tenant's individual unit (room). The Landlord's Agents did not receive the Tenant's consent prior to opening the door to her rental unit as required by section 26 of the Act.

Harassment and Substantial Interference with Reasonable enjoyment

22. Based on the evidence before me, I find on a balance of probabilities that the Landlord's conduct on January 5, 2023 amounted to harassment. Further, that this harassment and illegal entry has substantially interfered with both the Tenant's and the Tenant's guest's reasonable enjoyment of the rental unit.
23. Section 22 of the Act states:

A landlord shall not at any time during a tenant's occupancy of a rental unit and before the day on which an order evicting the tenant is executed substantially interfere with the reasonable enjoyment of the rental unit or the residential complex in which it is located for all usual purposes by a tenant or members of his or her household.

24. Harassment is not defined in the Act but it can be reasonably defined as a course of action which a reasonable person knows, or ought to know would be unwelcome.
25. On January 5, 2023 three of the Landlord's Agents illegally entered the Tenant's unit and demanded that her husband leave the premises. The Tenant's husband was undressed as he was sleeping, when they entered the unit. The Landlord's Agents proceeded to call him an intruder and demand that he leaves the property immediately and they continued with these demands even after he was in his vehicle in the parking lot.
26. The Landlord's Agents rely on a policy that has not been submitted into evidence and assertions that this is student housing despite the fact that the Tenant is not a student and never has been nor has she purported to be one. The Landlord's Agents also rely on the assertion that this is a female only residence yet confirm that this residence has been mixed gender in the past.
27. The Tenant has resided in the unit since 2019 and her husband has visited and stayed with her on many occasions without incident in the past. The Landlord's new management team chose to not contact the Tenant and unilaterally decided to enter the rental unit without notice and remove the Tenant's guest. I find that the Landlord's Agents knew or ought to have known that this would be unwelcomed.

28. PK stated that on January 5, 2023 when the Landlord's employees opened the door to the Tenant's unit, they told him that he shouldn't be there, called him an "intruder," and gave him 2 minutes to leave. PK also stated that one of the Landlord's employees had their cellphone raised as if taking photos or a video. PK also stated as he was just awoken and trying to get dressed it was taking a minute or two, and one of the employees threatened "do you want to play games with me," "get out private property," and "you have to go." PK further stated that the Landlord's employee, SS, followed him to his car, opened the passenger side door and again stated "get out private property". PK said he never returned to his wife's unit after this date and called this a "traumatizing experience."
29. There was no dispute that on January 5, 2023, the Landlord's Agents opened the door to the Tenant's unit, according to them to investigate who was in the unit. They then proceeded to remove the Tenant's guest without contacting her. SS stated that they were enforcing their policy of no guests when a tenant is not present. SD stated that they were not taking photos during this incident.
30. SS also stated that she saw PK in his car but did not follow him there, however she did ask him to leave the property even though she knew that since he was in visitor parking that he didn't have to leave. SS did not recall if she opened PK's car door, she believed she spoke to him through the window.

Remedy

31. The Tenant requested an abatement of rent, an order for the Landlord to stop this conduct, an order for the Landlord to pay a fine to the Board, and out of pocket expenses.
32. The Tenant seeks a 100% abatement for the months of September 2022 and January 2023. As noted above, I did not find any Landlord breach in September 2022. However, given that the Landlord illegally entered the rental unit on January 5, 2023 which also amounted to harassment and substantial interference, I find that an abatement for the month of January 2023 to be appropriate in these circumstances.
33. In *Wrona v. Toronto Community Housing Corporation* (January 24, 2007) Toronto Docket No. 374/06, [2007] O.J. No. 423 (Div.Ct.) the Divisional Court replaced the decision of the Board and granted the tenant an abatement of \$1,000.00 for a single illegal entry which was well in excess of 100% of the monthly rent charged.
34. Based on the precedent established by *Wrona* and the impact of the illegal entry, a reasonable amount of rent abatement for the illegal entry on January 5, 2023 would be \$380.00. There was no history of dispute between the parties with respect to entries into the unit, but in this case the illegal entry was not only a breach of the Tenant's privacy, the Landlord's Agents also used this entry to remove the Tenant's guest without the Tenant's knowledge.

35. Further, based on the evidence above, I find that a reasonable amount of a rent abatement for the harassment and substantial interference would be \$380.00. Both the Tenant and the Tenant's husband were gravely affected by the Landlord's actions on January 5, 2023. The Tenant's husband never returned to the unit after this date. The Tenant had relied on her husband often to assist her at the premises and drive her home to their residence in Peterborough. They had a great arrangement with their commutes and travel to and from their employment that was disrupted by this incident on January 5, 2023.

36. The Tenant has since vacated the rental unit, so there is no need for an order for the Landlord to stop the behaviour/conduct.

37. The Tenant also requested an administrative fine. The Board's Guideline 16 provides:

An administrative fine is a remedy to be used by the Board to encourage compliance with the *Residential Tenancies Act, 2006* (the "RTA"), and to deter landlords from engaging in similar activity in the future. This remedy is not normally imposed unless a landlord has shown blatant disregard for the RTA and other remedies will not provide adequate deterrence and compliance.

38. A fine is therefore a remedy aimed at deterrence and must have regard both to the deterrent effect of other remedies awarded in an application and the nature of the Landlord's conduct. An abatement of rent is awarded above, which serves as an adequate deterrent for the Landlord and makes a fine unnecessary.

39. The Tenant further requested out of pocket expenses related to retaining and having legal representation in this matter. Rule 23.3 of the Board's Rules of Procedure states:

A party who engages in unreasonable conduct which causes undue delay or expense may be ordered to pay costs to another party.

40. As well, the Board's Guideline 3 in part provides:

While the Board may order a party to pay the costs of another party, costs to a successful party for the preparation/representation fees paid to a legal representative are generally only awarded in cases of unreasonable conduct set out below. Similarly, the Board will generally only allow costs for other expenses incurred by the successful party (e.g., travel, expert reports, etc.) where there has been unreasonable conduct by the opposing side.

41. Pursuant to Rule 23.3 and the Board's Guideline 3, representation costs are generally only awarded where the other side's conduct in the proceeding was unreasonable. There is no evidence of unreasonable conduct by the Landlord in this proceeding.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$760.00 for a rent abatement.

2. The Landlord shall pay the Tenant the full amount owing by September 17, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by September 17, 2023, the Landlord will owe interest. This will be simple interest calculated from September 18, 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.

September 6, 2023
Date Issued

Lisa Del Vecchio
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.