



Order under Section 31 Residential Tenancies Act, 2006

Citation: Ngugi v Menei, 2023 ONLTB 59398

Date: 2023-08-31

File Number: LTB-T-041888-23

In the matter of: 1, 126 COURT ST S
THUNDER BAY ON P7B2X4

Tenant

Between: Lukas Ngugi

And

Landlord

Dino Menei

Lukas Ngugi (the 'Tenant') applied for an order determining that Dino Menei (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.

This application was heard by videoconference on August 21, 2023.

The Landlord Dino Menai and the Tenant Lukas Ngugi and the Tenant's Legal Representative Molly MacDonald attended the hearing.

Determinations:

1. As explained below, the Tenant proved allegations contained in the application on a balance of probabilities.
2. This T2 application alleges the Landlord entered the rental unit illegally, altered the locking system at the rental unit without giving the Tenant replacement keys and substantially interfered with the Tenant's reasonable enjoyment of the rental unit.
3. Section 22 of the *Residential Tenancies Act, 2006* (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.

4. Section 24 of the (the Act) 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.

5. Sections 26 and 27 of the Act set out when a landlord may enter a rental unit with and without notice to the Tenant. These sections say:

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.

And

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
6. Caycie Soke testified on behalf of the Tenant. Ms. Soke is staff lawyer at legal clinic and has been since 2016.
7. On May 26, 2023, the Tenant attended the clinic and spoke to Ms. Soke. Ms. Soke was advised by the Tenant he had just been released from jail and could not access his rental unit.

8. Ms. Soke testified she contacted the Landlord on May 26, 2023, and the Landlord advised her the Tenant was no longer welcome at the rental unit and that the unit had been abandoned.
9. Ms. Soke testified she advised the Landlord that the Tenant wanted keys to the rental unit however the Landlord refused the request citing damage to the rental unit and arrears of rent. According to Ms. Soke, the Landlord advised her to file an application with the Board.
10. Ms. Soke's evidence was the Tenant contacted the clinic in December 2021 because the Landlord was attempting to evict him illegally. The Tenant again contacted the clinic in March 2022 as a result of receiving an N4 notice from the Landlord.
11. The Landlord asked Ms. Soke if there was a verbal agreement between himself and the clinic which permitted him to evict the Tenant if he failed to pay his rent. Ms. Soke responded the clinic would not enter into an agreement permitting a landlord to evict a tenant illegally.
12. Ms. Soke acknowledged the Landlord had provided the Tenant access to his belongings but not access to the rental unit. Ms. Soke also stated the Tenant lost his keys to the rental unit during his period of incarceration.
13. The Tenant testified that he moved into the rental unit in 2008. His monthly rent was \$500.00, and he lived in basement of the property. He believes there are nine rental units at the residential complex. He had access to the rental unit through a security door and the door to the unit itself.
14. The Tenant's evidence was he was a recipient of Ontario Works and they paid the monthly rent directly to the Landlord. He immigrated to Canada from Kenya.
15. The Tenant testified he was incarcerated between April 14, 2023 and May 25, 2023. He had paid his monthly rent for April 2023 but did not pay the monthly rent for May 2023 because he was incarcerated and missed a meeting with Ontario Works. As a result of missing this meeting, Ontario Works did not forward the rent payment to the Landlord.
16. The Tenant's evidence was that when he was released from jail, he did not have a key to the rental unit. He attended his home, and the upstairs tenant told him the Landlord had moved his belongings out of his rental unit and they were told not to allow the Tenant into the complex.
17. The Tenant testified he has never been back inside the rental unit after being released from jail. He stated he did not have the Landlord's contact information to call him as it was inside the rental unit. He originally thought his belongings had been thrown away but learned they were being stored in a garage.
18. The Tenant's evidence was an employee of the Landlord gave him access to the garage where his property was being held. The Tenant testified he could not take his property at this point because he had nowhere to go.

19. The Tenant testified he has never received and notice of proceedings before the Board in which eviction was being sought by the Landlord. He has never received an order from the Board terminating the tenancy. His evidence was he did not abandon the rental unit.
20. The Tenant's evidence was that as a result of the Landlord's actions he has been living in a camp several kilometers outside of the city. He described it as public park where he lives in a tent. The Tenant has a friend that works at a restaurant that sometimes brings him food and water. The Tenant's friend also helps him with transportation to and from the city.
21. The Tenant testified he could not make food as fires were prohibited but this prohibition has recently been lifted. The Tenant uses an outhouse at the camp where he currently lives and the water at the camp is not potable.
22. The Tenant's evidence was prior to living in a tent at the camp, he had gone to the Salvation Army but was lost his place there when he missed a night.
23. The Tenant testified the Landlord had tried to evict him in the past but was unable to provide particulars of this attempt.
24. During cross examination, the Tenant acknowledged he had a verbal agreement with the Landlord to vacate the rental unit in February 2021. He acknowledged the Landlord waived two months of rent as a result. The Tenant did not vacate the rental unit as his plans to move in with friends fell through.
25. The Tenant was asked why he did not tell the Landlord he was incarcerated and the Tenant explained that he did not have the Landlord's contact information. The Tenant testified the legal clinic found the Landlord's contact information online and contacted him when he attended at their office.
26. The Landlord asked the Tenant if he had made any attempts to retrieve his belongings and the Tenant explained that he only has a friend to provide him transportation and he could not take his property to "the bush" because he has nowhere to keep his items.
27. The Landlord testified that a couple of years ago he had verbal agreement with the Tenant that he would vacate the rental unit. When the date arrived for the Tenant to move out he did not.
28. The Landlord also testified that as a result of rent arrears in the past he had a verbal agreement with the legal clinic representing the Tenant that allowed him to evict the Tenant if he missed another rent payment.
29. The Landlord's evidence was that around May 15, 2023 he entered the rental unit because he was worried the Tenant was deceased. He had not noticed any activity at the rental unit and he entered with the police. No evidence was submitted at the hearing of a police report for this entry. The Landlord was not asked if he provided 24 hours notice of entry as required by section 27 of the *Residential Tenancies Act, 2006* (the Act). No evidence was presented on this point by either party.

30. The Landlord testified he never changed the locks at the residential complex or the rental unit. His evidence was the Tenant's property is in storage and waiting to be collected.
31. The Landlord's evidence was he was not contacted by the legal clinic until sometime in June 2023, at which point he had already re-rented the unit to someone else. The Landlord was unsure as to when this new tenancy began. The Landlord admitted he could be wrong with the dates he was providing.
32. During cross examination the Landlord testified he was not entirely sure of his obligations under the Act. He reiterated that he believed he had a verbal agreement with the legal clinic permitting him to evict the Tenant if a rent payment was missed. The Landlord admitted he has not allowed the Tenant to return to the rental unit.
33. The Landlord admitted he had received legal advice in the past in relation to this tenancy. He also stated he found the "process" to be a hassle and he did not want to go through it again. The Landlord acknowledged he was told previously he had to follow the legislation and admitted this eviction of the Tenant was not done in accordance with the Act. He again stated he thought he had a verbal agreement in place permitting him to take the actions he did.

Analysis

34. This is a Tenant application, and it is therefore the Tenant's burden to prove the allegations on a balance of probabilities.
35. I am not satisfied the Landlord entered the rental unit illegally. While the Tenant was not present at the unit to receive a notice, the test is whether notice was provided. The entry by the Landlord was not an emergency and notice to the Tenant was required pursuant to section 27 of the Act. No evidence was presented on this issue. The Landlord was not asked if any notice was given. Without some evidence, I cannot find the Landlord entered the rental unit illegally and this portion of the Tenant's application will be dismissed.
36. There was no dispute the Landlord did not change the locking system to the residential complex or the rental unit. The Tenant lost his keys during his period of incarceration and the Landlord refused to provide access to the rental unit when it was requested. Based on the evidence I am not satisfied the Tenant has proven this portion of his application since no locking system was changed or altered at the residential complex. Therefore, it will be dismissed.
37. I am convinced on a balance of probabilities the Landlord substantially interfered with the Tenant's reasonable enjoyment of the rental unit. This application was filed on May 26, 2023 and included claims that the Landlord was contacted on that date when the Tenant attended the legal clinic. I do not accept the Landlord's evidence that he was not contacted until sometime in June 2023. He was imprecise on the dates he provided, including when the unit was re-rented to other tenants. I find it most likely he was contacted on May 26, 2023 as stated on the application and confirmed by Ms. Soke's evidence. When he was contacted, he refused to allow the Tenant into the rental unit.

38. The Landlord's own evidence supports the finding he illegally evicted the Tenant. On several occasions, the Landlord sought to rely on a verbal agreement he had with the legal clinic that allowed him to evict the Tenant if a rent payment was missed. I accept Ms. Soke's evidence that the legal clinic would never agree to allow a landlord to illegally evict a tenant and I do not find any such agreement was in place for this tenancy.
39. The Landlord claimed he entered the unit because he thought the Tenant was deceased. He also claimed he thought the unit was abandoned even though the rental unit contained all of the Tenant's property and the monthly rent had been late for only 15 days by May 15, 2023, the day the Landlord stated he entered the unit. I found the Landlord's explanation that he thought the unit was abandoned to conflict with his claim that he thought he could evict the Tenant if a rent payment was missed. I do not accept either explanation as I find a reasonable Landlord would not conclude the unit was abandoned in the circumstances. I also do not find a reasonable Landlord believes he has a verbal agreement with a legal clinic to circumvent the requirements of the Act.
40. When the Landlord was contacted by the legal clinic on May 26, 2023, he refused to allow the Tenant entry to the rental unit. I am not convinced the rental unit was already re-rented at this time and access could have been provided. I find it most likely the Landlord refused the Tenant access to his home because he wanted to evict him. The Landlord chose to evict the Tenant without following the Board's process. This finding is also supported by the Landlord's admissions that the process is a hassle. The Landlord also acknowledged this was an illegal eviction when the Act is considered.
41. I find that when the Landlord denied the Tenant access to his home, and effected an illegal eviction, the Landlord substantially interfered with the Tenant's reasonable enjoyment of the rental unit. Clearly one cannot enjoy their home if they are prevented from entering it. Therefore, this portion of the Tenant's application is granted.

Remedies

42. At the hearing, the Tenant sought remedies that were not claimed on the application. No request to amend the application was made prior to the hearing notwithstanding the application had been before the Board on a prior date. No explanation was provided by the Tenant's Legal Representative as to why an amendment was not sought prior to the hearing. I did not find it would be procedurally fair to the Landlord to allow additional remedies that were not claimed on the application, particularly since he had no notice of the request.
43. The Tenant requested an order terminating the tenancy effective May 1, 2023 to ensure the Landlord did not make a future claim for rent arrears. The Landlord agreed to this request. As a result, the Tenant no longer sought a rent abatement.
44. The Tenant sought \$2,050.00 for his property that he no longer has. The Tenant supported this amount with the following:
- a) \$250.00 for two laptop computers.

- b) \$300.00 for a refrigerator.
- c) \$600.00 for a queen bed mattress and box spring.
- d) \$250.00 for a television.
- e) \$500.00 for his clothing.
- f) \$150.00 for food in the freezer and cupboards.

45. I find the amount requested by the Tenant to be fair and reasonable except for the food that was lost. I can infer the Tenant's period of incarceration contributed to the loss of some of the food he had. Additionally, he was given access to his property and could have recovered the food that was in the rental unit. None of the other amounts particularized are excessive or unrealistic.
46. The Landlord stated the rental unit was broken into while the Tenant was incarcerated. He stated a police report was made but submitted no evidence of this. I am not convinced the Landlord has shown any of the Tenant's property was stolen. As such, I am satisfied the Tenant is entitled to an order for the value of his property that he cannot recover. This amount is \$1,900.00.
47. The Tenant also requested an order requiring the Landlord return to the Tenant any and all of the Tenant's property in the possession of the Landlord. The Landlord stated he continues to hold all of the Tenant's belongings and the Tenant is free to collect them. The Tenant has nowhere to keep his property because he is homeless. The Tenant requested an order requiring the Landlord to continue storing his property until September 30, 2023. The Landlord agreed to this request and offered to store the items until October 31, 2023. As such, an order will issue requiring the Landlord to store the Tenant's belongings until at least October 31, 2023 and to make it readily available to the Tenant for collection during reasonable hours.
48. The Tenant sought an order for general damages in the amount of \$5,000.00. In support of this amount, the Tenant submitted he was rendered homeless with nothing more than the clothes on his back. He has lost his home, his property, his passport and his immigration papers. The actions of the Landlord have also had a significant impact on his dignity and mental health. The Tenant now lives in a tent at a camp well outside the city. He has no running water and has to use an outhouse. Additionally, the Tenant now lives in isolation most of the time as the camp where he lives only has other people there on weekends. The change in the Tenant's circumstances due to the Landlord's actions are monumental and I find the request for general damages to be reasonable and it will be ordered.
49. The Tenant requested a fine be ordered against the Landlord for his actions. While I find the Landlord has blatantly disregarded the Act and his obligations under it, I also find the remedies that will be ordered to be a substantial deterrence to similar behaviour by this Landlord in the future. I also take note the Landlord has agreed to cooperate in the storage and recovery of the Tenant's belongings. While this is small comfort to the Tenant

given all of the circumstances, in my view it is a mitigating factor in considering a find to the Board. As such, I will not order the Landlord pay a fine to the Board in this case.

It is ordered that:

1. On consent of the parties, the tenancy is terminated effective May 1, 2023.
2. Until at least October 31, 2023, the Landlord shall hold and keep safe any and all property of the Tenant that he has is in his possession.
3. The Landlord shall, with reasonable notice from the Tenant, make the Tenant's property available at a convenient location between the hours of 8:00 a.m. and 8:00 p.m.
4. The Landlord shall pay to the Tenant the amount of \$1,900.00 less the value of any property, as itemized in paragraph 44 of this order, which is recovered by the Tenant on or before October 31, 2023.
5. The Landlord shall pay to the Tenant any amount owing pursuant to paragraph 4 of this order by November 5, 2023.
6. If the Landlord does not pay the Tenant the full amount owing pursuant to paragraph 4 of this order by November 5, 2023, the Landlord will owe interest. This will be simple interest calculated from November 6, 2023 at 6.00% annually on the balance outstanding.
7. The Landlord shall also pay to the Tenant the amount of \$5,000.00 for general damages.
8. The Landlord shall pay the Tenant the amount set out in paragraph 7 of this order by September 11, 2023.
9. If the Landlord does not pay the Tenant the full amount owing set out in paragraph 7 of this order by September 11, 2023, the Landlord will owe interest. This will be simple interest calculated from September 12, 2023 at 6.00% annually on the balance outstanding.

August 31, 2023

Date Issued

John Cashmore

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.