



## Order under Section 30 & 31 Residential Tenancies Act, 2006

**Citation:** Morrison v Rogers, 2023 ONLTB 50334

**Date:** 2023-08-25

**File Number:** LTB-T-005348-23

**In the matter of:** 28 BURYS GREEN ROAD  
FENELON FALLS ON K0M1N0

Tenant

**Between:** Christine Morrison

**And**

Landlord

Larry Rogers

Christine Morrison (the 'Tenant') applied for an order determining that Larry Rogers (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.
- withheld or interfered with their vital services or care services and meals in a care home.

Christine Morrison (the 'Tenant') also applied for an order determining that Larry Rogers (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.

These applications were heard together and shall be combined for the purpose of this order.

These applications were heard by videoconference on May 17, 2023.

The Tenant's legal representative, Alishia Barber, and the Tenant attended the hearing.

**Determinations:**

1. The rental unit is a detached, 3 bedroom, main floor, upper and basement layout. The Tenant is renting the entire house as the rental unit.
2. The tenancy began on March 1, 2022.
3. As of the day of the hearing the Tenant was still residing in the rental unit.
4. The Tenant filed a T2 application with the Board on January 23, 2023 and alleges the Landlord:
  - Illegally entered the rental unit
  - Harassed the Tenant
  - Withheld vital services
  - Changed the locks to the rental unit
  - Substantially interfered with the Tenant's reasonable enjoyment
5. The Tenant filed a T6 application with the Board on January 23, 2023 and alleges the Landlord:
  - Failed to meet the Landlords' maintenance obligations under the Residential Tenancies Act, 2006 (the 'Act') or failed to comply with health, safety, housing or maintenance standards.

**T2 APPLICATION**

Illegal Entry

6. The Tenant testified that on December 5, 2022 the Landlord kicked in the main door of the rental unit.
7. The Tenant supports her claims with her uncontested evidence submitted to the Board in the form of photos showing the broken door frame and handle. The Tenant testified the Landlord did not fix the door until March 2, 2023, during which time the door was in disrepair, the Tenant could not lock her door and had to barricade the door from the inside in order to keep it from remaining open.

The Act and Analysis

8. Section 26 of the Act states:

Entry without notice, emergency, consent

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.

9. On a balance of probabilities, I find that the Landlord is in breach of the Act and illegally entered the Tenant's rental unit. In addition to the Tenant's uncontested testimony I find the Tenant's evidence submissions of the police reports substantiates her claims. The Tenant is entitled to a remedy, which will be addressed in the remedies section of this order below.

Landlord Changed the Locks

10. The Tenant testified the Landlord changed the locks on several occasions in an attempt to evict her from the rental unit. The Tenant testified that on October 12, 2022 the Landlord changed the locks and did not provide the Tenant a new key.

11. To support her claim the Tenant submitted into evidence a police report that was filed by the Tenant when the Landlord changed the locks. The OPP attended the rental unit and confirmed the Tenant did not have access to the rental unit. Police advised the Tenant they instructed the Landlord to give access and a key to the rental unit to the Tenant.

The Act and Analysis

12. Section 24 of the Act states:

Changing locks

24 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.

13. On a balance of probabilities, I find that the Landlord is in breach of the Act and illegally entered the Tenant's rental unit. In addition to the Tenant's uncontested testimony I find the Tenant's evidence submissions of the police reports substantiates her claims. The Tenant is entitled to a remedy, which will be addressed in the remedies section of this order below.

### Harassment

14. The Tenant testified on August 26, 2022 she called the police to file a complaint the Landlord was continually around her property and peering in windows. Although the Landlord lived in a unit at the rear of the property, the Tenant claims she told the Landlord he was not welcome at the rental unit. A police report was filed with details of the Tenant's claims.
15. The Tenant testified on March 1, 2022 the Landlord was on her property in his workshop. The Landlord was caught peering in the Tenant's rental unit windows and the Tenant had to close the curtains.
16. The Tenant testified on November 4, 2022 the Landlord made threats that he was going to remove items from the Tenant's rental unit. Police were called and attended the rental unit.
17. There are several other police reports filed from the Tenant calling the police reporting the harassment by the Landlord. The last police report filed March 3, 2023, claims the Landlord is intercepting delivery trucks delivering items to the Tenant and the Landlord is taking packages that belong to her. The report also identifies the Tenant's claim that the Landlord is attending the rental unit and taking her mail and withholding it from the Tenant.
18. The Tenant supports her claim with uncontested documentary evidence submitted in the form of the police reports that were filed on the above days. In the multiple police reports, police state they informed the Landlord that he is to stop harassing the Tenant however, as the Tenant continued to file multiple complaints with the police, the Landlord did not cease his behaviour.
19. The Tenant claims the harassment is ongoing as of the day of the hearing.

### The Act and Analysis

20. Section 23 of the Act states:

Landlord not to harass, etc.

23 A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.

21. The [Ontario Human Rights Code](#) defines "harassment" as: engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.
22. On a balance of probabilities, I find that the Landlord is in breach of the Act and harassed the Tenant. In addition to the Tenant's uncontested testimony I find the Tenant's evidence submissions of the police reports substantiates her claims, however I make note that in the Tenant's statements she provides the police, the Tenant's claims are not specific to dates or details where she claims the Landlord intercepted delivery trucks or taking her mail. Further, there is conflicting submissions to the police of whether the Tenant gave permission to the Landlord to be on the property, then later states in the police report that does not want him on the property. While I find the Tenant's testimony credible, the lack of particulars and specific details will be considered in my decision for remedy.
23. The Tenant is entitled to a remedy, which will be addressed in the remedies section of this order below.

#### Landlord Withheld Vital Services Water and Electricity

24. The Tenant testified that she was without water running water, or the water supply was extremely reduced on several occasions between March 1, 2022 and December 2022.
25. The Tenant submitted uncontested evidence in the form of a text she sent to the Landlord on September 1, 2022 where she notifies the Landlord she has been without water for a few days.
26. During the Tenant's uncontested testimony she was unable to provide specific details or dates regarding issues with the water supply from March 1, 2022 up to the first text she sent the Landlord on September 1, 2022.
27. The Tenant testified that she was without water from December 24, 2022 to sometime around mid May 2023. The Tenant testified the water supply to the rental unit was sourced from a nearby creek. The house had a water filtration system that purified the water that was malfunctioning and a warning beep and light was triggered. The Tenant testified she texted the Landlord about the noise, and the Landlord said he would send his son to the rental unit to investigate. The Tenant testified the Landlord's son, Adam, attended the rental unit and told her the issue was fixed.

28. The Tenant submitted the text messages as evidence to support her testimony that she informed the Landlord about the warning noise.
29. The Tenant testified that she later learned that when Adam attended the rental unit in December 2022, he had turned the water filtration system off in order to stop the warning noise. Unaware the filtration system was turned off the Tenant continued to use the water for herself, her new born child and her pets from December 2022. The Tenant testified that she, her child and her pets got sick from the unpurified water.
30. Sometime around April 2023 the Tenant went to investigate the filtration system herself and discovered it was unplugged by Adam, to stop the warning sound back in December 2022. The Tenant submitted uncontested evidence in the form of photos of the water filtration unit with an error code that indicated the UV lamp needed to be replaced which was the source of the warning noise, and instead of replacing the UV lamp, Adam turned the unit off.
31. During the time the Tenant was without water the Tenant was going to friend's house approximately 20 minutes away, to use the bathroom in order to bathe her baby. The Tenant would occasionally boil water at the rental unit, in order to bathe her child in the sink when she could not go to her friend's.
32. The Tenant testified the Landlord shut off the power to the house and the Tenant did not have access to the breaker box as the Landlord had locked the basement.
33. The Tenant claimed she left her rental unit on April 29, 2023 to go grocery shopping . Upon her return, she discovered the power was shut off to the rental unit. The Tenant testified the Landlord had locked the basement access to the main power panel.
34. The Tenant called police, but the police did not attend. The police called the Landlord and instructed him to turn the power back on. The Tenant testified the Landlord did not attend the rental unit to turn the power on, and the Tenant left to go stay at a friend's cottage.
35. The Tenant returns back to the rental unit on May 7, 2023 and discovers the rental unit basement door is unlocked and the Tenant has access to the basement and is able to turn the power to the rental unit back on.

36. The Act and Analysis:

Interpretation

2 (1) In this Act,...

“vital service” means hot or cold water, fuel, electricity, gas or, during the part of each year prescribed by the regulations, heat.

37. On a balance of probabilities, I find that the Landlord is in breach of withholding vital services in the form of water and electricity from the Tenant. In addition to the Tenant's uncontested testimony I find the Tenant's evidence submissions of the police reports substantiates her claims. The Tenant is entitled to a remedy, which will be addressed in the remedies section of this order below.

### Substantial Interference

38. The Tenant testified that she was away from the rental unit for a few days at a friend's cottage. She returned to the rental unit on May 3, 2023 and discovered the Landlord was removing the Tenant's personal items from the rental unit. The Tenant called the Tenant's legal representative, and the police. The police attended the rental unit and instructed the Landlord to stop removing the Tenant's items from the rental unit. The Tenant was left to put the items back in the rental unit herself.

39. Before leaving the rental unit, the police instructed the Landlord to stay away from the rental unit, and the Tenant. When police leave the Tenant returns back to her friend's cottage for the remainder of the week.

40. The Tenant testified that on January 23, 2023 the Landlord removed firewood from the residential property. The Tenant required the wood to heat the fireplace in the rental unit. The Tenant had to purchase space heaters in order to keep the rental unit warm.

41. To support her claim the Tenant submitted uncontested documentary evidence in the form of a police report that confirmed the Landlord had taken the wood and sold the wood to another person.

42. The Tenant testified that issues are ongoing as of the day of the hearing.

### The Act and Analysis:

43. Section 22 of the Act states:

Landlord not to interfere with reasonable enjoyment

22 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.

44. On a balance of probabilities, I find that the Landlord is in breach of the Act and substantially interfered with the reasonable enjoyment of the Tenant's rental unit by removing some of the Tenant's items from the rental unit in her absence and without her permission. In addition to the Tenant's uncontested testimony I find the Tenant's evidence submissions of the police reports substantiates her claims.
45. I also considered the frequency ,and the numerous times the Tenant has had to call police in order to try and stop the Landlord's behaviour. The Tenant is entitled to a remedy, which will be addressed in the remedies section of this order below.

## **T6 APPLICATION**

46. The following claims in the Tenant's T6 application are identified in the Tenant's T2 application above. These issues are:

- Disrepair of the water filtration system
- Broken door lock

47. The Tenant's evidence for the above claims were addressed in the T2 application section of this order.

48. The Act and Analysis:

Section 20 of the Act holds the landlord responsible for providing and maintaining the rental unit in a good state of repair. This applies even if the tenant was aware of the state of non-repair before the tenancy started:

20 (1) A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards. 2006, c. 17, s. 20 (1).

(2) Subsection (1) applies even if the tenant was aware of a state of non-repair or a contravention of a standard before entering into the tenancy agreement. 2006, c. 17, s. 20 (2).



49. In *Onyskiw v. CJ, M Property Management*, 2016 ONCA 477 (CanLII), the Court of Appeal held that the Board ought to apply a contextual approach in determining whether a landlord has breached its maintenance obligations under the Act. A landlord will not be responsible for breaching its obligations if, after considering all of the circumstances, it is found that the landlord addressed the maintenance issues in a reasonable manner.
50. 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 also the parties' duty to mitigate found in section 16 of the Act.

Section 16 of the Act requires that a tenant or Landlord must take steps to mitigate loss.

Section 16 of the Act reads as follows:

When a landlord or a tenant becomes liable to pay any amount as a result of a breach of a tenancy agreement, the person entitled to claim the amount has a duty to take reasonable steps to minimize the person's losses.

51. Based on the uncontested evidence submitted under the Tenant's T2 application for the disrepair of the water filtration system and the broken door lock, and on a balance of probabilities, I find 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. The Tenant is entitled to a remedy, which will be addressed in the remedies section of this order below.

## **REMEDIES**

24. The Tenant is seeking an abatement of rent for the broken door, and an abatement of rent for the disrepair of the water filtration system, and order requiring the Landlord to fix the water filtration system.
25. An abatement is a contractual remedy. It recognises the idea that a tenant is paying rent for a bundle of goods and services and if the tenant is not receiving everything being paid for then he is entitled to abatement proportional to the difference between what is being paid for and what is being received. There is no guidance in the Act to assist the Member in determining the amount of an abatement of rent. The Board's Interpretation Guideline 5 provides some guidance on rent abatement. In determining the amount to be ordered, the Member will consider the period of time that the problem existed and the severity of the problem in terms of its effect on the tenant. The test should be the impact on the average tenant or the impact a reasonable person would expect this problem to have had on a tenant.

26. The Tenant's legal representative submitted a "Rent Abatement" chart for the remedies the Tenant is seeking based on the Tenant's claims in her application. The Tenant's legal representative is relying on this submission as her request for remedies for the Board's consideration. I make note that some of the remedies the Tenant's legal representative submitted are not eligible for my consideration and the reasons are provided below.

## **REMEIDIES NOT ELIGIBLE**

### Illegally entered the rental unit

27. While I find the Landlord is in breach of entering the Tenant's rental unit illegally, the Tenant's legal representative failed to provide the Board with a request for a remedy in the chart, or provide submissions with respect to a requested remedy regarding the Tenant's claim in the application, and therefore I am unable to grant any remedy for the Landlord's breach.

### Lack of Heat / Fire Wood Heating

28. The Tenant made a request in the application for a remedy claimed for no heat in the rental unit from January 6, 2023 up to the date of the hearing. The Tenant failed to provide sufficient testimony or evidence to support this. The lack of particulars and specific details to the Tenant's claim are such that I am not satisfied the Tenant has met the burden to support her claim and therefore this remedy will not be granted.

### Stalking

29. The Tenant made a request in her application for a remedy claimed for stalking. Although the Tenant is making a claim specific to this behaviour by the Landlord, the Tenant failed to provide sufficient testimony or evidence to support this. The lack of particulars and specific details to the Tenant's claim are such that I am not satisfied the Tenant has met the burden to support this specific claim and therefore this remedy will not be granted.

## T2 APPLICATION

### Harassed the Tenant

30. The Tenant is requesting a rent abatement of 20% from March 1, 2022 up to the day of the hearing. I do not find the Tenant's request reasonable given the Tenant's evidence submissions. While I accept the Tenant's evidence of multiple police reports, there are conflicting details in the Tenant's own submissions regarding her police reports where the Tenant provides police with different details. I also accept the Tenant's credible testimony that the harassment is ongoing up to the day of the hearing. The rent abatement granted to the Tenant is in the amount of \$1,540.00 (14 months x \$1,100.00 x 10%).

### Withheld Vital Services

31. The Tenant is requesting a rent abatement of 25% from March 1, 2022 up to the day of the hearing. I find that the Tenant's request not reasonable given the Tenant's evidence submissions regarding the water issues indicate the Tenant put the Landlord on notice as of September 1, 2022. In my view the Tenant did not provide evidence to support she had notified the Landlord prior to her text she submitted into evidence. I accept the Tenant's testimony that the issues are ongoing as of the day of the hearing, but I am only considering the period form September 1, 2022 up to the day of the hearing. The rent abatement granted to the Tenant is in the amount of \$2,475.00 (9 months x \$1,100.00 x 25%).

### Landlord Changed the Locks

32. The Tenant is requesting a rent abatement of 20% from October 1, 2022 up to December

5, 2022. I do not find that the Tenant's request reasonable given the Tenant's evidence submissions regarding her own evidence of the police report. The Tenant failed to provide evidence she was without a key from Octo 12, 2022 up to December 5, 2022 requested in the remedy. I find the Tenant is entitled to an abatement of compensation for one day for being locked out after the Landlord changed the locks. The rent abatement granted is \$165.00 (15%x \$1,100.00).

### Substantially Interference with Reasonable Enjoyment

33. The Tenant is requesting a rent abatement of 25% from March 1, 2022 up to the day of the hearing. I do not find that the Tenant's request reasonable. While I accept the Tenant has submitted police reports she filed, as evidence of the Landlord's substantial interference, as previously stated there is a lack of particulars and specific details, to the Tenant's allegations. Nonetheless, I find the Tenant credible with her testimony and considered the frequency and the number of times the Tenant has had to call the police. Given all the above, I am of the opinion the more reasonable amount is 10%. The rent abatement granted to the Tenant is in the amount of \$1,540.00 (14 months x \$1,100.00 x 10%).

## T6 APPLICATION

### Water Filtration System

34. The Tenant is requesting a rent abatement of \$2,200.00 for the disrepair of the water filtration system, that the Tenant claims made her and her young child sick. I find the Tenant's request reasonable given the severity of the potential for drinking unfiltered and / or contaminated water that was sourced from a nearby creek. In my view, the negligence on the part of the Landlord by turning off the filtration system to stop the warning mechanism to replace the UV light rises to the level for me to grant the full amount the Tenant is seeking. The rent abatement of \$2,200.00 is granted.

### Broken Front Door

35. The Tenant is requesting a rent abatement of \$660.00 November 1, 2022 to February 23, 2023. I find that the Tenant's request reasonable given the Tenant's photo evidence submissions supporting her claim the Landlord kicked in the door and broke the door

handle mechanism. Its clear from the photo the door is in disrepair. The Tenant's request for \$660.00 is granted.

36. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
37. This order contains all reasons for the determinations and order made. No further reasons will be issued.

**It is ordered that:**

1. By no later than August 31, 2023, the Landlord shall repair the water filtration system in the rental unit by:
  - a) Retain the services of a water treatment professional to inspect and repair the water filtration system.
  - b) Carry out the work in accordance with the professional's repair plan.
  - c) Provide the Tenant with a report confirming that the water being delivered through the water filtration system is safe to drink and falls within municipal acceptance standards.
2. By no later than August 31, 2023 the Landlord shall ensure the Tenant has running water throughout the entire rental unit.
3. If repairs are required the Landlord shall:
  - a) Retain the services of a plumbing expert to inspect the rental unit pipes and water delivery system and prepare a repair plan.
  - b) Carry out the work required to fix the running water in the rental unit.
4. The Landlord shall not increase the rent for the period the water filtration system is in disrepair and until the water treatment professional has deemed the water safe to drink.
5. The Landlord shall not increase the rent for the period the running water is in disrepair and a professional has deemed the running water has been returned to the rental unit.

6. The Landlord shall pay to the Tenant a rent abatement of \$8,620.00. This amount represents the total rent abatement remedies granted plus the cost of filing the application with the Board.
7. The Landlord shall pay the Tenant the full amount owing by September 5, 2023.
8. If the Landlord does not pay the Tenant the full amount owing by September 5, 2023, the Landlord will owe interest. This will be simple interest calculated from September 6, 2023 at 6.00% annually on the balance outstanding.
9. If the Landlord does not pay the Tenant the full amount owing by September 5, 2023, the Tenant may recover this amount by deducting \$550.00 from the rent each month from October 1, 2023 to December 1, 2024 and \$370.00 on January 1, 2025.
10. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**August 25, 2023**  
**Date Issued**

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**Greg Brocanier**  
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.