



**Order under Section 31  
Residential Tenancies Act, 2006**

**Citation:** LESTER v GARCIAS, 2023 ONLTB 58275

**Date:** 2023-08-22 **File Number:** LTB-T-073957-22/TST-13273-20

**In the matter of:** FLOOR 2, 1468 DUNDAS STREET WEST  
TORONTO ON M6J 1Y6

Tenant

**Between:** AMY JOSEPHINE LESTER

**And**

Landlord

VALMOR GARCIAS

AMY JOSEPHINE LESTER (the 'Tenant') applied for an order determining that VALMOR GARCIAS (the 'Landlord') entered the rental unit illegally, harassed, obstructed, coerced, threatened or interfered with the Tenant.

This application was heard by videoconference on August 15, 2022.

The Landlord and the Tenant attended the hearing.

**Determinations:**

1. The Tenant filed an application about Tenant Rights (T2 application) with the Board on January 23, 2020.
2. This T2 application is about illegal entries, substantial interference with the reasonable enjoyment of a rental unit, and harassment by another Tenant.
3. The issues to be determined by the Board in this application are first, whether the landlord unlawfully entered the Tenant's residential unit; and second, whether the Landlord's actions reached the threshold of harassment and substantial interference with the Tenant's reasonable enjoyment of her rental unit.

4. The residential complex is a 2-storey building and the residential units are on the second level.
5. The Tenants moved into the rental unit on December 01, 2015, and the monthly rent was \$1,512.00. The Tenants vacated the unit on June 10, 2019.

### **Illegal Entry – Substantial Interference**

#### Tenant's Evidence:

6. The Tenant claims the Landlord and his representatives illegally entered her rental unit between January 1 and May 31, 2019 to convert the unit to commercial use. The Tenant alleges that the entry notices the Landlord gave her for entries on January 07, 2019, January 10, 2019, March 04, 2019, April 04, 2019, April 06, 2019, April 10, 2019, and May 02, 2019, were sometimes late and less than 24 hours. The Tenant claims that the timeframes specified in the entry notices were unreasonably long, e.g., 10 am to 3 pm, and there were no-shows on some occasions, and the Landlord or his agent did not accompany the workers and inspectors when they entered the premises.
7. The Tenant also alleges that the work completed in her rental unit on May 13, 2019, and May 14, 2019, were the reasons provided in the Landlord's entry notice. The Tenant claims that the engineer drilled holes in the unmarked areas of the rental unit, including her bedroom, even though the Landlord's entry notice indicated the drilling of the holes would be only in marked areas.

#### Landlord's Evidence:

8. The Landlord testified that all notices were served to the Tenant at least 24 hours in advance of the proposed entry, and every visit was accompanied by either him, the project manager (Ramon Vasconcellos, and his partner, Carolina Ladeira, and reasons for the entries were clear. The Landlord submitted copies of the entry notices, which show that the Landlord gave well advance 24-hour entry notices to the Tenant from January 07, 2019, to May 14, 2019.
9. The Landlord testified served an N13 notice to convert the property's purpose to commercial use. All entries made between January 2019 to May 2019 were done by qualified professionals involved in the early stages of application for Building Permits and Committee of Adjustments for re-zoning, which were requirements for the tenancy termination. The Landlord claims that the inspection work was necessary for the unit to request tenancy termination legally.

10. The Landlord claims that the May 13, 2019, and May 2019 entry requests were clear with the reason, and it was instead that the Tenant was unreasonable and disrespectful towards the workers. The holes drilled in the unmarked sections of the unit were small and patched up right after to avoid any disturbance and alteration in the unit. They covered the furniture and put it back in place when done. They also cleaned the space and left it as it was. The Landlord claims that the Tenant's argument of the apartment potentially getting cold does not hold up since the holes drilled into the ceiling were insulated and patched back up.

Analysis:

11. Section 25 of the Act ensures a Tenant's right to privacy by providing that a landlord may enter a rental unit only in accordance with section 26 or 27.
12. Section 27(1) para.1 of the Act allows a landlord to enter a rental unit to carry out a repair or replacement or do work in the rental unit, if the Landlord gives the Tenant a written notice given to the tenant at least 24 hours before the time of entry.
13. Subsection 27(3) of the Act provides that a notice of entry must specify the reason for the entry, among other requirements.
14. Pursuant to s. 191 of the Act service by e-mail is not a permitted method of service. However, s. 191(2) says that if it can be proven that the document came to the attention of the recipient within the time period required, the document shall be deemed to be validly served.
15. Based on these principles, the Landlord's entries into the unit on January 07, January 10, March 04, April 04, April 06, April 10, and May 02 of 2019 were legal. The evidence indicates that the entry notices were delivered at least 24 hours before the scheduled entry. These notices also accurately described the reason for the entry, the day of entry, and a time slot between 8 a.m. and 8 p.m.
16. Based on the testimonies and documentary evidence, the Landlord's workers drilling holes in the Tenant's bedroom ceiling was not the reason for their entry on May 13, 2019. The Landlord's notice stated that the entry was for the structural engineer to "cut the marked holes in the drywall and to finalize his assessment." However, the Landlord cannot enter the premises for any reason other than what is specified in the notice. Despite the Tenant's email requesting a reschedule of the hole drilling in her bedroom since the bedroom is not part of the marked areas, the Landlord did not respond, and it allowed the structural engineer to proceed and enter the Tenant's bedroom, which is an unacceptable invasion of the Tenant's privacy.
17. Therefore, I find that the Landlord failed to comply with subsections 26(1) and 27.1(3) of the Act when his workers entered into the Tenant's bedroom on May 13, 2019.

18. 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 the Act. The Divisional Court 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. I am guided by the court in *Wrona* in my determination as to the appropriate amount to award the Tenant with respect to the breach of her privacy rights.
19. In this circumstance, based on the precedent established by *Wrona*, and in consideration of the impact of the illegal entry upon the Tenant, a reasonable amount of rent abatement for the illegal entry on May 01, 2019, is \$750.00. In the case before me, the Landlord's agent entered the Tenant's bedroom to drill holes in the wall when it was not stated as reason of entry on the notice. The breach constituted a serious invasion of the Tenant's privacy.
20. Pursuant to section 22 of the Act, I also find that the evidence establishes that the illegal entries on May 13, 2019 substantially interfered with the Tenant's reasonable enjoyment of the unit. Therefore, I find that the Tenant is entitled to a further rent abatement equal 10% of the monthly rent of May 2019, the month in which the incident happened. As the monthly rent is \$1,512.00, the total rent abatement awarded to the Tenant shall be \$151.20.
21. The order contains all the reasons for the decisions within the order. No other reasons will be issued.

**It is ordered that:**

1. The total amount the Landlord shall pay the Tenant is \$954.20. This amount represents:
  - a rent abatement in the amount of \$901.20 for the illegal entry and for substantially interfering with the Tenant's reasonable enjoyment of the rental unit.
  - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by September 2, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by September 2, 2023, the Landlord will owe interest. This will be simple interest calculated from September 3, 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.

**August 22, 2023**

**Date Issued**

15 Grosvenor Street, Ground Floor  
Toronto ON M7A 2G6

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**Percy Laryea**

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.