



Order under Section 31 Residential Tenancies Act, 2006

Citation: Izzard v Morrissette, 2023 ONLTB 56639

Date: 2023-08-15

File Number: LTB-T-076624-22

In the matter of: 1, 423 Shuter Street
Toronto ON M5A1X4

Tenant

Between: Shanna Izzard

And

Richard Morrissette

Landlord

Shanna Izzard (the 'Tenant') applied for an order determining that Richard Morrissette (the 'Landlord'):

- Substantially interfered with my reasonable enjoyment of the rental unit or complex or the reasonable enjoyment of a member of my household.

This T2 application was heard by videoconference on October 5, 2021 and completed February 9, 2022.

The Landlord and the Tenant attended the hearing.

Preliminary Issue:

1. The Tenant sought to amend the application adding "Reason 1" – namely that the Landlord entered her rental unit illegally and "Reason 4: that the Landlord Harassed, coerced, obstructed, threatened or interfered with her.
2. The Tenant sought a rental abatement of \$4,116.00 and \$17.19, the cost of a replacement broom.
3. The Landlord did not contest the request for amendment.

Determinations:

1. The Tenant filed this application March 8, 2020. The application was subsequently amended December 2020. The Landlord confirmed receipt of a copy of the amended application on or about December 27, 2020

Tenant Submissions

Upstairs tenants

2. The Tenant alleges that the Landlord does not respond to her enquires / complaints / correspondence. The Tenant alleges that that tenant in the upstairs unit violated all the parts of the lease and has vandalized the Tenant's property, tried to fight with her and had turned the rental premises into an "AirBnB".
3. The Tenant has complained to the Landlord about the conduct of upstairs tenant whose children are slamming doors, stomping on the ceiling, and had disturbed her reasonable enjoyment of the premises. At the hearing the Tenant submitted copies of several emails that she had sent to the Landlord that detail her concerns.
4. The Tenant confirmed that the tenant with the children upstairs moved out sometime in the summer of 2020.

Illegal entry

5. The Tenant testified on or about July 21, 2020 the Landlord entered her unit where the Tenant was sleeping and was naked. The Tenant stated that the Landlord was yelling obscenities at her.
6. The Tenant stated that she had contacted the Police to report this incident however did not present any Police reports and or witnesses to support her allegations.

The Broom

7. In the amended application the Tenant submits that the Landlord had taken the broom that she kept by her door and used to clean the laundry and outside area. The Tenant offers no proof and or collaborating information that the Landlord had "taken" the broom

Landlord's submissions

8. The Landlord did not contest the Tenant's allegations about the conduct of the upstairs tenant.
9. The Landlord testified that he took appropriate actions to address the Tenant's concerns including making phone calls to the upstairs tenant, doing site visits, changing locks and initiating legal action, albeit for rental arrears for the other unit. Subsequently the upstairs tenant moved out in the summer of 2020.

10. The Landlord also did not contest that he did enter the Tenant's unit, however after he had knocked on the door and attempted to determine if the Tenant was home. The Landlord also confirmed that he did not provide the required 24 hour notice. The Landlord explained that the internet service that was based in the Tenant's unit was turned off.

The Residential Tenancies Act 2006, (the "Act")

11. 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."

12. Section 23 of the Act states:

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

Analysis

13. *In Hassan v. Niagara Housing Authority* [2000] O.J. No.5650 (Div Crt), the court held that a landlord who fails to take reasonable steps to address substantial interference with reasonable enjoyment by one tenant of another tenant can be found to have substantially interfered with the "victim" tenant's reasonable enjoyment of the premises. This means that a landlord has the positive obligation to provide the tenant with quiet enjoyment and take the reasonably necessary action against any tenant that denies a neighbouring tenant quiet enjoyment of his premises
14. In this case, regarding the conduct of the upstairs tenants; I am satisfied that the Landlord did take sufficient action in an attempt to resolve the issues which lead to the upstairs tenant moving out.
15. In regard to the illegal entry.; the Tenant amended the application 9 months after it was filed with an occurrence that took place about 5 months after the initial filing. Although the Landlord did not contradict the Tenant's allegation, I prefer the Landlord's testimony that he was responding to a maintenance issue, namely that of the internet service being disconnected.
16. Although the Tenant stated that she had contacted the Police and the "Landlord Investigation Unit" and made complaints, the Tenant did not offer any supporting documentation or witnesses to collaborate her claims.
17. Although the Tenant has provided a quantity of information regarding the conduct of the upstairs tenant As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.

18. Although the Tenant has provided a quantity of information regarding the conduct of the upstairs tenant based on the information provided, I am not persuaded that Landlord did not act reasonably and thus am not prepared to make a finding that the Landlord substantially interfered with the reasonable enjoyment of the rental unit or complex or that the Landlord entered her rental unit illegally and or that the Landlord Harassed, coerced, obstructed, threatened or interfered with the Tenant.

It is ordered that:

1. The Tenant's application is dismissed.

August 15, 2023

Date Issued

Peter Pavlovic

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.