



Order under Section 31 Residential Tenancies Act, 2006

Citation: Knight v Mollohan, 2023 ONLTB 53835

Date: 2023-08-01

File Number: LTB-T-043533-22

In the matter of: 301, 16 Bridge Street West PO Box 534
Campbellford Ontario K0L1L0

Tenants

Between: Patricia Knight
Thomas Knight

And

Todd Mollohan

Landlord

Patricia Knight and Thomas Knight (the 'Tenants') applied for an order determining that Todd Mollohan (the 'Landlord'):

- 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 28, 2023. The Tenants, the Tenants' support person, T. Lawes, and the Landlord attended the hearing.

Preliminary Issue

1. The parties provided evidence regarding an incident that took place on January 11, 2023. This event took place on the sidewalk in front of the residential complex. The Board does not have jurisdiction to make any determinations regarding an event that did not take place in the residential complex. Therefore, this evidence is not considered in this order.

Determinations:

2. As explained below, the Tenants did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.

3. The tenancy began in 2013. The Tenants reside in a two-bedroom unit in a multi-unit residential complex.

The Tenant's Evidence

4. The majority of the Tenants' allegations are regarding the conduct of the tenants living in the unit located adjacent to their unit (the 'Neighbours').
5. The Tenants submit that since January 2022, the Neighbours have been making excessive noise by turning their water off and on several times in a row. The Neighbours have done this approximately thirty times. The Tenants state that every time this occurred, they would inform the Landlord. The Landlord's response was that he could not stop the Neighbours from running their water.
6. The Tenants submit that the Neighbours have been banging and slamming stuff against the wall since January 2022 and late at night. The Tenants state that they notified the Landlord of this after every occurrence. The Landlord replied that he spoke to the Neighbours, and they said they were sleeping when the alleged noise occurred, or they were getting something out of cupboards for their dog.
7. The Tenants submit that the Neighbours were stomping constantly and late at night since January 2022. The Tenants state that they notified the landlord of this after every occurrence. The Landlord requested proof of the noise to which they provided. The Tenants submitted into evidence audio recordings of the noise.
8. The Tenants submit that on April 15, 2023, the Neighbour attended their unit and pounded on the door and threatened to kill them. They advised the Landlord of the incident, and the Landlord took no action. Submitted into evidence was an audio recording of the incident where a man is heard saying outside the unit, "You don't talk to her, so shut your f***ing mouth, what did I tell you," and a loud knock on the door is heard.
9. The Tenants submit that the heat in the front room was in disrepair in December 2021 for two weeks. The Tenants advised the Landlord of the issue, and he attended the unit immediately to address it. They state the heating was not fixed for two weeks.

The Landlord's Evidence

10. The Landlord testified that he received the first email from the Tenants about the noise from the water on January 30, 2022. The Landlord states that he received audio recordings but there was no discernible noise. Further, he pulled up the water bills for the Neighbour's unit and did not see an increase or excessive use of water. The Landlord advised the Tenants that he could not tell the Neighbours when they can turn the water on.

11. Regarding the banging and slamming of items, he received the first email about the noise on January 5, 2022. The Landlord requested audio evidence from the Tenants and the audio produced had either no noise or faint walking around. The Landlord states he talked to the Neighbours about closing their cupboard doors.
12. The Landlord first received notice of stomping in February 2022. At the same time, the Landlord was receiving complaints from the Neighbours about the Tenants' noise. The Landlord asked the Tenants and the Neighbours to produce audio evidence. The Neighbours' audio evidence was also inconclusive. The Landlord states he stood in the hallway in between the units to investigate and he only hear the TV.
13. Regarding the April 15, 2023 incident, he received a call from the Tenants about the noise in the middle of the night. He advised the Tenants to call the police. On the security cameras, he observed the police attending the unit. He spoke with the Neighbours the following day and they apologized for the noise. The Tenants did not request that he take further action, so he did not.
14. The Landlord testified that he was notified of the Tenants heating issue on November 17, 2021. He attended the unit immediately. The Tenants advised him that they would be fine since they had two bedroom heaters that are located next to the area where the heat was not working. The Landlord provided the Tenants with a supplementary heater on November 20, 2021. On November 30, 2021, the Landlord was able to fix the heater and removed the portable heater.

Law and Analysis

Substantial Interference

15. Section 22 of the Act says:

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.

16. In the instant case, and based on the evidence presented, I find, on a balance of probabilities, that the noises complained of and emanating from the neighbouring unit were sounds of normal everyday living and do not constitute "substantial" interference.
17. I listened to all the audio recordings submitted into evidence in their entirety and find that the recordings produced either have no discernible noise or faint walking or rapping. In my view, while the Tenants submit that this noise is substantial, from an objective standpoint, I cannot

find that it is. Moreover, the sounds of walking, running water and closing and opening of cupboard doors are noises that are to be expected in a multi-unit residential building.

18. Even if I found that the noise rose to the level of substantial, which I do not, I find that the Landlord responded reasonably to the Tenants' complaints of noise. As can be seen from the wording of section 22, the Act does not give a tenant an unqualified right to quiet enjoyment. In fact, the provision refers only to the behaviour of the landlord and not to other tenants.
19. Case law in this area has developed the general principle that where a tenant's complaint concerns the behaviour of others, a landlord can be held liable under section 22 if the landlord fails to take all reasonable steps to address the tenant's complaints about the third party.
20. The general expectation of a landlord when dealing with tenant-on-tenant complaints is for the landlord to first investigate the complaint in question. Then if the complaint is found to be well-founded, the landlord is expected to take increasingly serious steps to deal with the behaviour complained of in order to stop it.
21. The Landlord in this case investigated the situation by requesting audio evidence, examining water usage and standing in the common hallway to detect noise. While the Landlord could not detect any noise based on the evidence given to him, he still acted on the Tenants' complaints and spoke to the Neighbours about their use of the cabinets. Therefore, I find that the Landlord's response was reasonable.
22. Regarding the lack of heat, where a claim is made of substantial interference due to "work", section 8 of Ontario Regulation 516/06 of the Act must be applied. "Work" is defined as maintenance, repairs or capital improvements carried out in a rental unit or a residential complex. The repair of the heater meets the definition of work.
23. Subsection 8(3) creates a two-part test that is both subjective and objective. Subsection 8(3)(a) requires the Board to look at the individual circumstances of the tenant and the impact on the tenant. However, regardless of the severity of that impact, subsection 8(3)(b) prevents the Board from making a finding that a landlord substantially interfered with the tenant's reasonable enjoyment unless the tenant proves unreasonableness with respect to the work being done.
24. There is no dispute that work was performed by the Landlord regarding the heat in the front of the unit. The Tenants submit that because of the heater not working, their laptop broke. However, I find that the Tenants have not proved on a balance of probabilities that the carrying out of the work was unreasonable in the circumstances. I find that the work was performed in a reasonable way and within a reasonable amount of time. The uncontested evidence was that the work was done over two weeks, the Tenants were provided with a

temporary portable heater, and the Tenants were able to remain in the unit. As such, I do not find that the Landlord substantially interfered with the Tenants' reasonable enjoyment.

Harassment, etc.

25. Section 23 of the Act states that a landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.
26. Although the word harass is not defined in the Act, harassment has been found by this Board to generally be a course of conduct or behaviour that the reasonable person knows or ought to know would be unwelcome.
27. I considered whether the noise complained of was harassment. I do not find that it was. There was insufficient evidence to establish that the noise was intentionally done to harass or interfere with the Tenants. Furthermore, based on the audio recordings a reasonable person would not know or ought to know the noise would be unwelcome because it was not loud.
28. I also considered whether the April 15, 2023 incident was harassment. While the Tenants being told to shut up and a loud knock at the door is unkind, I do not find that there were any threats uttered based on the audio recording submitted into evidence. The conduct is not sufficiently serious, on its own, to constitute harassment of the Tenant. Accordingly, the Landlord was not obligated to take any further steps with respect to this behaviour. Adult tenants will have tensions and disagreements with one another, it is not necessary for landlords to intervene in all such situations.
29. Having found that the Landlord substantially interfered with or harassed the Tenants, the Tenants' application is dismissed.

It is ordered that:

1. The Tenants' application is dismissed.

August 1, 2023

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Camille Tancioco

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.