



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

**Citation:** FRANCIS v MCDONALD, 2023 ONLTB 47623

**Date:** 2023-07-17

**File Number:** LTB-T-001752-21

2023 ONLTB 47623 (CanLII)

**In the matter of:** 2002, 4470 TUCANA COURT  
MISSISSAUGA L5R3K8

<b>Between:</b>	MAKIBA -NICOLE FRANCIS	Tenant
	<b>And</b>	
	KEITH MCDONALD	Landlord

MAKIBA-NICOLE FRANCIS (the 'Tenant') applied for an order determining that KEITH MCDONALD (the 'Landlord'):

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.
- withheld or interfered with the Tenant's vital services or care services and meals in the care home.

This application was heard by videoconference on October 21, 2022 and concluded on June 23, 2023.

The Landlord, the Landlord's Representative, Agatha Small and the Tenant attended the hearing.

Preliminary Issues:

1. At the October 2022 hearing, I heard submissions from the parties as to whether the Act applies. Since that time the Landlord filed Application LTB-L-031811-22 which was resolved by consent order LTB-L-031811-22 issued on June 26, 2023 that terminates the tenancy on September 30, 2023. The Landlord no longer disputes the Act applies which is evident by virtue of the Landlord's exercising his rights under the Act having filed his own application.
2. The Tenant claims she filed an amended application and I see no record of an amended application on the Board's electronic file. The Landlord received a copy of an amended application but asserts they received it on June 20, 2023 by email which was two days ago and they did not enough time to prepare. The Tenant also stated the application included other issues which arose after the November 21, 2021. Since the Tenant did not comply

with the Board's Disclosure Rule of Procedures, the Tenant may consider filing an application if she has enough evidence to support her claim about other issues related to the tenancy if they also fall within the one-year limitation period.

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**Determinations:**

1. As explained below, the Tenant has proven on a balance of probabilities the allegations contained in the application. Therefore, the Landlord must pay the Tenant \$513.00.
2. The Landlord was opposed to allowing the Tenant's guest to stay 5 days each week on a regular basis and asked the Tenant to stop inviting her son to her unit to stay over night on a regular prolonged basis. On or around September 10, 2021, the Landlord sent the Tenant a message to stop having guest sleep over or she'll have pay additional rent.
3. On October 3, 2021, the Landlord sent a letter to the Tenant to vacate. On November 1, 2021, the Landlord was sent a letter by the Tenant's legal representative informing him of the Tenant's rights to have guests and to stop his behaviour. On November 5, 2021, the Landlord called police to force vacancy and police gave the Tenant two weeks to leave. On November 21, 2021, the Landlord stated he called the police to follow up to get the Tenant out. On that day the Landlord and Tenant also had a heated verbal altercation which also included the Landlord's sister, at which time the Tenant showed the police her LTB application and they informed them they would not interfere with that process. There were no further incidents between the Landlord and Tenant after November 21, 2021, because the Landlord stopped asking to her leave, and the Tenant on her own initiative stopped having her son stay overnight.
4. The Tenant also testified that the Landlord turned off the electricity which prevented her from using the washing machine, dishwasher and toaster.
5. I find that Landlord substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household, harassed and interfered with the Tenants rights.
6. Despite a clause in the lease agreement that the premises were only for a single person residence, that clause does not waive the Tenant's right to have a guest stay temporarily nor does it prevent a tenant to house an occupant, which in this case is her son who stayed in the unit for 2-4 days during the week. This is not a situation where there was overcrowding where the number of people staying in the unit violated any health, safety, or housing standards. The Landlord may have been addressing noise complaints emanating from the Tenant's unit that was disturbing other tenant(s), but the proper recourse would be to follow due legal process not taken matters into this own hands and start harassing the Tenant to leave. The Landlord's conduct continued even after the legal clinic informed him by letter on November 1, 2021, of the Tenant's rights. The Landlord ought to have known his conduct was unwelcome.

7. The Landlord's actions caused uncertainty, fear, unnecessary stress and insecurity of tenure which was heightened on November 5 and 21, 2021 with police presence. I considered the Tenant had a verbal altercation with the Landlord and his sister which led the Tenant to feel unsafe, but the evidence adduced by the Tenant was that no further

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incident, engagement, conversations or altercations took place involving the Landlord or his sister after November 21, 2021, up to the date of this hearing.

8. I find it reasonable therefore to issue an abatement of rent of 40% rent for November 2021 rent period or \$460.00 (\$1,150.00 x 40%) which is the period that the Landlord's actions heightened, and the tension escalated. Since the Landlord's actions stopped after November 21, 2021, a further abatement is not reasonable.
9. The Tenant sought other remedies but there no nexus to the issues that are properly before me, therefore weren't considered.
10. The Landlord stated he has not interfered with the electricity that operates the washing machine, dishwasher, and toaster rather they are not operating because they are broken. The Tenant had electricity for other usual purposes such as lights and refrigerator, and it's reasonable to find that the vital service of electricity was not withheld. The Tenant did not meet the onus of proving that the Landlord interfered or withheld the vital service of electricity.
11. The Tenant wanted to raise a claim related to the vital service of heat which was not in the application. This issue is not properly before me and was not considered.
12. The Landlord cannot raise his own issues related to the tenancy under the T2 application. The Landlord must follow due legal process and file his own application if he has enough evidence to support his claim(s).
13. The Landlord owes the Tenant \$53.00 for the cost of the application fee.
14. The total amount the Landlord owes is \$513.00 (\$460.00+\$53.00).

**It is ordered that:**

1. The Landlord shall not harass and/or substantially interfere with the Tenant's reasonable enjoyment of the rental unit or complex or with the Tenant's lawful rights involving her right to have guest(s).
2. On or before July 28, 2023, the Landlord shall pay the Tenant \$513.00 which represents the rent abatement for November 2021 rent period and costs.
3. If the Landlord does not pay the Tenant the full amount owing by July 28, 2023, the Tenant may recover this amount by deducting \$513.00 from August 2023 rent charges.
4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**July 17, 2023**

**Date Issued**

Sandra Macchione

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.