



Order under Sections 31, 87, 88.1 and 88.2 Residential Tenancies Act, 2006

Citation: Kalavesis v Sohi, 2023 ONLTB 50059
Date: 2023-07-14 **File Number:** LTB-T-015496-22_LTB-L-060874-22

In the matter of: BASEMENT UNIT, 16 MCNAIRN CRT RICHMOND
HILL ON L4C5X1

Between: Lindsay Taylor Kalavesis Tenant

And

Hoda Yousefi Sohi Landlords
Alireza Shiridoij

Lindsay Taylor Kalavesis (the 'Tenant') applied for an order determining that Hoda Yousefi Sohi and Alireza Shiridoij (the 'Landlords')

- entered the rental unit illegally;
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household; and
- harassed, obstructed, coerced, threatened or interfered with the Tenant.

The Landlords applied for an order requiring the Tenant to pay the rent and daily compensation that the Tenant owes.

The Landlords also applied for an order requiring the Tenant to pay the Landlords' reasonable out-of-pocket costs that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlords' reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

The Landlords also applied for an order requiring the Tenant to pay the Landlords' reasonable out-of-pocket costs that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

This application was heard by videoconference on June 29, 2023.

The Landlords, the Landlords' legal representative, Danial Yousoufian, the Tenant and the Tenant's legal representative, Marshall Yarmus, attended the hearing.

Determinations:

Preliminary Issues

1. At the start of the hearing, and after a pre-hearing conference was held with both parties, each of the applications were amended as follows:
 - The T2 was amended to only concern two illegal entries on February 18, 2022, and March 16, 2022. The Tenant is seeking an abatement of \$1,000.00 for the first entry and \$500.00 for the second entry.
 - The L10 was amended to remove all issues other than a request for \$2,500.00 for outstanding arrears of rent for April and May 2022.

The Tenant's Application

- a) The February 18th Incident
2. By way of background, the residential complex is a house where the Tenant lives in the basement and the Landlords live on the main floor. For the following reasons, I am satisfied that the Landlords' agent entered the unit illegally on February 18, 2022.
3. There is no dispute regarding the key facts. The Tenant consented to allow contractors into the unit on February 18, 2022, to work on the furnace. While the contractors were in the furnace room, the Landlord brought an agent to the rental unit door, she knocked on the door but did not enter. The Landlord heard a shower running at this time and decided not to enter. Instead, she took the agent to the backyard to take pictures and give the Tenant time to come out of the shower.
4. When the Landlord approached the rental unit a second time, she waited at the top of the stairs while the agent descended to the door and entered the rental unit. At this moment, the Landlord admits that she could not see inside the rental unit and did not observe what took place.
5. The Tenant says she was in the shower when she heard a knock at the bathroom door. When she put on a towel to answer the bathroom door, there was a woman standing there whom she did not know. The Tenant asked her who she was and what she was doing there. The agent replied that the Landlord had granted her access to take pictures and look over the unit. She said she had already taken pictures of the kitchen, the bedroom and living space but she was waiting for the Tenant to leave bathroom so she could take

pictures there. The Tenant says she was very confused and startled by this visit. She had no idea who the person was and had received no warning regarding her entry.

6. The Tenant's testimony on this point was detailed and consistent and I have no reason to disbelieve her. I have also considered that the Landlord admits she brought the agent to the rental unit door, heard a shower running and then did not see what happened when the agent ultimately entered the unit.
7. Based on the evidence before me, I am satisfied that the Landlord's agent entered the unit without notice contrary to section 25 of the *Residential Tenancies Act, 2006* (the 'Act'). At the hearing, the Landlords justified their actions by saying that they provided the Tenant with written notice for the furnace contractors and, because they were already in the rental unit when the agent arrived, it should have been no problem for the Tenant to let in one extra person. However, that is a mischaracterization of the Landlords' responsibilities under the law.
8. According to subsection 27(3) of the Act, a landlord must provide written notice at least 24 hours in advance and that notice must include the reason for the entry, as well as the day and time of entry. In the matter before me, the Landlords failed to provide written notice to the Tenant that an agent would be attending the unit on February 18, 2022, to take pictures of the unit and conduct an inspection. Regardless of the presence of contractors in the unit, the Landlords were legally obliged to notify the Tenant in advance that they were bringing an agent to the unit for the purpose of taking pictures. As the Landlords breached their legal obligations in this regard, this portion of the Tenant's application must be granted and a remedy should flow to the Tenant.
9. The Tenant is requesting an abatement of \$1,000.00 for this instance of illegal entry. The Tenant says that I should follow the principles in *Wrona v. Toronto Community Housing Corporation*, [2007] O.J. No. 423 (Div. Ct.) ('Wrona') to award the \$1,000.00 remedy. While I agree that the *Wrona* case is a starting point for the Board regarding the quantum of remedy that is justified for an illegal entry, I would note that the facts in *Wrona* are very different from the matter before me. Having said that, I have considered the extremely embarrassing nature of this situation. The Tenant was caught in the shower, she was undressed and startled by the intrusion. The Tenant then says she felt violated and scared in her apartment after this entry and I find that her reactions to this situation are reasonable. Based on the egregious nature of the illegal entry, I find that an abatement of \$1,000.00 is justified in this instance. An order will issue deducting \$1,000.00 from any outstanding arrears that are owing to the Landlord.

b) The March 16, 2022, Incident

10. For the following reasons, I find that the Landlords did not enter the unit illegally on this date.

11. There is no dispute that the Landlords entered the rental unit on March 16, 2022, to address a “chirping” sound that was coming from the smoke detector and change the batteries. However, the Tenant was not actually living in the rental unit on this date. Although the Tenant still had the keys to the unit and still had a few belongings left in the unit, she was sleeping at her mother’s house and not at the rental unit.
12. The Landlords knew the Tenant was not living in the rental unit. The previous day, on March 15, 2022, the Landlord saw the Tenant moving some of her belongings out of the unit and she confirmed with the Tenant in person that day that she was in the process of moving out.
13. On March 16, 2022, the Landlords heard a noise coming from the rental unit. They texted the Tenant about the noise and waited for the Tenant’s response. When the Tenant failed to respond to their text, the Landlords entered rental unit, saw that the batteries in the smoke detector needed replacing and did that immediately.
14. At the hearing, the Landlords submitted a receipt for the batteries and the time stamp on the receipt confirms the Landlord waited until 9:00pm to purchase batteries and replace them.
15. Subsection 26(1)(a) says that a landlord may enter a rental unit at any time without notice in cases of emergency. In light of the circumstances surrounding the sound, I am satisfied that this entry was due to an emergency. The rental unit is located in the basement of the house where the Landlords live. The Landlord knew the unit was vacant for the evening because the Tenant told her she was moving out. Once the Landlords realized that the batteries in the smoke alarm required replacing, it would have been dangerous and irresponsible to fail to replace the fire alarm battery. For these reasons, I find that the Landlords were justified in entering the rental unit to address this emergency. As the Landlords have not breached their obligations under the Act in this instance, this portion of the Tenant’s application is dismissed.

The Landlords’ Application

16. The Landlords are requesting \$2,500.00 for arrears of rent owing for April and May 2022. For the following reasons, I find that the Landlords are entitled to those outstanding arrears.

a) The Outstanding Rent

17. By way of background, the parties entered into a one-year fixed term lease that was to terminate on June 30, 2022. There is no dispute that the Tenant ended the tenancy early. The Tenant sent an email to the Landlords in February indicating she intended to terminate the tenancy. However, the precise termination date was not clear from this email. The Tenant then began moving her belongings out on March 15, 2022, and told the Landlord in person that she was moving out. On March 17, 2022, the Tenant sent an N9 notice to

terminate the tenancy effective April 17, 2022. Ultimately, the Tenant returned the keys to the Landlords on April 14, 2022.

18. There are three sections of the *Residential Tenancies Act, 2006* (the 'Act') that apply to the matter before me. They are as follows:

88 (1) If a tenant abandons or vacates a rental unit without giving notice of termination in accordance with this Act and no agreement to terminate has been made or the landlord has not given notice to terminate the tenancy, a determination of the amount of arrears of rent owing by the tenant shall be made in accordance with the following rules:

If the tenant vacated the rental unit after giving notice that was not in accordance with this Act, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in the notice, had the notice been given in accordance with section 47, 96 or 145, as the case may be.

.....

47 A tenant may terminate a tenancy at the end of a period of the tenancy or at the end of the term of a tenancy for a fixed term by giving notice of termination to the landlord in accordance with section 44.

44 (4) A notice under section 47, 58 or 144 to terminate a tenancy for a fixed term shall be given at least 60 days before the expiration date specified in the tenancy agreement, to be effective on that expiration date.

19. Taken together, these sections mean that, when the Tenant terminated this fixed term tenancy, she was required to give the Landlord notice at least 60 days before the end of the fixed term. As she failed to do that, the Tenant is liable for any arrears of rent owing until the end of the fixed term, subject to the Landlord's obligation to mitigate their damages pursuant to section 16 of the Act. In other words, as the Tenant gave improper notice to terminate the tenancy, she is liable for any rent owing until the end of the fixed term, or until the Landlord was able to find a new tenant to rent the unit.

b) Re-Renting the Unit

20. The next issue before me is whether the Landlords took reasonable steps to attempt to re-rent the unit. I find that they did.

21. The surrounding context is important here. The Tenant sent written notice to the Landlords to terminate the tenancy, but her notice was very unclear. On February 10, 2022, the Tenant sent an email to the Landlords notifying them that she intended to move out "one month early". This suggests the tenancy would terminate on May 31, 2022. In this email,

the Tenant suggests that her last month's rent deposit should be applied to May; this supports her request that the tenancy will terminate May 31, 2022.

22. However, the email also says the Tenant is quitting her job and returning to school in April. This suggests that the Tenant may actually be moving out in April 2022 instead of May. In short, the initial notice from the Tenant to terminate the tenancy was not clear and, as such, I find that it was not reasonable for the Landlord to act on this email and take steps to re-rent the unit at this point.
23. The situation became increasingly unclear as the Landlord personally witnessed the Tenant moving her belongings out of the rental unit on March 15, 2022, and spoke to her about this on the same day. The Landlord then sent an email to the Tenant on March 15th asking her to confirm in writing that she was moving out. The Tenant failed to respond to this email.
24. Then, on March 17, 2022, the Tenant sent an N9 notice to terminate the tenancy effective April 17, 2022. This was the third possible date that the tenancy would terminate.

Ultimately, the Tenant returned the keys to the Landlords on April 14, 2022, which was before the date of termination in the notice and completely different from the dates indicated in her original email.
25. In this context of repeatedly confusing notices by the Tenant, I find that the Landlords were justified in waiting until they regained possession of the rental unit on April 14, 2022, before they took steps to inspect the unit, clean the unit and re-rent the unit.
26. However, the Landlord's situation is complicated by the fact that they had a lengthy vacation planned to their home country from May 18 to June 7th. The Landlords say they spent the end of April inspecting the unit, cleaning the unit and disposing of the various belongings (including a bed frame) which the Tenant left behind. Beginning in May, the Landlords say they placed advertisements on two online platforms in an attempt to re-rent the unit. Even though they received 4-5 applications, none of these were suitable candidates.
27. The Landlords then left the country on vacation and returned on June 7th. The Landlords then placed their advertisement again on the two online platforms, they received 10 applications and showed the unit to 5 prospective tenants. Due to the short time line, the Tenant who passed the application process was available to move in on July 1, 2022.
28. Although the Tenant says that the Landlords' tenant-vetting process was too stringent; I disagree. The Landlords are a small landlord who are renting the basement in their own home. This means that they will naturally want to ensure that any tenant is safe, can regularly pay rent and will not interfere with their reasonable enjoyment. There is no evidence before me that the Landlords were unreasonable in their application process. While it is true that they intentionally rented the basement to a single tenant and turned

away prospective tenants who did not comply with that requirement, this is a small rental unit and the Landlords were entitled to restrict their search to single individuals.

29. Based on the evidence before me, I am satisfied that the Landlords took all reasonable steps to re-rent the unit once they obtained possession. They placed multiple advertisements, they showed the unit numerous times and exercised their obligations in a reasonable manner. I am satisfied that the earliest the Landlords were able to re-rent the unit was July 1, 2022.

c) The Amounts Owing

30. This is a fixed term lease that was set to terminate on June 30, 2022. As the Tenant failed to give proper notice to terminate the tenancy and as the Landlords took all reasonable steps to re-rent the unit, the Tenant is liable for all the rent owing until the end of the fixed term. As the Tenant paid March's rent, she is responsible for the rent for April, May and June.

31. The monthly rent was \$1,250.00 The Tenant's last month's rent deposit was applied to June's rent. The Tenant owes the Landlords \$2,500.00 for April and May, less the \$1,000.00 outlined above for the illegal entry for a total of **\$1,500.00**. An order will issue accordingly.

It is ordered that:

1. The Tenant shall pay to the Landlords \$1,500.00 for arrears of rent.
2. The Tenant shall pay to the Landlords the full amount owing by July 25, 2023.
3. If the Tenant does not pay the Landlords the full amount owing by July 25, 2023, the Tenant will owe interest. This will be simple interest calculated from July 26, 2023, at 6.00% annually on the balance outstanding.

July 14, 2023

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Laura Hartslief

Member, Landlords and Tenant Board

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.