



**Order under Section 30 & 31
Residential Tenancies Act, 2006**

Citation: Chung Yan Woo v Adetokunbo Omidiran, 2023 ONLTB 43948

Date: 2023-06-19

File Number: LTB-T-004651-23

2023 ONLTB 43948 (CanLII)

In the matter of: 326 Krotz Street West
Listowel, ON N4W 0J4

Between: Chung Yan Woo Tenants
Tsz Ming Chow

And

Adetokunbo Omidiran Landlord

Chung Yan Woo and Tsz Ming Chow (the ‘Tenants’) applied for an order determining that Adetokunbo Omidiran (the ‘Landlord’), the Landlord’s superintendent or the Landlord’s agent harassed, obstructed, coerced, threatened or interfered with them (T2), and failed to meet the Landlord’s maintenance obligations under the *Residential Tenancies Act, 2006* (the ‘Act’) or failed to comply with health, safety, housing or maintenance standards (T6).

This application was heard by videoconference on May 16, 2023.

The Landlord and the Tenant Chung Yan Woo attended the hearing. The Tenant met with Tenant Duty Counsel prior to the hearing.

Determinations:

T2 Application – Harassment

1. The Tenant alleges that the Landlord harassed the Tenants through the Landlord’s real estate agent, Jody Jennings, in which she attempted to coerced the Tenants to sign a new lease on October 31, 2022.
2. Entered into evidence was a text message from Jody Jennings to the Tenant dated October 31, 2022 in which stated that she would be in Listowel the next day to discuss the lease that was sent to the Tenants, “*otherwise I will be delivering a notice*”.

3. A further text message from Jody Jennings to the Tenants dated November 6, 2022 was also entered into evidence, in which she states that, "*the new lease has to be done either way. You have the option of signing the lease sent to you which includes lawn and snow maintenance which you are already doing, may in future have hot water tank rental which is I believe to be around \$50. If not we have factored the cost of lawncare and snow for us to hire a service as well as a hot water tank rental*".
4. The Tenant testified that the Landlord's agent gave the Tenants a choice to either sign a new lease for a higher rent amount otherwise they would have been charged for lawn and snow maintenance.
5. A new lease was provided to the Tenants however, the Tenants refused to sign the lease as in the Tenants' opinion, the lease was void as the additional terms outlining that the Tenants would be responsible for lawn and snow maintenance were inconsistent with s. 4(1) of the *Residential Tenancies Act, 2006* (the 'Act').
6. When this issue was pointed out to Jody Jennings, the Landlord proceeded to provide the Tenants with an N1 notice of rent increase shortly thereafter. The notice was entered into evidence and outlined an increase of rent by \$520.20 for a total monthly rent payment of \$2,442.38. Further, the notice goes on to state that this increase was approved by way of an order. No order was provided in evidence.
7. Shortly thereafter, the Tenants received an N12 notice of termination on November 8, 2022 for the Landlord's child to move in. Shortly thereafter, the Tenants signed an N9 notice of termination and vacated the unit.
8. The Landlord testified that the reason for the new lease was to include the Tenants' dependents and to amend the lease to reflect the new Landlord. The Landlord testified that his bank would ask for the lease and that the information concerning the Tenants needs to be accurate.
9. The Landlord further submitted that the Tenants agreed to the rent increase.

T6 Application

10. The Tenants allege that the Landlord has failed to meet their maintenance obligations as required under the Act, namely s. 26(1) of Ontario Regulation 517/06 which outlines that the Landlord is responsible for the maintenance of exterior common areas, which includes the removal of snow and the maintenance of the lawn.

11. The Tenant testified that when he raised this issue with the Landlord in October of 2022, the Landlord insisted that the Tenant's sign a new lease with respect to lawn and snow maintenance. Once the Tenants rejected this, the Tenants were provided with a Notice of rent increase.
12. The Tenant testified that he had advised Jody Jennings of this issue on many occasions. In an e-mail thread entered into evidence, on September 27, 2022, Jody Jennings told the Tenant that, "*the build was after 2018 so we do not fall under the current LTB guidelines*".
13. In another e-mail dated October 22, 2022, Jody Jennings tells the Tenants, "*Lawn and snow removal was not on the original lease before because it took almost 1.5 years to get sod. I believe you have for the length of your lease been clearing your driveway and mowing your lawn?? That set precedent. (sic)*"
14. The Tenant testified that he regularly mowed the lawn and removed the snow throughout the tenancy and testified that he had tried to get the Landlord to deal with these issues, but the Landlord refused.
15. The Landlord in response submitted that the Tenants agreed to mow the lawn and clear the snow and that he had not heard any complaints from the Tenants about this arrangement until October of 2022.
16. The Landlord further confirmed in his submissions that lawn and snow maintenance were additional services hence why the Tenants received a Notice of rent increase.

Findings & Analysis

17. Section 23 of the Act states that, a landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.
18. On a balance of probabilities I am satisfied that Jody Jennings, an agent for the Landlord, did harass, coerce and threaten the Tenants. While there is no definition of "harassment" in the Act, it is generally held that "harassment" is a course of conduct that a reasonable person knows or ought to know would be unwelcome.
19. The Landlord's agent, having made herself out to be a property manager, knew or ought to have known that by continually requesting the Tenants to sign a new lease, and then threatening them with a notice should a lease not be signed was harassment, and a threat.
20. Further, the Landlord continued to harass the Tenants after they had refused to sign the new lease by providing a notice of rent increase. It was clear from the behaviour of the Landlord that they wanted to evict the Tenants as the Tenants asserted their rights in refusing to do work the Landlord is responsible for.

21. Section 3 of the Act states that the Act applies despite any agreement or waiver to the contrary. The Landlord knew or ought to have known that a rent increase for this service would have been contrary to the Act.
22. Section 20 of the Act states that a landlord is responsible for providing and maintaining a residential complex in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.
23. As outlined above, s. 26 of Ontario Regulation 517/06 outlines that the Landlord is responsible for exterior maintenance of the residential complex including snow removal and lawn maintenance.
24. As such, on a balance of probabilities I am satisfied that the Landlord has failed to his maintenance obligations with respect to the snow and lawn maintenance for the residential complex. Despite the parties perhaps agreeing to this, the fact that the Tenant did conduct this work does not set a "precedent" as the Landlord's agent had suggested. Section 3 of the Act outlines that neither party is permitted to contract outside of the Act.

Remedies

25. The Tenants vacated the unit and have since moved into a new rental unit. The Landlord disputes this and states that the Tenants are now living in their own home. The Tenant testified that he did not provide his new lease agreement into evidence as he did not want to disclose his new address to the Landlord.
26. The Tenants claim that their rent for their new unit is \$150.00 more than the unit in question and are requesting a remedy of \$1,800.00 to reflect the difference in rent for a period of one year.
27. The Tenants are seeking moving expenses in the amount of \$2,029.94 which represents \$77.44 for gas, \$50.00 for the quote, \$652.50 for 4.5 hours of moving, plus the Tenants' packing time for 25 hours at \$50.00 an hour for a total of \$1,250.00.
28. With respect to the Tenants' T6 application, the Tenants are seeking \$4,793.32 for out-of-pocket expenses, which is based on the proposed rent increase to \$2,442.38 subtracting the amount of rent as set out in the new lease (\$2,100.00) for 14 months.
29. The Tenants admittedly did not provide any evidence of a new lease, nor did they provide any receipts with respect to moving expenses. That said, I do not believe the requested remedy by the Tenants is appropriate in these circumstances as I am not satisfied on a balance of probabilities that the Tenants vacated the unit due to the Landlord's harassment.

30. While I did make a finding that the Tenants were harassed, the Tenants were also served an N12 notice of termination, had signed an N9 notice of termination and vacated the unit. Further, the Tenants were offered and had accepted compensation with respect to the notice.
31. Further with respect to the Tenants' requested remedies for their T6 application, s. 29(2) of the Act states that no application may be made more than one year after the date of the alleged conduct giving rise to the application occurred. As such, I am unable to give a remedy for 14 months of work as requested by the Tenants.
32. Based on the evidence provided by both parties and my knowledge of past decisions regarding similar fact scenarios, I believe that a more appropriate remedy would be a rent abatement for both of the Tenants' applications as permitted by s. 30(1)(2) and 31(1)(c) of the Act.
33. For the months of October and November 2022 in which the Landlord's agent had harassed the Tenants, The Tenants will be awarded a rent abatement of 30% for both months in the amount of \$1,260.00 ($\$2,100.00 \times 0.3 \times 2 = \$1,260.00$).
34. With respect to the Tenant's T6 application, the Tenants will be awarded a rent abatement of 5% for a period of 12 months (January 2022 – January 2023) for lawn and snow maintenance undertaken on behalf of the Landlord in the amount of \$1,260.00 ($\$2,100.00 \times 0.05 \times 12 = \$1,260.00$).

It is ordered that:

35. The Landlord shall pay to the Tenants \$1,260.00. This amount represents the rent abatement for harassment for the months of October and November 2022.
36. The Landlord shall pay to the Tenant \$1,260.00. This amount represents the rent abatement for snow and lawn maintenance undertaken by the Tenants on behalf of the Landlord for a period of one year.
37. The total amount the Landlord owes the Tenants is \$2,520.00.
38. The Landlord shall pay the Tenants the full amount owing by June 30, 2023.
39. If the Landlord does not pay the Tenants the full amount owing by June 30, 2023, the Landlord will owe interest. This will be simple interest calculated from July 1, 2023, at 6.00% annually on the balance outstanding.
40. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

June 19, 2023

Date Issued

Jagger Benham

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.