



Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: PATRICK BRANT v WENYAN WU, 2023 ONLTB 37373

Date: 2023-06-12 **File Number:**
LTB-T-036612-22-RV

In the matter of: 6, 143 COLBORNE STREET
KINGSTON ONTARIO K7K1E1

Between: PATRICK BRANT Tenant

And

WENYAN WU Landlord

Review Order

PATRICK BRANT (the 'Tenant') applied for an order determining that WENYAN WU (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 resolved by order LTB-T-036612-22 issued on March 20, 2023.

On March 21, 2023, the Landlord requested a review of the order.

On March 21, 2023 interim order LTB-T-036612-22-RV-IN was issued, staying the order issued on March 20, 2023.

The review application was heard by videoconference on April 12, 2023.

The Landlord and the Tenant attended the review hearing.

Determinations: The

Review

2023 ONLTB 37373 (CanLI)



1. The Landlord alleges that they were not reasonably able to participate in the proceedings.
2. The Tenant indicated that he provided the wrong mailing address for the Landlord to the Board and therefore the Landlord likely did not receive the notice of hearing. The Tenant consented to the Landlord's review.
3. On the basis of the consent to the review, I granted the Landlord's review request and the hearing proceeded *de novo* on the Tenant's application.

The T2 Application

4. The Tenant applied for an order determining that the Landlord:
 1. Substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant;
 2. harassed, obstructed, coerced, threatened or interfered with the Tenant;
 3. withheld or interfered with the Tenant's vital services or care services and meals in the care home.
5. The Tenant withdrew their claim regarding vital services and only the substantial interference and harassment claims proceeded.
6. At the hearing the Tenant sought to amend the total rent abatement they were seeking to \$2,205.00 from \$2,940.00 as they thought that lower amount was more reasonable. As the requested amendment lowered the amount that the Landlord is potentially liable for, there was no prejudice to the Landlord from the amendment, and I allowed the amendment.
7. The Tenant moved into the rental unit on February 1, 2021 and vacated January 31, 2022. The Tenant rented a room that had a bedroom and private living room, and shared common areas with other tenants. A total of seven tenants lived in the rental property during the Tenant's tenancy.

Substantial Interference – Lease Agreement Clauses

8. The Tenant submits that several clauses in his lease substantially interfered with his reasonable enjoyment of the unit.

Key Deposit Clauses

9. The Tenant submits that the following clauses about key deposits substantially interfered with his reasonable enjoyment of the rental unit:

“A \$50.00 refundable key deposit is charged to each tenant at the time of occupancy when the room is expected, conditions are agreed upon and keys are



given to tenants. It is refunded after the premises (rooms) is/are emptied cleaned, damages repaired and inspected and accepted by the landlord and the keys are returned to and checked/verified by the landlord.

And

“Doors or windows will not be broken for entry. If your keys are lost, left or locked in the room and the landlord is called to make a special trip to open the door for you and make copies for the keys, there is a \$20.00 charge to cover the cost.”

10. The Tenant testified that the clauses are contrary to the *Residential Tenancies Act, 2006* (‘the Act’) and that having to argue with the Landlord about legality of a key deposit also substantially interfered with the Tenant.
11. On September 8, 2021 the Tenant wrote to the Landlord and indicated that the key deposit was illegal and asked for it to be returned. The Tenant wrote to the Landlord again about the issue on September 12, 2021. The Landlord responded “the key deposit is allowed by the law and it is returned when you return the keys after moving out. I hope you do not start any problem in the house. If you want to move out, just let me know”.
12. The Landlord has since returned the key deposit to the Tenant.

Behaviour Clause

13. The Tenant submits that the following clause about tenant behaviour substantially interfered with his reasonable enjoyment:

“Tenants agree to respect and ensure that the privacy, safety, security, and comfort of other tenants sharing the house. They will not annoy other tenants or neighbours in any way and will be liable to the Landlord for any financial loss caused by their behaviour. They will not hold or participate in any illegal activities in the premises or they will be evicted right away. No loud music and TV, no noisy party in either private or public area.”

14. The Tenant testified that the result of this clause was that he felt he could not watch movies or listen to music at his desired volume.
15. The Tenant testified that on 3 or 4 occasions when the Tenant was watching a movie or using his karaoke machine the Landlord texted him about the noise level.



Guests Clause

16. The Tenant submits that the following clause about guests substantially interfered with his reasonable enjoyment:

“The Tenant agrees to use the rented premises only a residence for Tenant only. The premises can’t be “lend” to or shared with someone else. Visitors need to leave the premises before 10:00p.m. Under special circumstances, a spouse or a child is allowed to stay over for a night or two during the weekend if they do not live in Kingston with a notification to and the agreement from the landlord. Otherwise if a tenant is found having somebody else sharing his/her room, \$30 per person per night will be charged and the landlord had the right to charge extra for utilities if the duration is more than five days.”

17. The Tenant testified that he works during the day so the only time he can socialize is the evening. The Tenant testified that he did not invite guests over to the rental unit in fear of the above clause.

Lease Clauses – Analysis

18. Section 22 of the Act says that 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.
19. The above lease terms are not included in the Ontario Standard Lease and have been added by the Landlord. The Landlord argues that the terms do not substantially interfere with the Tenant as he agreed to them when he signed the lease, and only ever complained about the key deposit.
20. On a balance of probabilities, I find that the clause restricting guests after 10:00p.m. and subjecting the Tenant to a \$30.00 fee if he breaches that clause, did substantially interfere with the Tenant’s reasonable enjoyment. Tenants have the right to have guests. The clause restricting guests is both unenforceable and substantially interfered with the Tenant’s reasonable enjoyment of the rental unit. For his entire tenancy the Tenant did not have overnight guests or guests over after 10:00p.m. because he was fearful of violating the clause.
21. I do not find the clause regarding the privacy, safety, security and comfort of other tenants rises to the level of substantial interference. Seven tenants shared the rental property, and I do not find the expectations the Landlord sets in this clause to be unreasonable. The clause talks about not engaging in illegal activities or playing loud music/TV or holding loud



parties. Additionally, one of the examples the Tenant gave of enforcement of this clause is receiving a complaint after using his karaoke machine. I can see how a karaoke machine could be loud and the Landlord asking the Tenant to reduce the noise is not unreasonable.

22. I will however note that there are parts of the behaviour clause that are unenforceable. For example, the Landlord cannot evict a tenant right away if they violate the clause. A tenant has the right to receive notice of eviction and to challenge the eviction at the Board.

23. I also do not find the key deposit clause to have substantially interfered with the Tenant's reasonable enjoyment of the rental property. A Landlord is authorized to collect a key deposit if it is refundable and covers the actual cost of replacing keys if they are not returned to the Landlord at the end of the tenancy. While I agree with the Tenant that the key deposit charged by the Landlord goes beyond what is allowed by the Act, because it also mentions that the deposit will only be returned if the Tenant's room is cleaned and free of damage, I still do not find that the deposit *substantially* interfered with the Tenant's reasonable enjoyment of the rental unit. That something is contrary to the Act does not automatically mean that it substantially interfered with the Tenant's reasonable enjoyment, although it can be relevant to the analysis. I do not find that the key deposit substantially interfered with the Tenant because the deposit was for a low amount of money, was only collected once, and has been returned.

24. I also do not find the second key clause in the lease about replacement keys to have substantially interfered with the Tenant as he did not lose his keys during the tenancy and therefore never paid for any replacement keys.

25. I also do not find the discussions surrounding the key deposit to have substantially interfered with the Tenant as the Landlord responded in a timely and respectful manner. I also note that both parties state inaccuracies about what is permitted by the Act in their emails. While I do have concerns that during their discussion the Landlord mentions that he hopes the Tenant does not cause problems in the house and asks the Tenant if he wants to move out, the Landlord at no time tried to illegally evict the Tenant, nor do I think the Tenant took from the Landlord's comments that he had to move out of the rental unit if he complained to the Landlord about issues. As such, I do not find these discussions substantially interfered with the Tenant.

Substantial Interference - Entries Without Notice into the Shared Common Areas

26. The Tenant testified that the Landlord would frequently be in the common areas of the rental property despite not living there himself and that no notice was provided for these entries. The Tenant testified that this happened multiple times a week for the entire tenancy. The duration of the Landlord's visits was sometimes a quite check over the property, but sometimes the Landlord would stay up to 30 minutes.



27. The Tenant introduced into evidence a text message he received from the landlord as an example of the type of interference exhibited by the Landlord when he visited the rental property. On December 3, 2021 the Landlord texted the Tenant and said “Hi Patrick, could I ask you to turn the light off in Kitchen or washroom when done. I heard you going downstairs just now, so I assume you went to use the washroom, but the light is left on”.
28. The Tenant testified that the Landlord would also put notes all over the rental property. For example, about taking shoes off, cleaning dishes, not using the emergency exit unless there is an emergency etc. Photographs of these notes were entered into evidence.
29. The Tenant testified that the Landlord’s repeated entries were stressful for him and made him feel uncomfortable using the common areas.
30. The Landlord testified that he only attends the rental unit when he receives a request from a tenant to attend the rental property.
31. I found the Tenant credible in his testimony that the Landlord entered the rental property multiple times a week as the testimony was offered in a forthright manner and withstood cross examination well. Additionally, the text message from the Landlord about turning off the lights, and the numerous notes around the rental property illustrate the Landlord intervenes in the happenings of the rental property frequently. I am not satisfied that the Landlord only enters the rental property in direct response to tenant requests as the entries occur multiple times a week and it is unlikely that there are that many direct requests from tenants. I find that the Landlord’s frequent presence in the rental property common areas did substantially interfere with the Tenant as it led to him having increased stress and feeling uncomfortable using the common areas.

Substantial Interference – Broken Stove Top

32. The Tenant testified that during his tenancy only three of the elements on the communal stovetop worked, and that one of those elements is being held up by a muffin tin. This means that there are effectively only two working stovetop elements.
33. The Landlord testified that he believes the Tenant broke one of the sockets for one of the stovetop elements by cleaning it. The Landlord believes this because the Tenant told him he saw sparks while cleaning the stove.
34. The Landlord testified that the element that was originally not working was the large main element, so his solution was to switch the sockets for the stove so that the large element worked and one of the back smaller elements did not. The Landlord also testified that one of the tenants put the muffin tin below one of the elements and there is a portable working stove top element that can go on top. As such there are three working elements.
35. The Tenant testified that the broken elements substantially interfered with his reasonable enjoyment of the rental property because seven tenants shared the stove, and this resulted



in him being unable to cook when he wanted to. The seven tenants would have to coordinate their schedules for stove use. The Tenant also testified that he stressed about the possibility of the muffin tin causing a fire.

36. I am not satisfied that the broken stovetop elements rise to the level of *substantial* interference with the Tenant's reasonable enjoyment. While I accept that the Tenant often had to coordinate with the other tenants about when he could cook, this would be the case even if all the elements worked on the stove. Seven people cannot cook at once, and while the lack of all the working elements may have contributed to the problem, the Tenant was still able to cook. Additionally, the Tenant led insubstantial evidence to establish that the muffin tin below one of the elements caused a fire hazard. The Tenant stated that it did but did not provide any supporting evidence in this regard.

Substantial Interference - Removal of Food from Fridge

37. The Tenant testified that on December 2, 2021 the Landlord was cleaning out the communal fridge in the rental property and removed the Tenant's groceries. The Tenant testified that prior to the removal of his groceries he had explicitly told the Landlord what was his.
38. The Tenant testified that his missing groceries included cheese and butter. The Tenant estimates that approximately \$30.00 worth of groceries were lost.
39. The Landlord testified that he was cleaning the fridge because some tenants had just vacated. The Landlord testified that he returned the Tenants food two days later and had stored the items in his own fridge, so they did not expire. The Tenant testified that the butter was ok, but the cheese had expired.
40. I am satisfied that the Landlord removing the Tenant's food from the communal fridge did substantially interfere with the Tenant. This is because the Tenant lost approximately \$30.00 worth of groceries and while they were returned to the Tenant, he was without them for some time and the Tenant felt that cheese could no longer be eaten because of how it was stored.

Air Conditioning Unit Fee

41. In the summer of 2021, the Tenant installed an air conditioning unit in his room because of the hot temperatures.
42. Utilities were included in the Tenant's monthly rent, and the lease does not mention that the Tenant will have to pay more to use an air-conditioner.



43. The Tenant testified that the Landlord asked him to pay \$30.00 a month for the use of his air condition. The Tenant paid the fee for the four summer months and seeks reimbursement of that fee.
44. There is no evidence before me that the parties agreed to increase the rent to add a prescribed service. As such the Landlord was not authorized to charge the additional fee. I find that the air conditioning fee substantially interfered with the Tenant's reasonable enjoyment as he felt he had to pay it in order to have his air conditioner.

Harassment Regarding the Cleaning the of Rental Property

45. On September 6, 2021 the Landlord sent a memo to all of his tenants indicating that he would be instituting a cleaning schedule with specific jobs that needed to be done by specific tenants on certain weeks. The memo also indicates that there will be a charge between \$60.00 - 100.00 if the tasks are not completed.
46. The Tenant testified that he always did his cleaning tasks, so he was never charged the fee. However, the Tenant testified that the threat of a fee made him feel pressured to pick up the slack of his housemates. His housemates would not do an adequate job when it was their turn, so when it was his turn, he had more cleaning to do.
47. Section 23 of the Act states that a landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant. I do not find the Landlord posting a cleaning schedule to be harassment. Seven tenants lived in the rental property, and it is to be expected that cleaning duties would be shared amongst them. Additionally, the Tenant was never charged the cleaning fee.

Remedies

48. The Tenant requests a rent abatement in the amount of \$2,205.00 which is 25% of the monthly rent for February 1, 2021 to January 31, 2022.
49. I have found that the Landlord substantially interfered with the Tenant by prohibiting him from having guests past 10:00p.m., frequently visiting the rental unit common areas, and removed the Tenant's food from the fridge. I have not found that the Landlord substantially interfered the tenant or harassed the tenant by enforcing a cleaning schedule, failing to fix all stovetop elements, and having clauses in the lease about a key deposit and the behaviour of tenants.
50. I find a rent abatement in the amount of 14% to be reasonable. An abatement in this range is appropriate where there is some disruption to a tenant's ability to normally reside in rental unit. The Tenant was not able to have guests past 10:00p.m. for their entire tenancy and felt uncomfortable using the common spaces because of the Landlord's frequent visits.



51. The Tenant also requests out of pocket expenses in the amount of \$120.00 for the air conditioning fee he paid for the summer months of 2021. I find it reasonable to award the Tenant's out of pocket expenses in that regard.

It is ordered that:

1. The request to review order LTB-T-036612-22 issued on March 20, 2023 is granted.
2. Order LTB-T-036612-22 is canceled and replaced by the following:
3. The total amount the Landlord shall pay the Tenant is \$1,407.80. This amount represents:
 1. \$1,234.80 rent abatement
 2. \$120.00 for out of pocket expenses for substantial inference
 3. \$53.00 for the cost of filing the application.
4. The Landlord shall pay the Tenant the amount owing on or before July 12, 2023.
5. If the Landlord does not pay the Tenant the full amount owing by July 12, 2023 the Landlord will start to owe interest. This will be simple interest calculated from July 13, 2023 at 6% annually on the balance outstanding.

June 12, 2023

Date Issued

Amanda Kovats
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.

