



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

Citation: Alyssa Verebes-Budge v Francesca Idone, 2023 ONLTB 41021

Date: 2023-06-09

File Number: LTB-T-054300-22

In the matter of: 1, 404 HOLLAND AVE
OTTAWA ON K1Y0Z2

Between: Alyssa Verebes-Budge Tenants
Stephanie Saunders

And

Francesca Idone

Landlord

Alyssa Verebes-Budge and Stephanie Saunders (the 'Tenants') applied for an order determining that Francesca Idone (the 'Landlord'):

- entered the rental unit illegally;
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of the Tenants' household;
- changed the locks or the locking system to my rental unit or building without giving the Tenants replacement keys, and
- harassed, obstructed, coerced, threatened or interfered with the Tenants.

This application was heard by videoconference on May 24, 2023.

The Landlord and the Tenants attended the hearing.

Determinations:

1. The residential complex is a triplex comprised of three rental units. The Tenants reside on the main floor, the Landlord resides on the second floor. There is another rental unit in the basement.

2. The Tenants moved into the rental unit on or about September 1, 2021. The monthly rent was \$2,300.00. The lease provided that the parties may serve notices by email. As such, the parties provided their email addresses to each other. They also provided their respective phone numbers and communicated by text messages throughout the tenancy. The lease also stipulated that the Tenants were entitled to one parking spot and to the use of laundry facilities on site.
3. In early September 2022, the Tenants informed the Landlord that they wished to terminate their tenancy effective October 31, 2022. The Landlord refused to agree to an early termination, that is less than 60 days at the end of term. As such, on September 6, 2022, the Tenants gave the Landlord a Notice of Termination, Form N9, with the termination date of November 30, 2022. The Tenants, however, moved out of the rental unit on October 30, 2022.
4. On September 21, 2022, the Tenants filed this T2 application about tenants' rights pursuant to s. 29(1) of the *Residential Tenancies Act, 2006* (the 'Act'). The Tenants sought a rent abatement, and that the Landlord cease her conduct which, they said, seriously interfered with their enjoyment of the rental unit and to stop harassing the Tenants.
5. On May 11, 2023, approximately 8 months after they filed their application, the Tenants sought to amend their application to include additional alleged breaches of the Act by the Landlord and requested additional remedies. The Tenants served the amended application on the Landlord. The application was heard as amended.

Illegal entry:

6. The Tenants allege that the Landlord entered their rental unit illegally on several occasions.
7. The privacy provisions of the Act are contained in sections 25 through 27 of the Act. Section 25 states that a landlord can only enter a rental unit in accordance with either section 26 or 27.
8. Section 26 covers those situations where a landlord is permitted to enter without notice, that is: in emergencies; where the tenant consents at the time of entry; where the tenancy agreement requires the landlord to enter at regular intervals in order to clean; and to show the unit to prospective tenants.
9. Section 27 covers situations where the Landlord or his or her agent may enter after having given the tenant a written notice at least 24 hours in advance.
10. The Tenants alleged that the Landlord entered their rental unit on June 24, 2022 without giving the Tenants proper notice.
11. The evidence before me established that Landlord sent the Tenants a text message on Thursday, June 23, 2022, asking them when would be a good time for the Landlord to

come and check pipes that were making noise. The Tenants responded the next day, on Friday, June 24, 2022, saying that Monday would be a good day, as one of the Tenants was sleeping after a shift. The Tenants were nurses, and often worked shifts.

12. On the same day, June 24, 2023, at 11.28 a.m., one hour after the Tenants' message, the Landlord responded: "I will come down today between 2 and 4 to check the pipes". The noise was waking up the Landlord at 5:00 a.m. and she was not willing to wait for another three days, until it was convenient to the Tenants that the Landlord enter. The Tenants then responded that someone would be in the rental unit when the Landlord came.
13. Although in this instance, the Landlord did not give the Tenants a 24- hour Notice of Entry in accordance with the Act, I am satisfied that the Tenants gave the Landlord consent when they stated that someone would be in the rental unit when the Landlord came to the rental unit on June 24, 2022, between 2 and 4. As such, the Landlord's entry was not illegal.
14. I also note that the Tenants had every right to choose to be at home when an entry occurred, but that was their choice. There is nothing in the Act that says tenants must be present when entries occur nor is there any requirement that a landlord and tenant have to negotiate mutually agreeable times; nor does anything in the Act permit a tenant to refuse access if proper notice is given, just because he or she is unavailable to be present or uncomfortable with the entries.
15. On October 14, 2022, the Landlord entered the Tenants' rental unit without proper Notice of Entry in order to investigate whether the Tenant's rental unit was the source of a leak, that had just occurred in the rental unit below. This entry is, in my view, was an emergency entry to address an urgent situation, and as such not in breach of the Act. The Landlord had sent the Tenants a courtesy text message informing them that she had to enter the rental unit to check the source of the leak.
16. On November 27, 2022, the Landlord entered the rental unit to clean it after the Tenants vacated. The Landlord provided a written Notice of Entry on November 26, 2022. As the Tenants were no longer residing in the rental unit, they were unaware of the planned entry.
17. In conclusion, based on the evidence before me, I am not satisfied that the Landlord entered the Tenant's rental unit illegally.

The Landlord changed the locks or the locking system to the rental unit or building without giving the Tenants replacement keys

18. Section 24 of the Act states that a landlord shall not alter the locking system on a door giving entry to a rental unit or residential complex or cause the locking system to be altered during the tenant's occupancy of the rental unit without giving the tenant replacement keys.

19. The Tenants moved out of the rental unit on October 30, 2022. According to the Tenants, on November 20, 2022, they attempted to enter the rental unit in order to finish up cleaning the rental unit, and to retrieve a mat they had left there; however, the entry code on the main entry door had changed and the Landlord did not inform the Tenants of the new code. The Tenants could not access the rental unit on that day. The Tenants however did not contact the Landlord to obtain the code. The Tenants obtained the code from the tenant residing in the basement on November 27, 2022, and gained access the rental unit to remove their mat.
20. In this instance, the Landlord did alter the locking system by changing the entry code and did not provide the Tenants with the new code. However, the Tenants had moved out by the time the code was changed and the Landlord did not know that the Tenants would be returning to the rental unit as it appeared empty. In any case, the Tenants did not ask the Landlord for the entry code. The Landlord would have provided the entry code to the Tenants had they asked.
21. In conclusion, I am not satisfied that the Landlord refused to provide the entry code to the Tenants. Even if I am incorrect in finding that the Landlord changed the locks or the locking system to the rental unit or building without giving the Tenants replacement keys, in this instance the access code, the impact on the Tenants would have been minimal. As such, no remedy is warranted.

The landlord substantially interfered with the Tenants' reasonable enjoyment of the rental unit or complex, the Landlord harassed, coerced, obstructed, threatened, or interfered with the Tenants

22. Section 22 of the Act states:

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.

23. Section 23 of the Act states: "A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant."
24. There is no definition of "harassment" under the Act but generally speaking, harassment is usually considered to be a course of conduct that a reasonable person knows or ought to know would be unwelcome.
25. The Tenants alleged that the Landlord substantially interfered with their reasonable enjoyment of the premises and harassed them by attempting to micro-manage their life in the residential complex. For example, the Landlord insisted that the Tenants wear indoor shoes while walking around in their unit because their footsteps were too loud (text messages of November 5, 2021, and September 2, 2022); on June 7, 2022, the Landlord

sent the Tenants a text message asking the Tenants to make sure the sunroom windows and shutters were closed when they did not use the sun porch. The Landlord also told the Tenants when they could use the air conditioning; and on January 28, 2022, the Landlord yelled at Tenants for making salt stains on the wooden floor.

26. The Landlord denied yelling at the Tenants on January 28, 2022, although she did admonish the Tenants for making salt stains on the wooden floor. The Landlord acknowledged that she had asked that the Tenants wear indoor shoes in order to minimize disruption the tenants residing in the basement. The residential complex is an old home and sound travels throughout. The Landlord also acknowledged asking the Tenants, who reside on the main floor, to keep windows and shutters closed when not in the sun room, in order to prevent break-ins.
27. It was not disputed that the Landlord wished to raise the monthly rent by 5%, which is above the maximum increase permitted by the Rent Increase Guidelines. The Landlord wished to do so because the utility bills for the residential complex increased significantly. According to the Tenants, the parties had a discussion about it between May 30 and June 2, 2022, and the Landlord was insistent and rude about it. The Landlord denied being rude during the discussions. Ultimately, the Tenants refused to pay the illegal rent increase.
28. The Tenants also alleged that the Landlord harassed them between September 2 and September 5, 2022, while they were away at a cottage. On September 2, 2022, the Landlord sent the Tenants a text message stating that the Tenants did not include the rent increase in their September rent e-transfer. This increase was pursuant to the Rent Increase Guidelines. When the Tenants did not respond immediately, the Landlord sent the Tenants insistent follow up texts. The Tenants did not include the increase, because the Landlord did not provide them with a proper Notice of Rent Increase with the 90 days of written notice using the N1 form. The Landlord was under the impression she had provided the Notice of Rent Increase, but subsequently discovered that she had failed to give it to the Tenants.
29. Essentially, what the Tenants complain of is a series of incidents which reflect a lack of courtesy or professionalism on the part of the Landlord. A landlord is expected to act professionally as is any business person delivering a service for a fee. This applies to large corporate Landlords and small Landlords renting out parts of their hoes as well.
30. I find, based on the evidence before me, that the above conduct of the Landlord, although lacking professionalism at times, may have interfered with reasonable enjoyment of the premise by the Tenants; however, I am not satisfied that the interference raised to the level of substantial.
31. I find support for my finding also in a communication from the Tenants to the Landlord dated September 6, 2022 when the Tenants informed the Landlord that they were moving out at the end of October to move in with roommates to set off the cost of living. They stated “we appreciate your kindness and support throughout the year. We are sad to be leaving your beautiful home, but we hope you can understand our financial situation”.

32. The Tenants further alleged that the Landlord removed their parking spot. On September 6, 2022, the Landlord asked that the Tenants not to park in their parking spot as there was repair work done on the house and the workers needed access.
33. In this instance, the parking was not removed but was limited due to the repairs to the residential complex. As such, I find that the interference was not unreasonable in the circumstance.
34. The Tenants further alleged that the Landlord harassed them on September 19, 2022. The Landlord and the Tenants shared laundry facilities in the basement. On September 19, 2022, at 8:00 p.m., the Tenant AVB was using the laundry facilities. When she went to put her clothes in the dryer, she discovered that the Landlord had clothes in the dryer. AVB texted the Landlord to remove her clothes from the dryer. After about 45 minutes with no answer, AVB removed the Landlord's clothes from the dryer. There was a dispute as to whether AVB put the clothes in the laundry basket or on the floor. Around 9:00 p.m. the Landlord came to the Tenant's door and began yelling at her using coarse language calling her a "bold bitch", and stating has been "acting retarded since the beginning". The Tenants provided a video recording of this incident.
35. According to the Landlord, she was essentially entrapped by the Tenants. When she came to the laundry room, she found her clothes on the floor and became angry. When she walked by the Tenants' door, it was open and the Tenants were ready to video tape the Landlord as she was extremely upset because her clean laundry was on the floor.
36. The Landlord acknowledged that she acted inappropriately and apologized for her conduct.
37. Given how upsetting the Landlord's behaviour was to the Tenants, I am satisfied the behaviour in question substantially interfered with the Tenants' reasonable enjoyment and constituted harassment.
38. On or about September 22, 2022, the Landlord limited access to the laundry facilities to one day a week. The Tenants chose Sundays. The Landlord did, however, accommodate the Tenants and made the laundry facilities available on other days as well, upon the Tenants' request.
39. I am satisfied that the restriction of use of the laundry facilities seriously interfered with the Tenants' reasonable enjoyment of the premises, especially because the Tenants worked shifts, and irregular hours and needed flexible access to laundry. Moreover, the Landlord cannot unilaterally change the terms of the lease agreement.
40. According to AVB, due to the numerous, traumatizing encounters with the Landlord, AVB became increasingly anxious which affected her sleep and affected how she felt at work. She went to her family physician and they increased her anti-anxiety medication.

41. Given the number of incidents, the period over which they occurred, the impact of the Landlord's conduct on the Tenants, and the amount of rent charged, it seems to me that a reasonable abatement of the rent would be \$500.00.
42. In addition to a rent abatement, the Tenants requested that the tenancy be terminated effective October 31, 2022, a rent differential and general damages in the amount of \$1,000.00.
43. The Tenants alleged that they moved out because of the Landlord's behaviour. I am not satisfied that the evidence supports this finding. The Tenants moved out due to financial reasons into shared accommodations with other roommates. As such, termination of the tenancy and rent differential is not an appropriate remedy.
44. With respect to general damages, I am satisfied that the rent abatement is a remedy that sufficiently compensates the Tenants in the circumstances.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is \$500.00. This amount represents an abatement of rent:
2. The Landlord shall pay the Tenants the full amount owing by July 18, 2023.
3. If the Landlord does not pay the Tenants the full amount owing by July 18, 2023, the Landlord will owe interest. This will be simple interest calculated from July 19, 2023, at 6% annually on the balance outstanding.
4. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

July 7, 2023

Date Issued

Jana Rozehnal

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.