



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

Citation: Hernandez v Isoufi, 2023 ONLTB 37796

Date: 2023-05-17

File Number: LTB-T-002856-22

In the matter of: 2377 5TH LINE, Main Floor
CHURCHILL ON L0L1K0

Between: Janis Hernandez Tenants
John Haigh

And

Mike Isoufi Landlord

Janis Hernandez and John Haigh (the ‘Tenants’) applied for an order determining that Mike Isoufi (the ‘Landlord’) substantially interfered with their reasonable enjoyment of the rental unit and the residential complex, and harassed, coerced, obstructed, threatened or interfered with them.

This application was heard by videoconference on March 23, 2023.

The Landlord’s sister, Soudabeh Isoufi, and the Tenants attended the hearing.

Determinations:

1. The rental unit is the main floor of a house. The Tenants moved into the rental unit on January 1, 2021. They moved out on January 24, 2022. The monthly rent was \$3,000.00.
2. The Tenants’ application alleges that the Landlord substantially interfered with them by forcing them to pay for a hot water tank rental that was not mentioned in the lease agreement, and that the Landlord harassed them in various ways, including by insulting their dog, during the renegotiation of the lease terms in the Autumn of 2021.

Allegations about Harassment:

3. The Landlord’s evidence was provided by his sister, S. Isoufi (SI). SI was the primary liaison between the Landlord and the Tenants, and it was she that was involved, and who had knowledge of what discussions or interactions had occurred between the Landlord and the Tenants.
4. The Tenants’ allegations about harassment relate mainly to a period in late 2021 when the parties began discussing access to a utility room in the basement, or renting out the whole house, and raising the rent by up to 50%.

5. The Tenants' documentary evidence demonstrated that there were some discussions and negotiations about a rent increase after the expiry of the first year term of the lease.
6. It is undisputed that the Landlord was trying to negotiate a rent increase that was greater than the guideline amount.
7. The Tenants refused to pay greater than the guideline increase. They submitted into evidence an email from the Landlord, dated January 8, 2022, in which the Landlord states that he will continue to rent only the main floor to the Tenants, and he will not increase the rent at all. He states, "Will keep things as they are 3000 rent +70% utilities. As mentioned before will not be signing another lease, will do month to month and in the event either side decide to end the tendency (sic) pls provide 2 month notice."
8. The Tenants said that during this time SI would "show up" and berate them by treating them like stupid people. They said that during one of SI's visits, she saw that they had a dog and told them that they were forbidden to have a dog.
9. SI said that the only time she visited the property was to carry out maintenance requests. She said she heard a dog bark on one of the visits, and she reminded them that they had told the Landlord they only had a cat, and also that the parties had never agreed that the Tenants could have a dog.
10. SI said that when the parties were renegotiating the lease, the Landlord asked the Tenants if they wished to rent the whole house at an increased rent. She said that the Tenants refused, and they all agreed to continue to rent the main floor for the same monthly rent of \$3,000.00
11. I find that the Tenants have not proved, on a balance of probabilities, that the Landlord carried out a campaign of harassment, obstruction, coercion or interference for the reasons that follow.
12. The parties had discussions about possibly renting the whole house. The Tenants did not wish to have more space, nor did they wish to pay any more rent. The Landlord ultimately agreed to keep the rent and the terms exactly the same, on a month to month basis. There is nothing in the evidence about the renegotiation that constitutes harassment or coercion.
13. SI visited the house for maintenance requests. On one of the visits she was dismayed to hear the sound of a dog barking when the Tenants had specifically not advised the Landlord they had a dog, and the parties had previously agreed that the Tenants would only have a cat in their unit. It is undisputed that SI was not happy with the discovery that the Tenants had a dog. This does not constitute harassment or coercion, interference or obstruction. The Tenants continued to have their dog with them in the rental unit until they left.

Hot Water Tank Rental:

14. The Tenants allege that the Landlord substantially interfered with their reasonable enjoyment of the rental unit and the residential complex because he forced them to pay for a hot water tank rental which was specifically excluded from the lease.
15. The Tenants submitted into evidence their lease agreement, which provides that they will pay 70% of the utilities (heat and hydro). The boxes for gas and electricity are ticked (i.e. that the Tenants will pay these), and the box for "hot water heater rental" is not ticked.
16. The Tenants said that they received their first bill for utilities on February 5, 2021, and it included the hot water tank rental. They said that they queried this amount with the real estate agent with whom they negotiated the lease, and he told them to pay it because they should be grateful that they have a good Landlord. They said that they received an addendum to the lease that added the hot water tank rental, but they did not sign it.
17. The Tenants said that they sought to avoid conflict, and they just paid it in the end. The total they paid for the time they lived there was \$25.88 per month for 12 months, or \$310.00. They are claiming reimbursement of \$310.00 for the unlawful amount they paid.
18. SI said that she did not remember discussions about the hot water tank rental when negotiating the initial lease. However, she said that there was a definite agreement for the Tenants to pay 70% of the utilities, so the Landlord charged them 70% of the hot water tank rental.
19. SI submitted into evidence an email from the Tenants, dated February 16, 2021, in which they thanked the real estate agent for clarifying the situation about the hot water tank rental. The Tenants ask the Landlord for a specific addendum stating that they are responsible for 70% of the hot water tank rental. They also state, "I am not saying we won't pay for the Hot Water Tank monthly rental, what I am saying is that if we are going to pay for the Hot Water Tank Rental then please create an addendum to the rental agreement that outlines that Hot Water Rental per month is required..."
20. SI said that the Tenants signed an addendum, but there was no documentary evidence of it at the hearing.
21. I find that the Tenants should be reimbursed the \$310.00 they paid for the hot water tank rental for the reasons that follow.
22. It is undisputed that the parties had different understandings of the term of the lease that said the Tenants were responsible for 70% of the utilities. It is not particularly surprising that they would have different understandings, because utilities can mean a number of things. That is why there are a number of boxes that can be ticked or not ticked in the section of the lease entitled "Services and Costs".
23. It is undisputed that in that section of the OREA lease, the specific box stating "hot water heater rental" is not ticked. The parties also had an Ontario standard lease agreement. In

the section stating “The following utilities are the responsibility of....” There are no boxes ticked. The words “The Tenant shall pay 70% of Gas and Hydro bills” are written in.

24. Based on the above-mentioned documents, as well as the testimony of the Tenants, as well as the logical understanding of what was written or discussed, there was no reason for the Tenants to believe that they were responsible for the hot water tank rental. There is no documentary evidence that the Tenants ever signed an addendum in which they agreed to pay for the hot water tank rental, and the Tenants said they did not sign such an agreement. The box for hot water heater rental was not ticked in the OREA lease agreement. Hot water tanks are usually part of the fixtures in the house. Hot water tanks can be rented, or they can be wholly owned by the property owner. Landlords are obliged to provide hot water, and the hot water tank would be the means of providing hot water. It is probably unlawful for a Landlord to insist that a Tenant pay for a hot water tank outright, because it is the Landlord who is obliged to provide hot water. Therefore, it is arguably unlawful for a Landlord to insist that a Tenant pay for a hot water tank rental. I make no conclusive finding on this question, as it is unnecessary to determine that for this matter. In this case, the documentary evidence leads to the reasonable conclusion that the Tenants are not responsible for the hot water tank rental, and the Tenants only paid for it because they felt coerced into doing so.
25. Consequently, I find that the Landlord substantially interfered with the Tenants reasonable enjoyment of the rental unit and the residential complex by obliging them to pay for the hot water tank rental. The Landlord will, accordingly, be ordered to repay the Tenants for the \$310.00 amount they paid for the hot water tank rental.

It is ordered that:

1. The Landlord shall reimburse the Tenants \$310.00 for the amount they spent for the hot water tank rental.
2. The Landlord shall also pay the Tenants \$48.00 for the cost of filing the application.
3. The total amount the Landlord owes the Tenants is \$358.00.
4. If the Landlord does not pay the Tenants the full amount owing on or before May 28, 2023, the Landlord will start to owe interest. This will be simple interest calculated from May 29, 2023 at 6.00% annually on the balance outstanding.

May 17, 2023
Date Issued

 Nancy Morris
 Member, Landlord and Tenant Board

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