



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

Citation: Dewit v Liu, 2023 ONLTB 20809

Date: 2023-05-15

File Number: LTB-T-007961-22

In the matter of: Main, 263 Wright Avenue Toronto
Ontario M6R1L7

Between: Patrick Neary and Vanessa Dewit Tenants

And

Li Hua Liu Landlord

Patrick Neary and Vanessa Dewit (the 'Tenants') applied for an order determining that Li Hua Liu (the 'Landlord') harassed, obstructed, coerced, threatened or interfered with the Tenant; entered the rental unit illegally; and 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 (T2 application).

The Tenants also applied for an order determining that the Landlord 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 application).

This application was heard by videoconference on February 9, 2023. Only the Tenant Vanessa Dewit attended the hearing. As of 9:55 am, the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenants' evidence.

Determinations:

1. The application was filed on November 15, 2021.
2. The Tenants moved into the unit on December 1, 2020 and they moved out of the unit on December 5, 2021.
3. At the commencement of the hearing, the Tenant requested to withdraw the T6 application. In accordance with subsection 200(4) of the Act, I consent to the withdrawal of the Tenants' T6 application.

4. In the T2 application, the Tenants allege that the Landlord entered their unit illegally, harassed and interfered with the Tenants due to work taking place on the property.
5. As explained below, the Tenants have proven on a balance of probabilities that the Landlord entered the unit illegally and interfered with the Tenants' reasonable enjoyment of the complex by obstructing the access of their parking space. The Landlord is therefore ordered to pay the Tenants \$240.87 inclusive of costs.

The Tenant's Evidence and Submissions

6. The Tenant testified that they moved into the unit on December 1, 2020. They rented the main unit of the rental complex, which has a total of 4 units. She testified that the Tenants' rental agreement included exclusive use of the front and back yard. She testified that the Landlord frequently attended the property without notice to conduct maintenance and various duties around the property. She testified that the Landlord was doing exterior work in close proximity to their bedroom and living room windows on several occasions without giving any notice.
7. The Tenant testified that on August 8, 2021, the Landlord was seen painting the window sills of their unit around 5-6 pm. She took a photo of the Landlord and emailed it to the Landlord asking that notice be given for such work to be conducted in close proximity to their unit. She testified that the Landlord did not respond to the email.
8. The Tenant testified that on October 28, 2021, heavy equipment was outside of their unit at 8 am, moving dirt outside of the Tenants' bedroom window.
9. The Tenant testified that on November 11, 2021, the Landlord was doing work outside of the living room window of their unit. She emailed a photo of the Landlord in front of the window, and requested that the Landlord provide notice of plans to do maintenance near the Tenants' windows. The Landlord replied to the Tenant. The Landlord's response was apologetic, explaining that the Landlord believed she was not required to give notice for work being done on the exterior of the property. The Landlord acknowledged that she would give notice in future.
10. The Tenant testified that the Landlord had soil delivered to the property on October 23, 2021. The parties had been in communication by email regarding the soil delivery and the fact that it would be deposited on the driveway and moved within a few hours. The Tenants take issue with the fact that the soil did not get moved for one week from the driveway, which led to their parking spot being inaccessible. Further, they suffered stress and inconvenience from the soil that turned to mud as a result of rainfall. The email communications demonstrate that the Landlord did not intend to leave the soil on the driveway. The work was impeded by significant rainfall. The Tenant testified that she had to park her vehicle on the street for approximately one week and incurred a fee for this. She requested her parking fees to be deducted from her rent, which the Landlord refused. She testified that over the next month their yard was not usable as all of the soil was eventually moved to the lawns and turned to

mud, which impacted the Tenants' ability to have use and enjoyment of their front and back yards from October 23, 2021 through November 30, 2021.

11. The Tenant testified that generally, communications with the Landlord were not good. She testified that every couple of weeks the Landlord contacted them about something and it created a level of stress and anxiety for the Tenants who did not want to hear from the Landlord so frequently. She testified that she eventually muted the Landlord's messages to maintain a peaceful environment.
12. The Tenant testified that the Landlord refused to provide proof of permits for construction taking place in the complex and this interfered with the Tenants' enjoyment of the unit because they were unsure if the construction was in accordance with property standards and the provincial building code. An email exchange on June 12 and 13, 2021 was entered into evidence where the Landlord explained the move of laundry machines and advised the Tenants that her contractor was taking care of everything pertaining to the construction.
13. The Tenants seek \$100.00 for each alleged illegal entry (\$300.00) and a 25% rent abatement for the months of October and November 2021 for the inconvenience they incurred related to the mud on the rental property, general stress and anxiety from the Landlord's refusal to give proper notice of attendance at the property, excessive communications and refusal to provide particulars of a construction project at the rental complex.

Analysis:

Illegal Entry

14. Section 27 of the *Residential Tenancies Act, 2006* (the Act) states.

27 (1) A landlord may enter a rental unit in accordance with written notice given to the tenant at least 24 hours before the time of entry under the following circumstances:

1. To carry out a repair or replacement or do work in the rental unit
2. To allow a potential mortgagee or insurer of the residential complex to view the rental unit.
3. To allow a person who holds a certificate of authorization within the meaning of the Professional Engineers Act or a certificate of practice within the meaning of the Architects Act or another qualified person to make a physical inspection of the rental unit to satisfy a requirement imposed under subsection 9 (4) of the Condominium Act, 1998.
4. To carry out an inspection of the rental unit, if,

- i. the inspection is for the purpose of determining whether or not the rental unit is in a good state of repair and fit for habitation and complies with health, safety, housing and maintenance standards, consistent with the landlord's obligations under subsection 20 (1) or section 161, and
- ii. it is reasonable to carry out the inspection.

5. For any other reasonable reason for entry specified in the tenancy agreement.

15. Based on the evidence before the Board, I am satisfied that the Landlord illegally entered the rental unit on August 8, 2021, October 28, 2021 and November 11, 2021. The Act specifies that notice must be given if repair or replacement takes place in the rental unit. In this case, the Landlord and/or her contractors conducted at the exterior of the rental property, namely exterior foundation work as attested by the Tenant. The Tenant testified that both the front and back yard are for the exclusive use of the Tenants and therefore, I find that the exterior areas surrounding the unit are included as part of the rental unit. As such, entering the front or back yard requires the Landlord to serve notice upon the Tenants, failing which, the entry constitutes illegal entry of the Tenants' unit.

16. I find that the Tenant raised the issue with the Landlord about the need for notice on two occasions, the latter of which, the Landlord expressed her regrets, explained that it was a misunderstanding and confirmed that she would provide notice in future. The Tenant led no specific evidence about any impact felt by the Tenants for the 3 illegal entries, beyond general frustration that the Landlord failed to give notice. Therefore, I find that an award of \$150.00 for the 3 illegal entries is appropriate in the circumstance and sufficient to encourage the Landlord's compliance with the Act.

Harassment and Interference

17. Sections 22 and 23 of the Act states.

(3) 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.

(4) A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant

18. Based on the evidence before the Board, I find that the Landlord substantially interfered with the Tenants' reasonable enjoyment of the rental unit by leaving a large dirt pile on the driveway which obstructed access to the Tenants' parking spot for approximately one week. This caused the Tenants to incur charges for street parking which the Landlord refused to reimburse. The Tenants incurred fees totaling \$37.87 for a one-week parking pass on October 23, 2021 and are entitled to reimbursement of this cost. There were no submissions regarding any inconvenience of parking on the street.

19. I find that the Landlord gave notice of the delivery of soil to the property and the Tenants acknowledged. The evidence demonstrates that the Landlord intended to have the soil delivered and moved quickly. However, due to significant rainfall, the soil was not moved for several days. I am not satisfied that the presence of the soil interfered with the Tenants' enjoyment of the unit or the rental complex. The photos adduced into evidence did not clearly depict the complaints raised by the Tenants. There were no photos to demonstrate that the front or back yards were covered in mud. The claim regarding a loss of enjoyment of the unit due to the soil left at the rental property on October 23, 2021 is therefore dismissed.
20. I find that the Landlord responded reasonably to the Tenants' inquiries about construction at the rental complex and the movement of laundry amenities. I do not find that the Landlord was obligated to produce permits or other documents related to the planning and execution of construction taking place at the complex. Therefore, I do not find that this allegation constitutes interference with the Tenants' enjoyment. This portion of the Tenants' claim is dismissed.
21. There was no evidence submitted to support that the Landlord harassed the Tenants with a barrage of communications and therefore, this portion of the Tenants' claim is dismissed.

It is ordered that:

1. The Landlord shall pay to the Tenants \$37.87 which represents the out-of-pocket expenses incurred for street parking and \$150.00 for illegal entries to the Tenants' unit.
2. The Landlord shall also pay the Tenants \$53.00 for the cost of filing the application.
3. The total amount the Landlord owes is \$240.87.
4. The Landlord shall pay the Tenants the full amount owing by May 26, 2023.
5. If the Landlord does not pay the Tenants the full amount owing by May 26, 2023, they will owe interest. This will be simple interest calculated from May 27, 2023 at 6.00% annually on the balance outstanding.

May 15, 2023

Date Issued

Donna Adams
Member, Landlord and Tenant Board

15 Grosvenor St, 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.