



Order under Section 31 Of the Residential Tenancies Act, 2006

Citation: Imam Isaac Oton v Falesha Raquel Walters, 2023 ONLTB 35213

Date: 2023-05-10

File Number: LTB-T-013625-23

In the matter of: 31, 331 TRUELLE ST
SCARBOROUGH ON M1J3J9

Between: Imam Isaac Oton Tenant

And

Falesha Raquel Walters Landlords
Shane Walters

Imam Isaac Oton (the 'Tenant') applied for an order determining that Falesha Raquel Walters and Shane Walters (the 'Landlords') harassed, obstructed, coerced, threatened or interfered with the Tenant, altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys 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.

This matter was heard on April 27, 2023. The Tenant, the Tenant's legal representative, Nasser Ahmed, the Landlords, and the Landlords' legal representative, Michael J. Panacci, attended the hearing.

Preliminary Issue:

1. The Landlords' legal representative indicated that Shane Walters ('SW') is the landlord as he is the owner of the property. He stated that Falesha Raquel Walters ('FRW') is the wife of SW and acts as the property manager.
2. FRW did not dispute the validity of the Residential Tenancy Agreement admitted into evidence by the Tenant or that it is her name only listed as the landlord and that she is the only individual who signed the agreement as the landlord.

3. The *Residential Tenancies Act, 2006* (the 'Act') states that a "landlord" includes,
 - (a) the owner of a rental unit or any other person who permits occupancy of a rental unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit,
 - (b) the heirs, assigns, personal representatives and successors in title of a person referred to in clause (a), and
 - (c) a person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent.
4. FRW was a person who permitted occupancy of the rental unit. Given the definition of "landlord" and the submissions of the parties, I find it reasonable and appropriate to amend the application by adding SW as a named landlord to this matter as he is the owner of the rental property.

Determinations:

1. The Tenant alleges the Landlords breached Sections 22, 23 and 24 of the Act, which read as follows:

22 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 A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant

24 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.

2. For the reasons that follow, I am satisfied the Landlords breached their obligations under Sections 22, 23, and 24.

Section 24 – Illegal lockout

3. The Landlords altered the locks on the door giving entry to the home on January 4 and 9,

2023 without giving the Tenant replacement keys. A replacement key was provided to the Tenant on January 4 after police became involved. The Tenant was able to gain access to the rental unit following the January 9th lock-out on January 11, 2023 after retaining the services of a locksmith. These facts are not in dispute.

4. A tenancy can be lawfully terminated by: (1) a Board order; (2) a valid notice of termination where the tenant vacates the rental unit in accordance with the notice; or (3) agreement by the parties.
5. It is undisputed that there was not a Board order, valid notice of termination, or agreement by the parties to terminate the tenancy. Accordingly, I find the Landlords breached their obligations under Section 24 of the Act by illegally evicting and locking the Tenant out of the rental unit on January 4 and 9, 2023.
6. The parties disagree as to whether there was a third illegal lockout. The Tenant alleges the lock was altered sometime between January 16 and 19, 2023. FRW denies the lock was altered after January 11, 2023.
7. The Tenant testified that on January 11th, a locksmith assisted him in gaining access to the home. The locksmith provided him with keys to the new lock and the Tenant provided FRW with one of the keys. The Tenant stated that when he left the home on January 11th, he locked the door to his room (rental unit).
8. The Tenant returned to the home on January 16th and was able to gain access with his key. Upon entry to the home, he discovered that someone had unlocked the door to his unit and a new tenant was living in it.
9. The Tenant left on January 16th but returned on January 19th. The Tenant discovered that the lock to the home had been altered as he was unable to gain access with his key. The Tenant testified that he and his girlfriend called the Landlords' legal representative (Mr. Corbin) who confirmed that the lock had been changed but that there was a replacement key for him in the padlock. The padlock, however, required a PIN code to access. The Tenant was never provided with the PIN access code from Mr. Corbin or the Landlords.
10. FRW did not dispute the Tenant's evidence with respect to another tenant occupying his unit. She did, however, deny that the lock was altered a third time stating there was a key for the Tenant in the padlock.
11. Having considered the evidence and submissions of the parties, I am satisfied the Landlords altered the lock a third time between January 16 and 19, 2023.

12. The Tenant is the one who retained a locksmith on January 11, 2023. The locksmith provided the Tenant with new keys to the lock. This new key worked on January 16 but did not work on January 19. This suggests the lock was changed.
13. The Tenant already had a key to the home. Given this, why would the Landlords need to provide him with a key? FRW did not explain why a key needed to be placed in a padlock for the Tenant.
14. I find it is more likely than not the reason a key was placed in the padlock was because the Landlords altered the lock a third time sometime between January 16 and January 19, 2023. I further find that the Landlords failed to provide the Tenant with the PIN code to obtain the new key. Accordingly, I find the Landlords breached section 24 by altering the lock a third time.

Sections 22 and 23 – Substantial interference and harassment

15. The Tenant provided oral testimony with respect to events leading up to the January 4, 2023 illegal lock-out. The Tenant also relied upon copies of text messages, photographs, and video and audio clips to support his claim. This evidence was unchallenged by the Landlords.
16. Based on the evidence before me, I am satisfied the Landlords breached their obligations under Section 22 and 23 of the Act.
17. On August 4, 2022, FRW sent the Tenant a text message advising him that he needed to move out as all the other tenants had given notice to vacate by August 31, 2022 and she planned to move into the home on September 1, 2022.
18. Despite the fact that the Landlords never served the Tenant with an N12 notice of termination or that the August 4, 2022 text message was contrary to the Act, FRW continued to pressure the Tenant to move out.
19. Between August 4 and September 30, 2022, FRW repeatedly asked the Tenant when he was leaving. In a text message sent to the Tenant, FRW advised the Tenant that as of October 1, 2022 he would be considered trespassing and that he was required to vacate

immediately. There was no legal basis for FRW to make such a threat or to require the Tenant to vacate.

20. On October 1, 2022, FRW texted the Tenant, "*Please leave I feel unsafe with you in my home.*" She included in the text message a photograph of an individual's neck. Again, FRW had no legal grounds in which to make such a demand of the Tenant.
21. On that same day, FRW entered the residential complex without proper written notice and continued to press the Tenant about moving. When the Tenant explained that he was doing the best he could, FRW stated that her husband would handle things differently than her. I believe the average reasonable person would have perceived such a statement as threatening.
22. On October 2, 2022, FRW texted the Tenant, "*Please leave today. I'm asking nicely. I'm uncomfortable with you in my home.*" The Tenant responded by asking FRW to stop harassing him to which FRW responded, "*I'll be telling my husband about the sexual advances that you've made towards me.*"
23. On/around the evening of October 2, 2022, the Tenant was in his room when he heard banging on his door and a male voice demanding that he come out. The Tenant did not know who the man was or what he wanted. The man stated that he was FRW's husband SW. In my view, the average reasonable person would have found this intrusion to be upsetting and frightening given the threats made by FRW on October 1 and 2, 2022.
24. The Tenant testified that when he came out of the room, he saw SW and several individuals standing on the staircase. According to the Tenant, SW stated that he needed to know when he was leaving because he was planning on moving in. SW told the Tenant he had until Thursday to vacate. SW had no legal grounds to make such a demand.
25. The Tenant stated that the harassment continued, unabated until December 30, 2022. In his written submissions, the Tenant described the harassment as including frequent illegal entries and loud, daily construction noise. He also believes that a fake tenant was placed in the home for the sole purpose of driving the Tenant out as the tenant had three large, destructive dogs. The man stayed less than two weeks.
26. On November 27 and December 30, 2022, five female tenants moved in without any notice or information being provided to the Tenant. On December 5, 2022, an individual identified as the Landlords' property manager attended without notice and accused the Tenant and his girlfriend of trespassing.

27. 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. I find that the average, reasonable landlord would have known or ought to have known that the actions as described above would be unwelcome.
28. Landlords are entitled to enforce their rights by giving tenants proper notices of termination when warranted and by filing applications at the Board. Landlords are not entitled to act in an abusive and aggressive manner towards their tenants.
29. The Landlords did not serve the Tenant with a proper N12 notice of termination yet continued to demand that he vacate. When the Tenant did not vacate as demanded, the Landlords embarked on a campaign of harassment designed to force the Tenant to move. FRW demands and accusations of trespassing were contrary to the Act and inappropriate. FRW’s threats to get her husband involved and SW’s conduct in aggressively confronting the Tenant without notice were not only contrary to the Act, but completely unreasonable and do not fall within the realm of proper communications or behaviour in a tenancy.
30. On January 4, 2023, a group of men dressed in SWAT gear attempted to gain access to the Tenant’s room. The Tenant and his girlfriend were relaxing in his room when there was a loud bang on his door. The person banging on the door stated that they were hired by FRW to remove him from the home as he was trespassing, and he was leaving one way or the other. They told the Tenant that they had a key to his room and that they would use it to enter.
31. The Tenant testified that he and his girlfriend were frightened. His girlfriend was crying and shaking and trying to get a hold of the police. Once police arrived, the Tenant opened the door and left the room. It was during this incident that the Landlords illegally altered the lock. Police advised FRW that evening that the Tenant had the right to be at the home and ordered her to provide him with a key, which she did.
32. I find the Landlords’ actions surrounding the above incident to be utterly unconscionable. There is nothing in the Act that provided the Landlords the right or authority to hire private security to threaten or force the Tenant to vacate. Despite the statements from police, the Landlords altered the lock five days later on January 9, 2023.
33. The Tenant testified that when he returned home around 6:00 p.m. on January 9, he found that the locks had been changed and a note was taped to the door stating that he was no longer welcomed in the home and that he should contact FRW’s lawyer Mr. Corbin to retrieve his belongings. The Tenant had to check into a hotel for the night without his medication or medical devices, all of which were in the home.

34. On January 10, 2023, Mr. Corbin advised the Tenant that all his possessions had been removed from the property and placed in storage. The Tenant was able to gain access to the home on January 11 after calling a locksmith.
35. The Landlords knew the Tenant had the legal right to remain in the home yet altered the lock, removed the Tenant's belongings, and obstructed his access to the home. FRW was once again reminded of this by police who attended the property on January 11. Despite this reminder by police, the Landlords altered the lock a third time between January 16 and 19, 2023.
36. I am satisfied that the Landlords harassed and threatened the Tenant on multiple occasions. I am also satisfied that the Landlords' unlawful conduct described above substantially interfered with the Tenant's quiet and reasonable enjoyment of the rental unit and obstructed and interfered with him. I am also satisfied that the Landlords' multiple illegal entries constituted a substantial interference to the Tenant's right to privacy.
37. FRW did not dispute that she entered the home several times a month and never provided the Tenant with written notice. She stated that she did not think she had to provide notice as she had items stored in one of the rooms.
38. Section 25 of the Act provides that a landlord may enter a rental unit only in accordance with section 26 or section 27. Section 26 describes circumstances where entry without notice is permitted such as in cases of emergency or if a tenant consents to the entry at the time. Section 27 describes the requirements for entry with written notice. This section sets out the required content of the notice which includes the period of notice and the circumstances under which entry is permitted.
39. The fact that the Landlords may have had items stored in the home does not absolve them of their obligations under the Act with respect to notices of entry. The Tenant had a right of privacy and FRW repeatedly violated this right.

Remedies

40. The Tenant withdrew his request for remedies 2, 9, and 10.

Rent Abatement

41. The Tenant seeks a 100% rent abatement for a five-month period for the violation of the Tenant's rights, or \$4,000.00.

42. A rent abatement is a monetary award expressed in terms of a portion of past or future rent. It may be a lump sum payment the landlord is ordered to pay the tenant which effectively orders the landlord to give back part of the rent paid. It may be an order allowing the tenant to pay less rent by a certain amount or percentage, or even to pay no rent, for a specified time period. It could also be a combination of these. In general, the more serious the breach and its impact on the tenant, the larger the rent abatement.

43. I am of the view that the Landlords' conduct was deliberate and done with the intent to force the Tenant to vacate. The Tenant asked FRW to stop with the harassment and threats and explained that it was causing him stress. The Landlords' actions were a serious breach on the Tenant's right afforded to him under the Act. I believe the Landlords were motivated by malice and engaged in a conduct which they knew or ought to have known would have been extremely upsetting and stressful to the Tenant.

44. Having considered the evidence before me, I find that a lump sum rent abatement of \$2,500.00 fairly compensates the Tenant for the impact the Landlords' actions had upon his ability to reside in the rental unit normally and peacefully over the five-month period leading up to the lock-out in January 2023.

Difference in rent

45. The Tenant seeks an order from the Board requiring the Landlords to pay him the difference in rent between his old rental unit and his new rental unit for one year from the date he moved out.

46. The Tenant testified that he moved into his new rental unit on February 11, 2023. He stated that his new rental unit is comparable to the old rental unit as it is in the same neighbourhood, is a room, and requires that he shares kitchen and bathroom facilities with

other tenants. The rent at the new rental unit is \$950.00 and the rent at the old unit was \$800, representing a monthly difference of \$150.00.

47. The Landlords' legal representative argued that this claim ought to be dismissed as the Tenant has not provided rent receipts or other documentation establishing the new tenancy or the amount of his rent.
48. The Landlords did not admit any evidence challenging the Tenant's credibility on this issue.
49. I found the Tenant to be a credible witness. He provided oral testimony in a straightforward manner, free from exaggeration. For example, the Tenant was quick to point out that the difference in rent is \$150 and not \$200 as noted on the application.
50. I accept the Tenant's evidence that he moved into a new rental unit on February 11, 2023 and that he is still residing in this unit. The Tenant would not have had to move had it not been for the unlawful actions of the Landlords. I am satisfied the new rental unit is comparable to the old rental unit. Accordingly, I find it reasonable and appropriate to order the Landlords to pay the Tenant \$1,800.00 for one-year difference in rent (\$150 x 12).

Moving and storage expenses

51. The Landlords illegally locked the Tenant out of the rental unit and removed his personal belongings and placed them in storage. The Tenant must now incur out of pocket expenses for the cost of moving his personal belongings from storage.
52. The Tenant has claimed \$500.00 for moving expenses. The Tenant has not moved but indicated at some point he will need to move his belongings from the storage unit. The amount claimed is based on an estimate of two movers with a truck at a rate of \$230 for the first hour and \$130 per hour after plus HST.
53. Based on the Tenant's evidence as to the nature of the items remaining in storage, I do not believe it would take more than two hours to move the Tenant's belongings. Given the estimate submitted into evidence, I find it reasonable to order the Landlords to pay the Tenant \$400.00 towards moving expenses.

Out of pocket expenses

54. The Tenant seeks \$5,039.80 for his out of pocket expenses resulting from the unlawful actions of the Landlords. In support of the amount claimed, the Tenant admitted into evidence receipts for his lodging and food for the period from January 10, 2023 to February 5, 2023. These costs were not challenged by the Landlords.
55. I find the amount claimed to be both supported and reasonable as the Tenant would not have incurred these costs had it not been for the Landlords' unlawful conduct. Accordingly, I shall order the Landlords to reimburse the Tenant \$5,039.80.

General damages

56. The Tenant seeks general damages for pain and suffering in the amount of \$5,000.00, or what is commonly referred to as "non-pecuniary damages" because they are not damages directly related to a financial loss, but for pain and suffering.
57. The object of non-pecuniary damages is to compensate a party's pain, suffering, and loss of enjoyment of life. In *Taft v. Whitesands Apartments, [2009] O.J. No. 3198*, the Court confirmed the Board's authority to award general damages for mental distress under subsection 31(1)(f) of the Act.
58. I found the Tenant to be a credible and compelling witness. He delivered his testimony in a straightforward manner, lacking in exaggeration. He was forthright with respect to his pre-existing mental and physical conditions which he stated were exacerbated by the Landlords' conduct. In the months leading up to the illegal lockouts, the Tenant described struggling with fear, insecurity, and anxiety as the Landlords continued to threaten to remove him from the home. He described feeling very uneasy in his own home and being unable to sleep.
59. The Tenant's mental and physical health worsened following the Landlords' illegal lockout. He experienced panic and anxiety attacks, sleep disturbances, muscle spasms, irritability, and worsening chronic pain. He stated that his overall mental and physical health declined

as he had no immediate access to his medications and medical devices, clothing, music, television, or books.

60. I accept that the Tenant experienced profound emotional and mental distress over the Landlords' harassment, threats, and illegal lockouts. The Tenant spoke of the fear he felt during what can only be described as an unlawful raid on January 4, 2023. FRW was aware that the harassment was causing the Tenant stress yet persisted in her unlawful conduct. The Tenant was displaced not once, but three times from his home.
61. Having considered the impact upon the Tenant, I find that an award of \$5,000.00 is appropriate in compensating the Tenant's pain, suffering, and loss of enjoyment of life as a direct result of the Landlords' unlawful conduct.

Administrative fine

62. Finally, the Tenant requests an order imposing an administrative fine on the Landlords.
63. The Board's Guideline 16 suggests that the purpose of a fine is to encourage compliance with the Act and to deter landlords from engaging in similar activities in the future. It goes on to say "this remedy is most appropriate in cases where the landlord has shown a blatant disregard for the Act and other remedies will not provide adequate deterrence and compliance."

64. The Landlords' legal representative submits that an administrative fine would be inappropriate as it is only speculation as to whether the Landlords would repeat this behaviour in the future. He argued that while the Landlords' actions were unlawful, they were not particularly egregious as they were motivated by the safety of other tenants.
65. In my view, this is a case that clearly warrants an administrative fine. The Landlords could have served proper notices of termination to the Tenant and filed an application with the Board if they were concerned with the safety of other tenants. The Landlords could have also reported safety concerns to the police who would have laid charges where appropriate. Instead, the Landlords took actions into their own hands denying the Tenant natural justice.
66. I am not satisfied that the remedies sought by the Tenant and granted in this order would deter the Landlords sufficiently from engaging in similar actions in the future. I say this because cautions from the police, the Housing Enforcement Unit, and the Tenant's legal representative were not enough to get the Landlords to comply with the law.
67. Section 1 of the Act states, "The purposes of this Act are to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes."
68. The rental industry is a regulated industry governed by legislation. Landlords are not entitled to take matters into their own hands. The Landlords embarked on a campaign to bully and intimidate the Tenant as a means of getting him to leave. When their threats were not enough, the Landlords hired private security, dressed in SWAT gear, to force the Tenant out of the rental unit. This event, on its own, is appalling and seems to symbolize the extent to which the Landlords believed they were above the law. The Landlords knew that the Tenant had the legal right to be in the rental unit yet illegally locked him out just five days later. Even after being cautioned by police again on January 11, the Landlords altered the lock a third time.
69. The Landlords' actions clearly show a blatant disregard for the Act, for the laws, and for the well-being of the Tenant. I find their behaviour is so egregious that an administrative fine of \$7,000.00 would be useful in deterring them from considering similar behaviour in the future.
70. In accordance with the Board's Rule 6.1, should the Landlords fail to pay the fine to the Board, they will not be permitted to file any new applications with the Board until the fine has been paid.

71. The Tenant incurred costs of \$48.00 for having to file this application with the Board. The Landlords shall be ordered to reimburse this cost.

72. The total amount ordered to the Tenant in connection to this application is \$14,739.80 (\$2,500.00 rent abatement + \$1,800.00 difference in rent + \$400.00 moving expenses + \$5,039.80 out of pocket expenses + \$5,000.00 general damages + \$48.00 filing fee).

Order Page

It is ordered that:

1. The Landlords shall pay to the Tenant the amount of \$14,739.80.
2. If the Landlords do not pay the Tenant the full amount owing by May 21, 2023, they will owe interest. This will be simple interest calculated from May 22, 2023 at 6.00% annually on the balance outstanding.
3. The Landlords shall pay to the Landlord and Tenant Board an administrative fine in the amount of \$7,000.00 by May 21, 2023.

May 10, 2023
Date Issued

Dawn Sullivan
Vice Chair, Landlord and Tenant Board

15 Grosvenor Street, 1st 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.

Payment of the administrative fine must be made to the Board by the deadline set out above. The fine can be paid by certified cheque, bank draft or money order made payable to the *Minister of Finance*. If paying in person, the debt can also be paid by cash, credit card or debit card.

Order Page