



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

Citation: Sprach v Carroll, 2023 ONLTB 32965

Date: 2023-04-27

File Number: LTB-T-001677-22

In the matter of: 1, 47 CHURCH ST W
ELMIRA ON N3B1M6

Between: Jennifer Sprach Tenants
Peer Telling

And

Dianne Carroll Landlord

Jennifer Sprach, and Peer Telling (the 'Tenants') applied for an order determining that Dianne Carroll (the 'Landlord') entered the rental unit illegally.

This application was heard by videoconference on March 21, 2023.

Only the Tenants attended the hearing.

As of 9:50am, the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB.

There was an email sent to the Board by the Landlord stating that she would not be available to attend the hearing. The Landlord had not submitted a "Request to Reschedule" form, nor had the Landlord submitted any evidence that she had sought the consent of the Tenants to have the matter rescheduled. The Landlord's email stated that she was seeking the adjournment for medical appointments, however the email lacked particulars, such as time of appointment or the expected duration of the appointment. There is no evidence that the Board responded to the Landlord's request to have the matter rescheduled. Without a response from the Board, it would be expected that either the Landlord, or her agent, should have been present for the hearing.

I find that the Landlord had sufficient notice to either properly request the rescheduling of the hearing pursuant to Rule 21 of the *LTB Rules of Procedure*, or to retain the services of an agent to act on her behalf in either proceeding with the matter or requesting an adjournment. Therefore, the matter will be heard uncontested.

Determinations:

1. The Tenants testified that the tenancy ended September 30, 2022.
2. The Tenants testified that they were seeking an order determining that the Landlord illegally entered their rental unit on January 8, 2022, at 12:37pm.
3. The Tenants presented evidence that the Landlord had communicated with the Tenants via text on January 7, 2022, at 4:50pm stating that a plumber was going to enter their rental unit. A copy of the text message, with the time received showing 4:50pm on the text message, was submitted to corroborate the Tenants' testimony.
4. The Tenants presented a screenshot of security video footage taken from inside their rental unit with a time stamp showing that the plumber entered the rental unit at 12:37pm on January 8, 2022. The Tenants testified that this was a breach of the Act because the Tenants were not given a full 24 hours of notice by the Landlord prior to entry into the unit.
5. The Tenants stated that they believe the person who entered the unit was a plumber and that no damages or any other issues occurred due to this entry.
6. Section 27(1) of the *Residential Tenancies Act*, 2006 (the 'Act') states:

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.
7. Section 27 of the Act is clear in stating that a landlord is required to give 24 hours of notice prior to entry for the purpose of repair or maintenance. Based on the evidence before me, the plumber hired by the Landlord entered the unit approximately 20 hours after the notice was given by the Landlord and not 24 hours.
8. I find that the Landlord permitted an entry into the rental unit with less than 24 hours of notice and is therefore a breach of section 27 of the Act.
9. At the hearing, the Tenants stated that they were only seeking the filing fee for this application of \$48.00 and would withdraw any other remedies being sought on their T2 application.
10. I find that the Tenants' remedy is fair in these circumstances. Therefore, the Landlord shall pay the Tenants the filing fee of \$48.00.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated as of September 30, 2022.

2. The total amount the Landlord shall pay the Tenants is \$48.00. This amount represents the filing fee incurred by the Tenants for this application.
3. The Landlord shall pay the Tenants the full amount owing by May 15, 2023
4. If the Landlord does not pay the Tenants the full amount owing by May 15, 2023, the Landlord will owe interest. This will be simple interest calculated from May 16, 2023, at 6% annually on the balance outstanding.
5. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

April 27, 2023
Date Issued

Robert Brown
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.