



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

Citation: Taman v Xhelli, 2023 ONLTB 29214

Date: 2023-04-05

File Number: LTB-T-013226-23

In the matter of: Basement-102 Gilley Road
North York, ON M3K 1L7

Between: Fatos Xhelli Landlord

And

Haney Taman Tenants
Patrick Othieno

Taman Haney and Patrick Othieno (the 'Tenants') applied for an order determining that Fatos Xhelli (the 'Landlord') altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenants replacement keys.

On February 10, 2023, LTB-T-013226-23-IN was issued, preserving the tenancy and keeping safe any property belonging to the Tenants pending a determination of the issues.

This application was heard by videoconference on March 1, 2023.

The Tenants and the Tenants' Legal Representative Samuel Pevalin. The Landlord appeared on his own behalf.

Determinations:

1. There is no dispute between the parties that on January 23, 2023, the Tenant Taman Henry ('TH') had left the residential complex and when he returned later that day he had found that the only entrance to the unit had been boarded up.
2. The Landlord claims that due to various issues with TH he had asked him to vacate the unit on August 29, 2022. A letter from the Landlord to TH was entered into evidence from that date. The Landlord claims that TH damaged the unit, harassed other tenants, was intoxicated and harassed the Landlord and his wife.

3. Further, TH testified that on January 16, 2023, the Landlord had posted a copy of an N4 notice of termination on the Tenants' door. TH admitted that he owed the Landlord rent at the time but had advised the Landlord that he intended on paying his arrears. The Landlord never filed an application with the Board.
4. TH denies the Landlord's allegations and testified that he never received an eviction order from the Board.

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5. TH testified that when he questioned the Landlord about the lock-out on January 23, 2023, the Landlord told him that he was no longer welcome in the unit. The police were called as well as the fire department, who ordered the Landlord to remove the boards from the unit entrance.
6. The Tenant Patrick Othieno ('PO') testified on behalf of the Landlord and testified that he was given access to the unit by the Landlord on that date. PO testified that just he and TH live in the basement unit.

Analysis & Findings

7. Section 37 of the *Residential Tenancies Act, 2006* (the 'Act') provides that a tenancy may be terminated only in accordance with the Act. It is clear from the evidence that the purported termination of the tenancy by the Landlord was not in accordance with the Act. The Landlord may have provided TH with one valid notice however, the Landlord never applied to the Board to evict TH at any time.
8. Given the findings as set out above, I find that the Landlord altered the locking system on a door giving entry to the rental unit or the residential complex during the Tenants' occupancy of the rental unit without giving the Tenants replacement keys contrary to paragraph 5 of s. 29(1) of the Act.

Remedies

9. The remedies being sought by the Tenant include a rent abatement for the month of January in the amount of \$950.00, an order that tenancy is reinstated and a general damages award for emotional distress in the amount of \$2,000.00.
10. The requested remedies for a rent abatement and an order that the tenancy be reinstated is reasonable and will be ordered.
11. With respect to the general damages award, the Tenant was required to file an application and a request to shorten the time requesting an early hearing with the Board. The Tenant also had to live in a homeless shelter for an undetermined amount of time. As such, I find the request to award damages in the amount of \$2,000.00 to be reasonable.

12. The Tenant also incurred costs of \$53.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

13. The Landlord shall pay to TH \$53.00 for the cost of filing the application.
14. The Landlord shall also pay to TH an abatement of rent of \$950.00.
15. The Landlord shall also pay to TH general damages for emotional distress in the amount of \$2,000.00.
16. The total amount the Landlord owes the Tenant is \$3,003.00.

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17. If the Landlord does not pay the Tenant the full amount owing on or before April 16, 2023, the Landlord will start to owe interest. This will be simple interest calculated from April 17, 2023 at 6.00% annually on the balance outstanding.
18. The Landlord shall immediately allow TH to recover possession of the rental unit by providing TH with keys/fobs/digital codes to the door of the rental unit and the residential complex.
19. If the Landlord fails to provide TH with possession of the rental on April 5, 2023, TH may file this Order with the Court Enforcement Office (Sheriff) so that the reinstatement of the tenancy may be enforced.
20. Upon receipt of this Order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to TH, on or after April 5, 2023.
21. The Part of this order allowing TH to recover possession of the unit expires and cannot be enforced if:
 - a) TH does not file this order on or before April 20, 2023 with the Court Enforcement Office (Sheriff) which has territorial jurisdiction where the rental unit is located, or
 - b) TH files this order with the Court Enforcement Office but the order has not been enforced on or before May 20, 2023.

April 5, 2023

Date Issued

Jagger Benham

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.