



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

**Citation:** Xu v Wu, 2023 ONLTB 23303

**Date:** 2023-04-04

**File Number:** LTB-T-043424-22

**In the matter of:** Master bedroom, 223 KNUDSON DR  
KANATA ON K2K2N7

**Between:** Qiyi Liang Tenants  
Weipeng Xu

**And**

Hua Wu Landlord

Qiyi Liang and Weipeng Xu (the 'Tenants') applied for an order determining that Hua Wu (the 'Landlord'):

- entered the rental unit illegally.
- altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenants replacement keys.
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of the Tenants' household.
- harassed, obstructed, coerced, threatened or interfered with the Tenants.
- withheld or interfered with the Tenants' vital services or care services and meals in the care home.

This application was heard by videoconference on September 1, 2022.

The Landlord and the Tenants attended the hearing. The Landlord's Legal Representative J. Tao, a Mandarin Interpreter Lilian Xao and Tenants' witnesses Gavin Cui and Shuang Zhu were also present.

**Determinations:**

1. As explained below, I find that the *Residential Tenancies Act, 2006* ("Act") does apply to this tenancy. Therefore, the Board has jurisdiction to consider the Tenants' claims.
2. The Tenants' application states 223 KNUDSON DR, Kanata as their rental address whereas during their testimony the Tenants revealed that they only rent the master bedroom at the property address 223 KNUDSON DR, Kanata. Hence on my own motion I am amending the application to list the rental unit as 'Master bedroom, 223 Knudson Dr, Kanata' as all parties were in agreement.

*Does the Act apply?*

3. Section 5(i) of the *Residential Tenancies Act, 2006* ("Act") states that the Act does not apply to:

living accommodation whose occupant or occupants are required to share a bathroom or kitchen facility with the owner, the owner's spouse, child or parent or the spouse's child or parent, and where the owner, spouse, child or parent lives in the building in which the living accommodation is located

4. The property is a 3-bedroom house with all bedrooms on second floor and a room and a rec room in the basement. There is one kitchen in the house but the Tenants have their own attached bathroom in the rental unit.

#### Tenants' evidence

5. The Tenants testified that they moved into the house on April 21, 2022 and have never shared a bathroom or kitchen with the Landlord. The Tenants rent the master bedroom and there are other tenants who live in other two rooms upstairs.
6. The Tenants testified that the Landlord does not live at the rental property but instead has a house in Quebec and his vehicle is registered in Quebec as well. The Tenant stated that the Landlord also rented out the basement room for a month so it is not possible for the Landlord to be living in the basement.
7. Tenant's witness Shuang Zhu who lived at the property from May 6, 2022 to May 30, 2022 testified that she never saw the Landlord live at the property and she has not been in contact with Landlord ever since. She also testified that the Landlord never told that her that she will be sharing the kitchen and bathroom with Landlord, but he did tell that if the other room is rented, she will share the bathroom with the other tenant and she assumed she will be sharing the kitchen too.
8. The Tenants' second witness Gavin Gui (GG) testified that his parents rented the basement room for 3 days before moving to a room upstairs when it became available. They stayed at the rental property for a period of three months and while he himself did not live there he regularly visited his parents and did not see the Landlord there.

#### Landlord's evidence

9. The Landlord's Legal Representative stated that the lease states that the kitchen and bathroom are shared with the Landlord. The lease was submitted as evidence.
10. The Landlord testified that he has a short-term rental agreement with the Tenants and it was clearly stated that the Tenants will be sharing kitchen and bathroom. The Landlord does live there occasionally since he is a contractor and takes projects in Ottawa, so he lives at the rental property every now and then. The Landlord also testified that his family members live in Montreal but since a lot of his renovation projects are in Ottawa its not possible to return to Montreal every night.
11. There is a bedroom in the basement that the Landlord has kept for his own use, and he uses it more often in winters when travelling often is not safe. Also, he only leases the

property for short term as he wants to keep his option open to gain possession of the rental property with one month's notice if he requires it for himself and his family exclusively. He uses the garage and the basement to store his personal stuff. He also added that the bedroom in the basement was only given for few days in July 2022 to a friend of his and not a month as testified by the Tenants.

12. The Landlord further testified that he finishes work late and if he comes to the property to sleep, he may not encounter other Tenants, but the Tenants see him every week when he comes to deliver mail and they also see him regularly when he mows the lawn or does maintenance or repair work at the property. He also added that if he gives out his basement to a friend, he does not need permission from the Tenants to do so.

### Analysis

13. Based on the testimony before me, I find that the Landlord does use the basement occasionally for his personal use. Since the property only has one kitchen, he has to use the same when he stays at the property over night. The lease also clearly states that the kitchen and bathroom will be shared with the Landlord.
14. However, what I need to determine is if the Landlord's occasional usage of the kitchen is sufficient to result in the rental unit being exempt from the Act pursuant to section 5(i). As set out above, this exemption only applies if "the owner, spouse, child or parent **lives** in the building in which the living accommodation is located."
15. I have also contemplated s.202 of the Act which directs me to examine the real substance of the interactions between the parties and their activities.
16. Based on the evidence, I find that the exemption from the Act contained in s.5(i) does not apply with respect to this tenancy. I say this for the following reasons:
- The term "lives" is not defined in the Act, and in the apparent absence of any on-point jurisprudence, I will be guided by the dictionary definition of this term. The Oxford Canadian Dictionary (2004) defines "live" as "make or have one's abode". Applying this definition, I find that the second condition found in subsection 5(i) is not satisfied. While the Landlord occasionally spends the night in the residential complex, his habitual or primary abode is in Montreal. This is the address where he sleeps and resides a majority of the time and is the address, he provides for official purposes such as his drivers license.
  - The Landlord's evidence was that he shared the property quite a few times during this tenancy; the Landlord's evidence was also that he had unrestricted access to common areas, but the Landlord failed to establish the he occupied this house as his primary residence. I draw an adverse inference from the Landlord's failure to provide more reliable evidence as to how many days the Landlord actually occupied rental property.
17. I am not satisfied that the Landlord shared a bathroom and a kitchen under s.5(j) of the Act. Therefore, the Act applies to this tenancy.

*T2 application*

18. The Tenants application includes following issues:
  - a) The Landlord changed the locks of the rental unit;
  - b) The Landlord illegally entered the rental unit;
  - c) The Landlord substantially interfered with their reasonable enjoyment;
  - b) The Landlord harassed them; and
  - c) The Landlord withheld the vital service of air conditioning.
19. On any application before the Board the person making an allegation bears the burden of proof. This means the Tenants must lead sufficient evidence to establish that it is more likely than not that the Landlord did what they allege he did. In this case, I am satisfied that Landlord substantially interfered with the Tenants' reasonable enjoyment or harassed the Tenants. Though I am not satisfied based on evidence presented at the hearing that the Landlord deliberately interfered with or withheld a vital service.

*Changed the locks of the basement*

20. The Tenant alleges that the Landlord changed the locks of the basement area where his stuff was stored and did not give him the keys to access the basement area.
21. Based on the testimony provided the rental unit is the master bedroom of the property which is shared with other tenants who rent other bedrooms in the property. The Landlord occasionally occupies the basement bedroom of the property. The Landlord asked the Tenants to remove their belongings from the garage and the basement area but the Tenants failed to do so. Since the Tenants were entering the personal space of the Landlord in the basement and also playing with the power panel which could be dangerous, he changed the locks of the basement room.
22. The Tenants also allege that the Landlord rented out the basement of the property for four days in June 2021 and for one month in July 2021, which interfered with their access to the basement where they stored their belongings which substantially interfered with them.
23. The Tenants also allege that the Landlord failed to provide them with the mailbox key. The Landlord replied that the Landlord only has one key to the mailbox and the mailbox is where the mail is delivered for all Tenants, and he cannot share the same with the Tenants. He comes at least once every week and hands out the mail to the Tenants himself.

24. Pursuant to s. 24 of the Act:

**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.

25. None of the locks described by the Tenants fall under this definition. Section 24 applies to the locking system of the rental unit which in this case is the master bedroom and the residential complex which is the main door to enter into the property. I find based on this that the claim for Landlord changing the locks of the rental unit, are dismissed.

*Withheld Vital Services*

26. The Tenant also allege that the air conditioning of the property was not working from July 24 2021 till August 5, 2021 and the Landlord did not do enough to repair the air conditioning.

27. Pursuant to s. 21 of the Act:

21 (1) 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, withhold the reasonable supply of any vital service, care service or food that it is the landlord's obligation to supply under the tenancy agreement or deliberately interfere with the reasonable supply of any vital service, care service or food.

28. The definition of "vital service" in s.2(1)

"vital service" means hot or cold water, fuel, electricity, gas or, during the part of each year prescribed by the regulations, heat.

29. Subsection 21(1) does not apply to a disrepair or maintenance problem. The wording of the provision shows it is intended to address the situation where a landlord deliberately interferes with or withholds a vital service. That is not what happened here, so this part of the Tenant's application must be dismissed.

*Illegal entries*

30. The Tenants alleged the following illegal entries by the Landlord on the following dates:

- July 25 2021
- July 27, 2021 from 1 pm to 3 pm

31. The Tenants testified that the Landlord entered the property on both these occasions, but none of the entries were in the rental unit. The Tenant Weipeng Xu testified that he was afraid that the Landlord may enter his bedroom too, but he never did.

32. I do not find based on the Tenant's testimony that the Landlord entered the rental unit which in this case is the master bedroom. The Landlord does use the basement bedroom occasionally and also comes to maintain the property. Based on those circumstances the Landlord does not need to give the Tenants a notice under the Act to enter the property unless he is specifically entering the Tenants' rental unit.

33. The Tenants' claim for illegal entries is dismissed.

*Substantial interference and harassment*

34. The Tenants alleged harassment and substantial interference for these issues:
- AC stopped working from July 24 till August 5, 2021
  - Landlord cut off electricity on July 25 and July 27, 2021
  - Landlord threatened to throw out Tenants' belongings from garage and basement
  - July 27, 2021 incident with Tenants' paralegal
  - July 18, 2021 Landlord threatens to impose fine if rent is late
35. The Tenant Weipeng Xu testified that the AC at the rental unit stopped working on July 24 2021 and the Tenants had to deal with unbearable heat and the Landlord's negligence in fixing the AC for so many days, which led to interference of reasonable enjoyment. On July 27, 2021 the Landlord came and turned off the power of the house. The power was on and off multiple times sometimes for 5 minutes and sometimes for longer. This also interfered with the Tenant's work.
36. The Tenant did state that the Landlord texted later that he was repairing the AC and that was the only text he received for AC repair.
37. The Landlord testified that on July 24, 2021 the Tenant messaged him to come look at the AC and there are phone records for July 25, 2021 @ 17:09 pm where the Landlord states he told the Tenants he will be there to fix the AC. The Tenants also called the police the same day when he disconnected power to fix the AC.
38. The AC did not function properly even after the Landlord fixed it on July 25, 2021 so he told the Tenants he will come back the next day via a text message.
39. The electricity cuts on July 25 and July 27, 2021 were related to the AC repairs. The Landlord agreed that he disconnected power for one hour in the evening of July 25, 2021 but on July 27, 2021 even though he was at the property but there were no power cuts at all.
40. The Tenant alleged that the Landlord threatened to remove their personal belongings from the garage and the basement. The find this to be interference since they were allowed additional storage space in the lease agreement. The lease does not mention the exact space for additional storage in the lease.
41. The Tenant testified that the Landlord threatened to throw his personal belongings from the garage and the basement in a text sent on July 25, 2021.
42. The Landlord does not deny the same and testified that he told the Tenants to vacate the garage and the basement as they were only paying for the master bedroom and the basement was for his own personal use. He added that the Tenant called the police on July 25, 2021 and they told the Tenants after seeing the stuff that he must clean up.

43. The incident on July 27, 2021 was related to the Tenants' paralegal coming to the house and the Landlord forcefully stopping the Tenant from opening the main door of the house and also making threatening gestures towards them. A sworn statement from the paralegal was sent as evidence. The sworn affidavit states that the Tenant told him that the Landlord prevented him from opening the door and he heard the Landlord tell him to not open the door. He further adds the Landlord was making threatening gestures, so he advised his clients to call the police. He also states that once the Landlord left the house they prevented him from entering again.
44. The Landlord testified that the paralegal was preventing him from entering his own property and using his bedroom in the basement which is illegal.
45. The Tenant also provided some text messages from the Landlord stating that if his rent is late then he will be fined \$100.00 for each day of delay and he finds that these text messages are harassing and interferes with their reasonable enjoyment. The Landlord did not address this evidence.

#### Analysis

46. While the term "harassment" is not defined 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.
47. Pursuant to s.22 of the Act: 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
48. I find based on the totality of evidence provided that the Tenants have proved on a balance of probabilities some of the claims of harassment or substantial interference by the Landlord.
49. I do not find the Landlord has substantially interfered when he came to repair the AC which was requested by the Tenants. The Landlord came to check the very next day after he received the complaint and showed records of calling the Tenants to inform of his visit. The power cuts were also related to the repair, and I do not find that any inconvenience the Tenants experienced as a result of these repairs constitutes harassment or substantial interference.
50. The Landlord telling the Tenants to move their stuff out of the garage and the basement was reasonable since the Tenants were only renting the master bedroom, but the lease agreement was vague in specifying the additional storage. The Landlord should not have threatened to throw the stuff out if its not cleared.
51. The Landlord was clearly not entitled to threaten the Tenants with fines if their rent was late. Such charges are prohibited by section 134(1) (a) of the Act. Landlords may file an application if the Tenants do not pay rent in time or pay rent late persistently. I find the

Landlord texting the Tenants to pay a per day fine is not acceptable and constitutes substantial interference and harassment.

52. The Tenant's testimony and the paralegal's sworn statement establishes on a balance of probabilities that the Landlord did make threatening assertions towards the Tenant and the paralegal on July 27, 2021. Even if the Tenants were preventing the Landlord from entering the rental property, he should not have engaged in an aggressive behaviour. While this was a single incident, it was serious enough to substantially interfere with the Tenant's reasonable enjoyment. The Tenants having a guest attend the property does not allow the Landlord to prevent their entry or show such aggression.
53. On the whole, I find that based on the allegations of substantial interference and harassment the Tenants have been able to prove some of the claims made by them. Based on all the circumstances I shall grant the Tenants a lumpsum rent abatement of \$500.00. The Landlord also must stop the activities if the Tenants are still residing at the rental unit.

**It is ordered that:**

1. The total amount the Landlord shall pay the Tenant is \$548.00. This amount represents:
  - \$500.00 for a lumpsum rent abatement.
  - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by April 30, 2023.
3. If the Landlord does not pay the Tenant the full amount owing by April 30, 2023 the Landlord will owe interest. This will be simple interest calculated from May 1, 2023 at 6.00% annually on the balance outstanding.
4. If the Landlord does not pay the Tenant the full amount owing by April 30, 2023, the Tenant may recover this amount by deducting the amount from the rent in May 2023 if they are still Tenants at the rental unit.
5. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**April 4, 2023**  
**Date Issued**

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Sheena Brar  
Member, Landlord and Tenant Board

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