



**Order under Section 22
Residential Tenancies Act, 2006**

Citation: Clyde v. Corredato 2023 ONLTB 22515

Date: 2023-03-30

File Number: LTB-T-018717-22

In the matter of: Basement, 45 WALDER AVENUE
TORONTO ON M4P 2R7

Between: Chris Clyde Tenant

And

Rita Corredato Landlord

Chris Clyde (the 'Tenant') applied for an order to determine Rita Corredato (the 'Landlord') harassed, obstructed, coerced, threatened or interfered with the Tenant; 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; and, withheld or deliberately interfered with the reasonable supply of a vital service, care service, or food that the Landlord is obligated to supply under the tenancy agreement

This application was heard by videoconference on January 10, 2023 at 12:01 p.m.

The Tenant Chris Clyde and the Landlord Rita Corredato attended the hearing.

Determinations:

Post Hearing Submissions

1. During the hearing, the Tenant attempted to rely on approximately 80 pieces of unlabeled submissions that were not organized in any logical manner and which the Tenant was unable to identify in a timely manner during the hearing. I gave the Tenant an opportunity submit a table of contents with clearly labelled and organized evidence after the hearing. While the Tenant did resubmit a portion of the evidence, approximately 8 unique documents, it was not organized as per the instructions provided. Despite these facts, I still considered the 7 text/photographic documents and the single audio recording resubmitted after the hearing.

Background

2. The residential unit is a 2-bedroom apartment in the basement of a 3-unit residential complex. There is a 3-bedroom unit on the main floor and the Landlord lives on the top floor. There is also a yard which is considered common space.
3. The Tenant moved into the unit on May 2, 2021 and moved out on August 31, 2021.

4. The T2 application was filed November 14, 2021, alleging the following:
 - a. The Landlord withheld or deliberately interfered with the reasonable supply of a vital service, namely the internet and air conditioning, the Landlord was obligated to supply under the tenancy agreement. The Tenant sought \$200.00 in compensation for undersupply of internet services. The Tenant withdrew their claim seeking compensation for the cost of paint, as paint does not constitute a vital service.
 - b. The Landlord harassed, obstructed, coerced, threatened or interfered with the Tenant over a series of arguments in person or through email and an argument over termination of the tenancy. The Tenant sought a rent abatement.
 - c. The Landlord substantially interfered with the Tenant's reasonable enjoyment of the rental unit or residential complex over maintenance and repair issues, an issue with respect to access to the backyard, common laundry room and access to the internet. The Tenant sought a rent abatement, compensation with respect to the differentiation in rent from his new unit to his previous unit and compensation for moving expenses.
5. For the reasons that follow, I find the Tenant's harassment claims and claims related to the Landlord withholding or deliberately interfering with the reasonable supply of a vital service should be dismissed.
6. As explained below, I am not satisfied on a balance of probabilities that the Landlord substantially interfered with the Tenants' reasonable enjoyment of the rental unit or residential complex with respect to the Tenant's claims related to maintenance and repair issues or access to the backyard and internet. Therefore, these claims are dismissed.
7. However, I am satisfied on a balance of probabilities that the Landlord substantially interfered with the Tenant's reasonable enjoyment of the unit of residential by restricting the Tenant's access to the laundry machine.

Vital Services

8. The Tenant alleged the Landlord had withheld or deliberately interfered with the reasonable supply of a vital service, care service or food that they were obligated to supply under the tenancy agreement, specifically internet connectivity. The Tenant took the position that this same conduct substantially interfered with his reasonable enjoyment of the rental unit.
9. Section 21 of the *Residential Tenancies Act, 2006* (the 'Act') addresses a landlord's duty not to withhold the reasonable supply of a vital service:

(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.

(2) For the purposes of subsection (1), a landlord shall be deemed to have withheld the reasonable supply of a vital service, care service or food if the landlord is obligated to pay another person for the vital service, care service or food, the landlord fails to pay the required amount and, as a result of the non-payment, the other person withholds the reasonable supply of the vital service, care service or food.

10. The Act defines vital services as:

- heat (from September 1 to June 15, in most cases a minimum temperature of 20 degrees Celsius as set out in section 4 of O. Reg. 516/06)
- fuel
- electricity
- gas
- hot or cold water

11. If the alleged interference concerns items that are not defined in the Act as a "vital service", such as air conditioning or internet service, then section 21 of the Act is not applicable. Therefore, I find the Tenant's claims related to the Landlord withholding vital services are dismissed, but these issues are considered in the substantial interference analysis below.

Harassment

May 2021 Argument

12. The Tenant testified that on May 7, 2021 an argument ensued with the Landlord when he requested the Landlord to take a look at the unit about some potential repairs. The Tenant further testified the Landlord reacted to his requests abruptly and was being rude and confrontational which made the Tenant feel uneasy.

13. The Landlord denied these allegations and claimed if anything the Tenant was being mean, testifying she merely told him she would fix the items as soon as possible. The Landlord submitted a written statement from the other Tenant in the complex, Ron Hoffman, who was a witness to the events that substantiated the Landlord's testimony.

Cat Email in July 2021

14. The Tenant further testified on or about July 2021 the Landlord sent an email to the Tenant advising she saw his cat outside. The Tenant alleged the Landlord was intentionally trying to cause the Tenant anxiety.

15. The Landlord acknowledged sending the email; however, stated the email was sent because she was genuinely concerned it was the Tenant's cat. A copy of the email was submitted into evidence.

Argument over Termination of the Tenancy

16. The Tenant testified on July 17, 2021 the Landlord initiated an argument over ending the tenancy when the Tenant sought to assign the unit. It is undisputed the Landlord denied the Tenant's assignment request approximately 3 days after its receipt. The Tenant stated the Landlord and Tenant engaged in a conversation about the process, which turned into an argument where the Tenant ended up signing an N11 agreement to terminate the tenancy. The Tenant testified he felt pushed out because of the stress and anxiety of the ongoing harassing behaviour.
17. The Landlord denied she engaged in harassing behaviour. She stated that if anything the Tenant was being rude and harassing her. She felt very upset as a result of the argument and as a result served the Tenant with a N5 Notice alleging the Tenant was interfering with her reasonable enjoyment of the rental complex. Ultimately, the N5 was never pursued. The Tenant's evidence contains an email from the Landlord to the Tenant dated July 18, 2021 stating the Landlord served the Notice as well as reporting the matter to the police.
18. The Landlord further testified that a few days later, the parties calmed down and arrived at a mutual agreement to end the tenancy. The Landlord submitted a copy of the N11 into evidence that was signed on July 26, 2021 with a termination date of August 31, 2022.

Analysis

19. Subsection 23 of the Act states that a Landlord shall not interfere with or harass a tenant.
20. The Act does not provide a definition of harassment. The Ontario Human Rights Code, R.S.O. 1990, c. H.19, defines harassment as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome".
21. Based on the evidence before me, I am not satisfied based on the Tenant's evidence or description of the matters alone or in aggregate on May 7, 2021, July 2021 establishes that the Landlord's conduct constitutes or rose to the level of harassment. In my assessment, the communication between the Landlord and the Tenant regarding the Tenant's cat was not malicious. This is substantiated by the Landlord's testimony. The arguments in May and July of 2021 do not rise to the level of harassment as I find in both cases each party engaged in conduct that contributed the situation. Moreover, the Landlord is fully within their right to serve an N5 Notice.
22. As the Tenant did not establish on a balance of probabilities that the Landlord had harassed, obstructed, coerced, threatened or interfered with the Tenant and therefore this portion of the application is dismissed.

Substantial Interference related to repairs and maintenance and other matters

23. The question to be determined by the Board is whether the power outage episodes, fridge, counter and sink issues, and the backyard access issues alone or in the aggregate resulted in a substantial interference with the Tenant's of reasonable enjoyment of the rental unit.

Power Outages

24. The Tenant testified that the power was out in the unit on May 21, 2021 from approximately 12:00 p.m. to 6:00 p.m. and on May 27, 2021 from 10:30 a.m. to 7:00 p.m. The Tenant asserted that this substantially interfered with his reasonable enjoyment of the unit as he was unable to work and study.

25. The Tenant further testified the issue was repaired shortly after he complained; however, he requested a new fuse box be installed to prevent future power outages and so it could handle multiple devices and appliances on the same circuit. The Tenant described the Landlord reacted with anger and screamed and yelled at the Tenant.

26. The Landlord testified that the power was out for the purpose of renovations and were otherwise caused by the Tenant plugging too many devices into one circuit and it was fixed the same day on each occurrence. An inspection report, submitted into evidence, dated November 2022, prepared by the contractor, stated the fuse box is in good condition.

27. The Landlord further testified on May 21, 2021 she noticed the Tenant had multiple devices plugged into one circuit where she advised the Tenant to plug one in at a time at which point the Tenant engaged her in an argument.

Fridge Repair

28. It is undisputed that on June 16, 2021 the Tenant discovered the fridge was broken, informed the Landlord on June 18, 2021, and the Landlord inspected the fridge on June 21, 2021.

29. The Tenant testified the Landlord was unhelpful and rude during this process. The Tenant further testified the process caused him anxiety and he was unsatisfied about the timeliness of the repairs. He asserted that this substantially interfered with his reasonable enjoyment of the unit.

30. The Landlord testified she responded very quickly by contacting an appliance technician immediately and issue was fully resolved by June 23, 2021. In addition, the Landlord testified she also provided the Tenant with a mini-fridge on June 21, 2021. The Landlord submitted a copy of the records of purchase for the mini-fridge and replacement fridge.

Counter Repairs

31. The Tenant testified the landlord, when coming to install the counter, cancelled 1-hour before arrival causing him to change his plans and anxiety around rescheduling the repairs. The Tenant alleged the rescheduled period was less than 24-hours notice.
32. The Landlord testified that proper notice was provided, the work was completed immediately and to a high quality, and the Tenant was over-emotional and exaggerating about any arguments that took place during the repair process.
33. It is undisputed the repairs took place between May 21, 2021 and May 27, 2021.

Backyard

34. The Tenant testified that on June 6, 2021 the Landlord observed him exercising in the backyard and on June 7, 2021 the Landlord intentionally locked the fence door restricting access from the backyard to the public park in an effort to substantially interfere with his reasonable enjoyment of the common area.
35. The Tenant further testified that no advance notice was provided and this resulted in him adding an additional 4 minutes to his walk to access the park and the grocery store. The Tenant explained the lock was removed 5 days later.
36. The Landlord testified that she locked that gate as a temporary safety measure to prevent homeless people who were living in the public park from accessing the property. The Landlord submitted pictures of the encampment in the public park directly behind the unit. The Landlord denied any wrongdoing adding that this measure amounted to a temporary inconvenience and the Tenant was exaggerating any impact.

Internet

37. The Tenant testified with the exception of in his living room, the Wi-Fi in the unit was low quality for the duration of his tenancy and either did not work in some cases or resulted in slower speeds. The Tenant further testified this was frustrating and it impacted his overall ability to work. To remedy the issue, the Tenant purchased additional Rogers internet to compensate for the poor quality internet service. The Tenant submitted copies of the Rogers bills as evidence.
38. The Landlord testified that both the internet and the Wi-Fi worked well and that the Tenant was exaggerating. The Landlord asserted that the Tenant wanted faster speed internet and this was the true nature of the complaint. As evidence, the Landlord provided written statement from her previous tenant stating that the internet and Wi-Fi worked well when he resided in the unit, which was prior to May 2021.
39. The Landlord also provided a copy of the internet bills illustrating the internet service was provided during the period of the tenancy. The Landlord testified that in response to the Tenant's complaints that on May 3, 2021 she purchased a Wi-Fi extender for the Tenant and submitted evidence confirming the purchase. She further testified that the Tenant

opted to install the extender himself and submitted a written statement from Jamie Miles who was contracted to do the work, confirming same.

Analysis

40. Section 22 of the Act provides that a landlord shall not substantially interfere with the reasonable enjoyment of the rental unit for all usual purposes by a tenant.
41. With respect to the backyard, I find the measures taken by the Landlord were reasonable as the purpose for the lock was for safety, not to interfere with the Tenant. Moreover, the matter was temporary and while this may have caused a minor inconvenience to the Tenant, no specific evidence beyond the Tenant's testimony was provided to substantiate how locking the backyard gate impacted the Tenant and amounted to substantial interference of reasonable enjoyment of the unit. Therefore, this portion of the substantial interference claim is dismissed.
42. With respect to the internet issues, I find that not only was the internet working, the Landlord took reasonable steps to address any Wi-Fi quality issues that may have existed by purchasing a Wi-Fi extender. Any inconvenience was related to speed or quality and does not rise to the level of substantial interference of reasonable enjoyment of the unit.
43. The Tenant's claims relating to the power outages, fridge repairs and counter repairs assert substantial interference due to "work" undertaken by the Landlord. Therefore, in determining whether there is substantial interference I must apply s. 8(2) of Ontario Regulation 516/06 under the Act which states:

8(2) For the purposes of section 22, paragraph 3 of subsection 29 (1) and subsection 31 (1) of the Act, this section applies to the Board in making a determination,

(a) as to whether a landlord, superintendent or agent of a landlord, in carrying out work in a rental unit or residential complex, substantially interfered with the reasonable enjoyment of the unit or complex for all usual purposes by a tenant or former tenant, or by a member of the household of a tenant or former tenant; and

(b) whether an abatement of rent is justified in the circumstances.

44. Subsection 8(3) of the regulation reads as follows:

(3) In making a determination described in subsection (2),

(a) the Board shall consider the effect of the carrying out of the work on the use of the rental unit or residential complex by the tenant or former tenant, and by members of the household of the tenant or former tenant; and

(b) the Board shall not determine that an interference was substantial unless the carrying out of the work constituted an interference that was unreasonable in the circumstances with the use and enjoyment of the rental unit or residential complex by the tenant or former tenant, or by a member of the household of the tenant or former tenant.

45. With respect to the power outages, I find the measures taken by the Landlord were reasonable as each occurrence the power was restored within a few hours after an immediate response from the Landlord, therefore this portion of the substantial interference claim is dismissed.

46. With respect to the fridge, I find the measures taken by the Landlord were reasonable as the fridge was replaced within 5 days. Moreover, the audio recording submitted by the Tenant captures the timelines related to the fridge replacement and also reveals that the Landlord offered alternatives to mitigate the issue such as keeping items in another fridge within the complex and purchasing the mini-fridge as a temporary alternative. I find the process was reasonable and accommodating and the Landlord's behaviour appropriate. Therefore, this portion of the substantial interference claim is dismissed.

47. With respect to the counter repairs and installation, I am persuaded by the Landlord's testimony and I find the measures taken by the Landlord were reasonable. Moreover, there was no evidence provided that by the Tenant would demonstrate how adjusting their plans or getting anxiety around rescheduling the repairs amounted to substantial interference of reasonable enjoyment of the unit. Therefore, this portion of the substantial interference claim is dismissed.

48. I find the power outage episodes, fridge, counter repairs, internet, as well as the backyard access issues alone or in the aggregate did not result in a substantial interference of reasonable enjoyment of the rental unit.

Substantial interference claims related to laundry services

49. The Tenant testified that beginning May 28, 2021 the Landlord began restricting access to the common area laundry machines. Originally the Tenant was able to access the laundry three days per week, anytime of the day. However, as of May 28 he could only access the laundry after 6:00 p.m. on weekdays or on weekends.

50. The Tenant testified that this impacted his schedule, as he was unable to do the laundry at the times he was available and caused anxiety about future potential service restrictions to the laundry or future confrontations with the Landlord about laundry access.
51. The Landlord did not deny the change in schedule and testified that she received a letter from the City of Toronto stating best practices for energy conservation and submitted the letter into evidence she posted on the door to the laundry room as a notice to the Tenants.

Analysis

52. It is undisputed the Landlord, through her actions, restricted the Tenant's access to the laundry. The Landlord is not allowed to police the laundry room or arbitrarily restrict access, in the absence of any express terms in a tenancy agreement providing for access only at specific times. I am convinced through the Tenant's testimony that the restricted laundry access impacted the Tenant's schedule and caused anxiety.
53. I find the actions of the Landlord substantially interfered with the Tenants reasonable enjoyment of the unit and award the Tenant a rent abatement in the amount of \$20.00 per month, each month, from May 28, 2021 to August 31, 2021 for a total rent abatement of \$62.00, which includes a pro-rated amount covering the three days in May 2021 ($\$20.00 \times 3$) + \$2.00 = \$62.00.

Other Remedies

54. I am not satisfied that the substantial interference resulting from a change in the laundry arrangements was serious enough to induce the Tenant to move. The Tenant's claim for moving expenses and rent differential are therefore denied.

It is ordered that:

1. The Landlord shall pay to the Tenant a rent abatement of \$62.00 for substantial interference due to a change in laundry arrangements.
2. The Landlord shall also pay the Tenant \$48.00 for the cost of filing the application.
3. The total amount the Landlord owes the Tenant is \$110.00.
4. The Landlord shall pay the Tenant the full amount owing by April 20, 2023.
5. If the Landlord does not pay the Tenant the full amount owing by April 20, 2023 the Landlord will owe interest. This will be simple interest calculated from April 21, 2023 at 5.00% annually on the outstanding balance.

6. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

March 30, 2023
Date Issued

Greg Witt
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.