



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

Citation: Thompson v Wilson-Forbes, 2023 ONLTB 25687

Date: 2023-03-22

File Number: LTB-T-002465-21

In the matter of: 558 PERTH AVE TORONTO
ON M6N2W7

Between: Heather Thompson Tenant

And

Allison Wilson-Forbes Landlord

Heather Thompson (the 'Tenant') applied for an order determining Allison Wilson-Forbes (the 'Landlord') or the Landlord's superintendent or the Landlord's agent 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.

Heather Thompson (the 'Tenant') also applied for an order determining Allison Wilson-Forbes (the 'Landlord') harassed, obstructed, coerced, threatened or interfered with the Tenant.

Heather Thompson (the 'Tenant') also applied for an order determining Allison Wilson-Forbes (the 'Landlord') entered the rental unit illegally.

This application was heard by videoconference on March 7, 2023.

The Tenant Heather Thompson and the Landlord Allison Wilson-Forbes attended the hearing

Determinations:

1. This T2 application alleges the Landlord entered the rental unit illegally, substantially interfered with the reasonable enjoyment of the rental unit by the Tenant and that the Landlord harassed, obstructed, coerced, threatened or interfered with the Tenant.
2. The Tenant vacated the rental unit on November 30, 2021. The monthly rent was \$1,500.00.

Illegal Entry

3. Section 25 of the *Residential Tenancies Act, 2006* (the Act) states a Landlord may enter a rental unit only in accordance with sections 26 and 27 of the Act. These sections read as follows:

26 (1) A landlord may enter a rental unit at any time without written notice,

(a) in cases of emergency; or

(b) if the tenant consents to the entry at the time of entry.

(2) A landlord may enter a rental unit without written notice to clean it if the tenancy agreement requires the landlord to clean the rental unit at regular intervals and,

(a) the landlord enters the unit at the times specified in the tenancy agreement; or

(b) if no times are specified, the landlord enters the unit between the hours of 8 a.m. and 8 p.m.

(3) A landlord may enter the rental unit without written notice to show the unit to prospective tenants if,

(a) the landlord and tenant have agreed that the tenancy will be terminated or one of them has given notice of termination to the other;

(b) the landlord enters the unit between the hours of 8 a.m. and 8 p.m.; and

(c) before entering, the landlord informs or makes a reasonable effort to inform the tenant of the intention to do so.

27 (1) 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.

2. To allow a potential mortgagee or insurer of the residential complex to view the rental unit.

3. To allow a person who holds a certificate of authorization within the meaning of the Professional Engineers Act or a certificate of practice within the meaning of the Architects Act or another qualified person to

make a physical inspection of the rental unit to satisfy a requirement imposed under subsection 9 (4) of the Condominium Act, 1998.

4. To carry out an inspection of the rental unit, if,
 - i. the inspection is for the purpose of determining whether or not the rental unit is in a good state of repair and fit for habitation and complies with health, safety, housing and maintenance standards, consistent with the landlord's obligations under subsection 20 (1) or section 161, and
 - ii. it is reasonable to carry out the inspection.

5. For any other reasonable reason for entry specified in the tenancy agreement.

(2) A landlord or, with the written authorization of a landlord, a broker or salesperson registered under the Real Estate and Business Brokers Act, 2002, may enter a rental unit in accordance with written notice given to the tenant at least 24 hours before the time of entry to allow a potential purchaser to view the rental unit.

(3) The written notice under subsection (1) or (2) shall specify the reason for entry, the day of entry and a time of entry between the hours of 8 a.m. and 8 p.m.

4. The Tenant alleged four illegal entries. Her evidence was they occurred on October 1, 2021, October 4, 2021 and twice on October 5, 2021. All of the entries involved the bathroom, which is not contained within the rental unit, but is a short distance down a shared hallway with the Landlord. The Tenant and the Landlord do not share the bathroom.
5. The Tenant's evidence was no notice was provided by the Landlord for any of these entries. The Landlord did not dispute entering the Tenant's bathroom on these dates.
6. The parties agreed that during email exchanges between them on September 21, 2021, the Tenant twice asked the Landlord if she wanted to check the bathroom over concerns with water damage and issues with the bathtub.
7. The Tenant received an email from the Landlord on October 1, 2021 advising her the Landlord had been in the Tenant's bathroom. The email details some concerns with the state of the bathroom and request the Tenant refrain from taking baths until protective repairs are done. The Tenant was not at home during this entry.
8. On October 4, 2021, the Tenant received an email from the Landlord advising her a contractor had entered the Tenant's bathroom to assess the condition and estimate the time required for repairs. The Tenant was not at home during this entry.

9. The Landlord's evidence was she believed the emails from September 21, 2021 permitted her to enter the Tenant's bathroom without providing the required 24 hours notice of entry. The Landlord did state that she provided notice for the October 4, 2021 but did not provide any evidence she had done so. The Landlord also stated that she was just "popping in" to take a look and the entries only lasted for approximately five minutes while the Tenant was not present. The Landlord agreed she could have sent a text to the Tenant but did not.
10. The Landlord testified that on October 5, 2021, she noticed water coming into her laundry room which shares a common wall with the Tenant's bathroom. Concerned about damage, the Landlord knocked on the door to the Tenant's bathroom and entered after no one answered the door. The Landlord's evidence was she thought the Tenant was not home and the situation was urgent.
11. When the Landlord entered the Tenants bathroom, her evidence was she found the Tenant cleaning and the water was running from both faucets. The Landlord testified the Tenant was wearing headphones and she assumed the Tenant did not hear her knocking. According to the Landlord, the Tenant asked her to come back in ten minutes and the Landlord returned in 13 minutes to find the water still running. When she returned, she knocked on the door again before entering. It was the Landlord's evidence the situation did not become an emergency until the water had been running and soaking into the damage that was discovered by the contractor on October 4, 2021 and travelling to her laundry room.
12. I am satisfied on a balance of probabilities the entries that occurred on October 5, 2021 were an emergency. The Tenant did not offer any evidence that she was not running the water at the time or that the bathroom did not contain damage requiring repair. Preventing water damage, in the moment, as it is flowing into other areas of the property meets the requirement of entry without notice contained in section 26(1)(a).
13. I find on a balance of probabilities the Landlord illegally entered the rental unit on October 1, 2021 and October 4, 2021. The requirements contained in section 27(3) of the Act are clear. Written notice must be provided. I am not convinced the Landlord gave notice of either entry as no evidence of any written notice was submitted. Relying on an email exchange from several days earlier is not, in my view, consent at the time of entry as contemplated in section 26(1)(b) of the Act. The Landlord was required to provide the Tenant 24 hours notice for these entries and did not. I do not accept the Landlord's unsubstantiated claim that she provided notice for the October 4, 2021 entry. It was clear from her evidence she was operating on the belief notice was not required. Lastly, whether or not the Tenant was home is immaterial. The Tenant's privacy interests endure even when they are away from home.

Substantial Interference - Bathroom Repair

14. The Tenant testified on October 1, 2021, the Landlord asked her not to use the bathtub due to needed repairs. The Landlord's evidence, supported by an email sent to the Tenant, was that she was asked not to take baths. The shower is an attachment requiring standing in the bathtub. The Tenant took the email from the Landlord to mean that she could not use the shower either although the email from the Landlord does not request this.

15. Repairs to the bathroom were conducted from October 12, 2021 until October 13, 2021. The Landlord submitted an email dated October 12, 2021 advising the Tenant she could resume use of the bathroom “tomorrow night”. The Tenant submitted it was not until the morning of October 14, 2021 that she was informed the bathroom repair was completed. I am satisfied the time period of the repairs was two days, those being October 12 and 13, 2021.
16. The parties agreed that during the repairs the Tenant was without a bathroom and no alternative accommodations were offered to the Tenant by the Landlord. The Tenant submitted an email in which the Landlord advised the Tenant that during the repairs she would need to make other arrangements as she will not be able to use the bathroom. The Landlord’s evidence was the Tenant did not request any consideration or accommodation from the Landlord so nothing was offered or provided.
17. The Tenant testified during the repairs, public restrooms were not open due to the Covid 19 pandemic. Her evidence was she used a bucket when her digestive system required relief. She also testified she did not shower or take a bath from October 1, 2021 until the repairs were completed.
18. I am satisfied on a balance of probabilities the Tenant’s reasonable enjoyment of the rental unit was substantially interfered with during the repairs done to the bathroom. Being without a functioning toilet or shower for two days is a significant hardship to endure.
19. I am not satisfied the Tenant could not shower for more than the two days the repairs took. It was clear in the email sent by the Landlord the request was not to take baths. If the Tenant went almost two weeks without taking a shower, I find that is down to her misreading the email sent to her by the Landlord.

Substantial Interference and Harassment -Email Message

20. The Tenant’s evidence was these claims overlapped in relation to an email she received from the Landlord. She testified the email conversations between herself and the Landlord after the entries addressed above were threatening in nature. It is clear from the emails the parties disagree on when notice is required for entry and when it is not. The Tenant submitted an email from the Landlord dated October 6, 2021 in which the Landlord writes:

I feel this conversation is getting adversarial and I will not continue it in this vain. There are a few things you yourself are not following under the Residential Tenancies Act that I've been lenient about, so please don't even go there. You're also in violation of the Quarantine Act, so again, please don't communicate this way. This is not a path that will lead to a pleasant safe living environment.

21. The Tenant’s evidence was this email amounted to a threat and thereafter she was worried about confrontations with the Landlord although the parties agreed they had no in person

interaction for the remainder of the time the Tenant lived at the rental unit. It was the potential to interact with the Landlord the Tenant claimed to fear given the shared hallway. The Tenant's reply to this email did not suggest she felt threatened. The Tenant's evidence was she did not want to escalate the situation with the Landlord.

22. The Landlord's evidence was this email was a summary to the Tenant of how the tenancy had recently been unfolding. The Landlord's evidence was the Tenant's guest would not wear a mask as required and the email referenced this and the safety issue. The Landlord's evidence was the email was not a threat and there were no incidents between the two parties afterwards.
23. On my first reading of the October 6, 2021 email sent by the Landlord to the Tenant, I took the unsafe reference to be in relation to the lack of adherence to the Quarantine Act. Even if I am incorrect, I do not find this email amounts to a threat. I find the communications between the parties show a relationship that may be souring as a result of the issues with the bathroom and the circumstances that unfolded. There is no pattern of behaviour in which the Landlord continues to incite or bother the Tenant. Nothing else occurred after the repairs were completed.
24. The Tenant testified she was worried about future illegal entries and future bad behaviour from the Landlord based on the email she perceived as a threat. The Tenant agreed the parties did not interact in person again. I found the Tenant's concerns about the future to be speculative and unsupported by evidence.
25. On this portion of the application, I am not satisfied on a balance of probabilities the Tenant has proven the Landlord substantially interfered with the Tenant's reasonable enjoyment of the rental unit or harassed, coerced, threatened or interfered with the Tenant. I am also not convinced on a balance of probabilities the Landlord's conduct induced the Tenant to vacate the rental unit when she did on November 30, 2021. As a result, this portion of the Tenant's application is dismissed.

Remedies

26. The Tenant is seeking an abatement of rent as a result of the illegal entry and the substantial interference caused by the repairs to the bathroom. Abatement of rent is a contractual remedy based on the principle that if you are paying 100% of the rent then you should be getting 100% of what you are paying for and if you are not getting that, then a tenant should be entitled to abatement equal to the difference in value.
27. The Tenant requested a global rent abatement of \$1,500.00, which was the monthly rent. Her application as filed, requested \$1,700.00 however the Tenant acknowledged this amount was an error as she filled in the amount of her rent where she currently resides. The Tenant was unable to articulate how she calculated the amount being sought.

28. I have found two instances of illegal entry on the part of the Landlord. In *Wrona v. Toronto Community Housing Corporation*, 2007 CanLII 3228, the Divisional Court granted the tenant an abatement of \$1,000.00 for a single illegal entry which was well in excess of 100% of the monthly rent charged.
29. The Divisional Court's decision is binding on the Board so it must be taken into account when the Board crafts a remedy for a similar breach to the one that existed in that case. The facts in *Wrona* are not substantially similar to the facts here. In *Wrona*, there was a single illegal entry where notice had been served but the content of the notice failed to meet the requirements of the Act. In *Wrona* the Divisional Court found that an abatement of \$1,000.00 was an appropriate remedy. In *Wrona*, however, there had been at least one previous application brought to the Board by the tenant about the same issue. In other words, there was a history of dispute between the parties about what constituted a legal entry. Here there was no prior application between the parties so there was no such history.
30. In considering the totality of the circumstances, including the nature of the illegal entry and the distinguishable facts from the Divisional Court decision in *Wrona*, I find a rent abatement of \$500 for each instance to be appropriate for a total of \$1,000.00.
31. I have also found the Tenant being without a functioning bathroom for two days amounted to substantial interference with her reasonable enjoyment of the rental unit. The daily amount of rent is \$49.32. I arrive at this number by multiplying the monthly rent of \$1,500.00 by 12 months and then dividing that total by 365 days.
32. I find a functioning bathroom to be a basic necessity when it comes to rental housing. The Landlord offered the Tenant no alternatives. Having to use a bucket and being unable to wash oneself is a clear hardship and I will order two days of abatement at 100% for a total of \$98.64.
33. As the remainder of the remedies sought by the Tenant were related to the unsuccessful portion of her application, they were not considered.

It is ordered that:

1. The Landlord shall pay to the Tenant the amount of \$1,098.64. This amount represents the rent abatement for the illegal entries and the loss of use of the bathroom for two days.
2. The Landlord shall also pay \$48.00 to the Tenant for the cost of filing the application.
3. The total amount owing to the Tenant by the Landlord is \$1,146.64
4. If the Landlord does not pay the Tenant the full amount owing on or before April 2, 2023, the Landlord will start to owe interest. This will be simple interest calculated from April 3, 2023 at 5.00% annually on the balance outstanding.

March 22, 2023

Date Issued
Cashmore

John

Member, Landlord and Tenant Board

15 Grosvenor St, 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.