



Order under Section 31 Residential Tenancies Act, 2006

Citation: BRANT v WU, 2023 ONLTB 25939

Date: 2023-03-20

File Number: LTB-T-036612-22

In the matter of: 6, 143 COLBORNE STREET
KINGSTON ONTARIO K7K1E1

Between: Patrick Brant Tenant

And

Wenyan Wu Landlord

Patrick Brant (the 'Tenant') applied for an order determining that Wenyan Wu (the 'Landlord'):

- 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.
- Harassed, coerced, obstructed, threatened or interfered with the Tenant.
- Withheld or interfered with a vital service.

This application was heard by videoconference on March 8, 2023.

Only the Tenant attended the hearing and spoke to Tenant Duty Counsel prior to the hearing.

As of 10:33 am, the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenant's evidence.

Preliminary Issue:

1. The Tenant requested an amendment to the application to remove the allegation that the washer and dryer were not working properly, and that the Landlord withheld or interfered with a vital service. I consented to the request to amend the application.
2. The Tenant requested to amend the amount of rent abatement requested on the application from \$2,940.00 to \$2,205.00. As the Tenant requested a lesser amount there was no prejudice to the Landlord. I consented to the request to amend the rent abatement amount.

3. The Tenant included a maintenance allegation related to the stove top elements on his application. I explained to the Tenant that I could consider this allegation on the T2 application, however my analysis would be based on a different section of the Act. I explained to the Tenant that he could file a T6 application for the maintenance allegation. The Tenant wished to proceed with the maintenance allegation on the T2 application.

Determinations:

4. As explained below, the Tenant has proven on a balance of probabilities the allegations contained in the application. Therefore, the Landlord must pay the Tenant a rent abatement in the amount of \$1,323.00 and reasonable out of pocket expenses in the amount of \$120.00.
5. The tenancy began February 1, 2021.
6. The Tenant is no longer in possession of the rental unit having vacated on January 31, 2022.
7. The Tenant rented a room from the Landlord, there were 6 other rooms in the residential complex. All tenants share the common area of the residential complex.

Tenant's Uncontested Evidence

Cleaning Schedule

8. The Tenant testified that on September 9, 2021, the Landlord posted a cleaning schedule in the common area of the residential complex. The rotation was a 7-week rotation where each Tenant would be responsible for the cleaning of the common area once every 7 weeks. The notice states that if the Tenant fails to clean on their scheduled week, the Landlord will charge the Tenant between \$60.00 and \$100.00. The Tenant provided a copy of the letter dated September 6, 2021.
9. The Tenant states that he was not charged a cleaning fee by the Landlord as he always performed his scheduled cleaning.
10. He states when he notified the Landlord a few days after this notice was posted that he did not agree with the fee, the Landlord stated that he was within his rights to charge a fee if the Tenant did not clean on his scheduled week.

Analysis- Cleaning Schedule

11. I accept the uncontested testimony and evidence of the Tenant that the Landlord posted the cleaning schedule and a fee schedule if the Tenant failed to clean on their scheduled week.

12. The Tenant testified that he was not charged the cleaning fee as he always cleaned on his scheduled week.
13. Section 23 of the Act states:

A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant". While there is no definition of "harassment" 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.
14. While I can appreciate that the Landlord posting a fee schedule may be upsetting to the Tenant, I do not categorize this as harassment. The Tenant testified that he was not charged a cleaning fee by the Landlord and there was no evidence before me that there was any further communication by the Landlord to the Tenant regarding the fee schedule.
15. On the basis of the evidence and testimony provided by the Tenant, I am not satisfied that the Landlord breached their obligations pursuant to s. 23 of the Act.

Stove Elements Not Working

16. The Tenant testified that two of the four stove top elements are not in working condition. The Tenant provided a photograph of one of the elements that is being held up by a muffin tin and a photograph of the main buttons on the stove that appear to be taped with a note that says, "no use".
17. The Tenant testified there are six other tenants that reside in the residential complex and not having access to all four stove top elements is frustrating as only two tenants can cook at a time.
18. He states that the muffin tin holding up the element is a fire hazard.
19. He testified that he notified the Landlord in February 2021, the Landlord did not fix the issue and instead removed the knobs that controlled the stove top element and taped off the elements that were not working.
20. The Tenant testified that the issue had not been fixed prior to him vacating on January 31, 2022.

Analysis- Stove Top Elements

21. While this issue is related to maintenance and the Tenant did not file a T6 application, I am considering this allegation under Section 22 of the RTA.
22. The Tenant is required to share the stove with 6 other tenants. Having only two working elements prevents the Tenant from being able to cook at the time the Tenant wishes to cook as the elements have been reduced by fifty percent.

23. I also find that the muffin tin holding up the element in the stove is a fire hazard.

24. On the basis of the evidence and testimony provided by the Tenant, I am satisfied that the Landlord breached their obligations pursuant to s. 22 of the Act.

Food Removed from Fridge

25. The Tenant testified that on December 2, 2021, the Landlord attended the rental unit for an inspection as another tenant had just vacated. Later that date the Tenant noticed that all his food from the fridge had been removed as well as all the other tenant's food. He states he contacted the Landlord immediately to ask if the Landlord had removed the items from the fridge and was notified by the Landlord that he had done so, and all the items were being stored in the Landlord's garage. The Landlord returned the food items a few days later to the Tenant and all the food items had spoiled and needed to be thrown out.

Analysis- Food Removed from Fridge

26. Based on the uncontested testimony of the Tenant, I find that the Landlord emptied the fridge of all the Tenant's food. I accept that the Landlord returned the food to the Tenant a few days later but the items had spoiled.

27. On the basis of the evidence and testimony provided by the Tenant, I am satisfied that the Landlord breached their obligations pursuant to s. 22 of the Act.

Lease Agreement

28. The Tenant provided a copy of lease he signed with the Landlord on January 30, 2021. The Tenant states that some of the clauses in the lease agreement substantially interfered with his reasonable enjoyment of the rental unit.

29. The Tenant testified that a few days after he signed the lease agreement with the Landlord in January 2021, he took another read through and realized he did not agree with some of the terms of the agreement. He contacted the Landlord immediately to discuss, and the Landlord advised him that if he did not like the terms that he could move out.

30. I have only considered the following clauses in the lease agreement as follows:

- a. Clause 12- Decorating- No mounting of any shelf, fixture, hanger or whatever on the wall, windows and doors from the ceiling without the written approval by the Landlord. Nail holes and staples on the walls, ceiling, windows or doors will be regarded as damage to the property. Tapes should be used for posters but they should not be too strong as to remove or peel the paint of the walls.
- b. Clause 23- Residence/Visitor- Visitors need to leave the premises before 10:00pm. Under special circumstances, a spouse or a child is allowed to stay over for a night or two during the weekend if they do not live in Kingston with a notification to and an

agreement from the landlord. Otherwise, if a tenant is found having somebody else share his/her room, \$30.00 per person per night will be charged and the landlord has the right to charge extra for utility sharing if the duration is for more than five days.

31. The Tenant testified that he wanted to hang art on his wall, and he was not permitted to do because of Clause 12 in the lease agreement.
32. The Tenant testified that he did not have anyone to his rental unit after 10:00 pm as he was not permitted to do so and did not want to be charged a \$30.00 per night fee. The Tenant testified that due to his work schedule most of his social times fall outside the allowed time by the Landlord.
33. He further testified that during his tenancy he was will ill and not being able to have any visitors after 10:00 pm was very difficult for him as he needed to have people around him to help him.
34. The Tenant provided other clauses in the lease agreement related to a lost key deposit, Landlord dictating the expected behaviour of the Tenant, no pets, violation of the lease and damage responsibility. The Tenant provided testimony that there has not been a direct impact on him related to these clauses.

Analysis Lease Agreement

35. I did not consider the clauses in the lease agreement that did not have a direct impact on the Tenant's reasonable enjoyment of the rental unit related to lost key deposit, Landlord dictating the expected behaviour of the Tenant, no pets, violation of the lease and damage responsibility.
36. While I accept the Tenant wanted to hang art on his walls and did not do so because of clause 12 in the lease agreement, I do not find that this substantially interfered with the Tenant's reasonable enjoyment. Clause 12 does not permit the Tenant from hanging art, rather requests the Landlords written permission to do so. There was no evidence before me that suggest that the Tenant requested permission of the Landlord to hang art on the wall and the request was denied.
37. I find it unreasonable there was a clause in the lease agreement that restricted the Tenant from having visitors after 10:00 pm and if he did there would be a charge of \$30.00 per night. The Tenant has the right to have visitors to his rental unit as he wishes provided it does not interfere with the reasonable enjoyment of other tenants.
38. I am persuaded by the Tenants uncontested testimony that this was stressful for him as due to his work schedule most of his social time fell outside of the time frame the Landlord would allow guests. I also accept that during his tenancy he was ill and not being able to have visitors to the rental unit at certain times to help him was stressful.

39. On the basis of the evidence and testimony provided by the Tenant, I am satisfied that the Landlord breached their obligations pursuant to s. 22 of the Act, regarding Clause 23 in the lease agreement.

Entries Without Notice for Inspection of Common Area

40. The Tenant testified that at the beginning of his tenancy in February 2021, the Landlord would visit the rental residential complex daily to inspect the common areas without providing proper notice to the Tenant.

41. He testified that the visits were generally very short in nature and just a quick in and out.

42. He testified the Landlord did not enter his bedroom during these visits.

43. He states he notified the Landlord that he should be posting proper notice or letting the Tenant know when he will be inspecting the common areas of the residential complex. The Landlord advised him if he did not like the inspections he could move out.

Analysis- Entries Without Notice for Inspection of Common Area

44. There was no evidence before me that the Landlord was responsible for cleaning or maintenance of the common areas that would require the Landlord to be in the common areas to conduct this service.

45. Based on the uncontested evidence, I find that the Landlord entered the common areas regularly without posting notice to the Tenant. While I accept the Landlord did not enter the Tenants room during these inspections, I find the common area is part of the Tenant's rental unit.

46. A "rental unit" is defined in subsection 2(1) of the *Residential Tenancies Act, 2006* (the 'Act') to include "a room in a boarding house" whereas "residential complex" includes "all common areas and services and facilities available for the use of its residents." In a rooming house such as this one, the rental unit is the locked bedroom that the Tenant has as his own private space and the shared kitchen, bathrooms and common areas form part of the residential complex.

47. While I accept the Landlord's visits were short in duration and normally a quick in and out, the Landlord is still required to post proper notice of entry.

48. On the basis of the testimony provided by the Tenant, I am satisfied that the Landlord breached their obligations pursuant to s. 22 of the Act.

Air Conditioning Unit

49. The Tenant testified the utilities were included in his monthly rent of \$735.00. The Tenant provided a copy of the signed lease agreement that states the monthly rent is \$735.00 a month inclusive of utilities.
50. The Tenant testified that his bedroom is in an attic area of the residential complex and became extremely hot in the summer months and the temperature reached 30 degrees.
51. He testified he asked the Landlord if he could install a window air conditioning unit in his bedroom at his own expense and the Landlord agreed to this request.
52. He testified the Landlord charged him a fee of \$30.00 per month, despite the utilities being included and the Tenant providing his own window air conditioning for the period of June 2021 to September 2021, in the amount of \$120.00.
53. The Tenant claims substantial interference because the Landlord charged the Tenant a fee for the use of an air conditioner that the Tenant purports, he was not ever made aware there would be an additional charge when he requested permission of the Landlord to install the window air conditioner.

Analysis- Air Conditioning Unit

54. Based on the uncontested evidence and testimony of the Tenant, I am satisfied that at the time of the signing of the tenancy agreement the Tenant was not made aware that should he install an air conditioner appliance in the rental unit that there would be a charge for its use. There was no provision as such in the signed lease agreement provided by the Tenant.
55. I am also satisfied the Tenant asked permission of the Landlord to install a window air conditioning unit in his room and the request was granted.
56. Section 116 (1) of the RTA provides that: "A landlord shall not increase the rent charged to a tenant for a rental unit without first giving the tenant at least 90 days written notice of the landlord's intention to do so."
57. Section 123 (1) of the RTA provides that: "A landlord may increase the rent charged to a tenant for a rental unit as prescribed at any time if the landlord and the tenant agree that the landlord will add any of the following with respect to the tenant's occupancy of the rental unit:
 - a. A parking space.
 - b. a prescribed service, facility, privilege, accommodation or thing.

58. Section 16 (1) of Ontario Regulation 516/06 defines “prescribed services” for the purpose of section 123(1) of the RTA. In particular, clause 4 lists “extra electricity for an air conditioner” as a prescribed service or facility for the purposes of section 123 (1) of the RTA.
59. I find the extra electricity charge in this case meets the definition of rent and there was no evidence before me that the Landlord and Tenant agreed to increase the rent for the extra electricity charged to the Landlord for the Tenants use of the window air conditioning unit.
60. On the basis of the testimony provided by the Tenant, I am satisfied that the Landlord breached their obligations pursuant to s. 22 of the Act.

Remedies

61. The Tenant requested the following remedies:
- a. A rent abatement in the amount of \$2,205.00, which represents a 25% rent abatement for a period of one year from February 1, 2021 to January 31, 2022.
 - b. Out of pocket expenses in the amount of \$120.00, which represents the cost the Tenant was charged a utility charge for the period of June 2021 to September 2021.
62. I find that the rent abatement of \$2,205.00 that the Tenant is requesting is unreasonable given the breaches of the Act that have been proven and their impact on the Tenant. I accept that the Landlord interfered with the Tenant’s reasonable enjoyment because the Landlord failed to fix the stove top elements, removed food from the Tenant’s fridge, did not permit the Tenant to have guests past 10:00 pm or a \$30.00 per night charge would apply and entered the residential complex without posting proper notice.
63. Considering these circumstances, I find it reasonable to award a rent abatement equal to 15% of the monthly rent of 735.00 for the period of 12 months commencing February 1, 2021 to January 31, 2022, in the amount of \$1323.00.
64. I also find it reasonable to award the Tenant’s out of pocket expenses in the amount of \$120.00, which represents the extra utility charge for the air conditioning unit the Tenant was charged by the Landlord.
65. This order contains all reasons for the decision. No other reasons will be issued.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is \$1,496.00. This amount represents:
 - a. \$1,323.00 for a rent abatement.
 - b. \$120.00 for out-of-pocket expenses

- c. \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenants the full amount owing by March 31, 2023.
3. If the Landlord does not pay the Tenants the full amount owing by March 31, 2023 the Landlord will owe interest. This will be simple interest calculated from April 1, 2023 at 5% annually on the balance outstanding.

March 20, 2023

Date Issued

Trish Carson

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.