



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

**Citation:** Kennedy v Parkbridge Lifestyle Communities Inc 2023 ONLTB 25853

**Date:** 2023-03-20

**File Number:** LTB-T-036491-22

**In the matter of:** 26 LAKE BREEZE DRIVE  
GODERICH ONTARIO N7A0B7

**Between:** Deborah Kennedy Tenants          Kirk Kennedy

**And**

Parkbridge Lifestyle Communities Inc

Landlord

Deborah Kennedy and Kirk Kennedy (the 'Tenants') applied for an order determining that Parkbridge Lifestyle Communities Inc (the 'Landlord'):

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of the Tenant's household.

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

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

As of 9:45 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.

**Determinations:**

1. As explained below, the Tenants 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 \$1257.05.
2. The tenancy began in June 2019.
3. The Tenant's own the home and lease the land from the Landlord.

4. The rental unit is a home site the Tenants rent from the Landlord which includes the use of the Community Centre.

#### Tenant's Uncontested Evidence

5. The Tenant's testified they pay the Landlord a monthly rent which includes the land lease, property taxes, water testing fee and maintenance fees. They state the maintenance fee portion of the fees include the use and maintenance of the Community Centre and the snow removal and grass cutting of all the common areas within the residential complex.
6. They testified the Community Centre has a main hall, kitchen, sitting area, pool, sauna, and weight room. They state the Landlord hires a cleaning company to clean the facilities and hires someone to maintain the pool and the sauna.
7. They testified that when they signed the lease with the Landlord in 2019, they were provided a breakdown of the total amount of fees and how much was allocated to maintenance. The Tenant's provided a copy of an Official Receipt from the Landlord that shows the amount allocated to maintenance for 2019 was \$155.00 per month and the amount allocated to maintenance for 2020 was \$158.41 per month from the total fees of \$917.80 per month.
8. They testified when they moved into the home in 2019, they were told by the Landlord that the maintenance portion of the total monthly fee, being \$155.00 included the use and maintenance of the Community Centre and snow removal and grass cutting of the common areas within the residential complex.
9. They testified that in 2021, 2022 and 2023, the Landlord stopped providing them with a breakdown of the fees and only provided them with a total fee that states "rent fee and property taxes". On several occasions they asked the Landlord for the breakdown of the fees so they could determine how much was being paid toward the maintenance fees for the use and maintenance of the Community Centre and maintenance of the common areas. The Landlord would not provide this information to the Tenants.
10. The Tenant's testified the Landlord closed the Community Centre starting June 2020 and advised the Tenants that this was due to Covid.
11. They testified the Community Centre was re-opened for approximately six weeks in the Fall of 2021 but could not remember the exact dates. During this six-week period there was a sign that read "Use at Own Risk".
12. After the six-week period in the Fall of 2021, the Landlord closed the Community Centre again and advised the Tenant's that this was due to Covid.

13. They testified the Community Centre remained closed until sometime in the summer of 2022, at which time it was re-opened, and full access provided to the Tenants.
14. They testified that during the time the Community Centre was closed, they continued to pay the maintenance fees to the Landlord which included the use and maintenance of the Community Centre.
15. The Tenant's testified when they spoke to the Landlord regarding the maintenance fees that included the use and maintenance of the Community Centre and asked the Landlord for reimbursement of these fees, the Landlord informed the Tenants that the maintenance fees do not include the maintenance of the Community Centre and they would not be reimbursed.
16. They testified that the Board of Directors made an appeal to the Landlord to have all tenant's maintenance fees returned for the period the Community Centre was closed which was denied by the Landlord.

#### Analysis

17. I accept that the closure of the Community Centre interfered with the Tenant's reasonable enjoyment and find that restrictions prevented the Tenant's from receiving the full value of their monthly rent while the Community Centre was closed.
18. As the Landlord did not appear at the hearing, there was no evidence before me as to whether the Landlord was required by the Province or Municipality to remove access to the facilities in question in compliance with mandatory public health measures.
19. I am persuaded by the Tenant's uncontested testimony and evidence that the maintenance fees include the use and the maintenance of the Community Centre. Which would include the cleaning of the community centre and maintenance of the pool and sauna.
20. Therefore, I find that the Landlord substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant's or by a member of the Tenant's household.

#### Remedies

21. The Tenants are requesting the following remedies:
  - a) A rent abatement in the amount of \$2,989.33 which is 100% of the maintenance fee as follows:
    - Maintenance fees in the amount of \$155.00 per month for the period of June 1, 2020 to November 30, 2020. (\$930.00)
    - Maintenance fees in the amount of \$158.41 for the period of December 1, 2020 to December 31, 2021. (\$2059.33)

22. While I find that the maintenance fee amounts of \$155.00 for the period of June 1, 2020 to November 30, 2020 and \$158.41 for the period of December 1, 2020 to December 31, 2021, include the use and maintenance of the Community Centre, I must also consider that this amount also includes the snow removal and the grass cutting of the common areas of the residential complex.
23. I find it reasonable to award a rent abatement of 50% percent of the maintenance portion of the monthly rent of \$2,989.33 for the period June 1, 2020 to December 31, 2021, which is \$1494.66.
24. I have also considered that there was a six-week period sometime in the Fall of 2021, where the Community Centre was re-opened, and the Tenants had full use of the Community Centre even though there was a sign posted "Use at Own Risk". During this 6week period the maintenance fees the Tenants paid for the use and the maintenance of the Community Centre was \$158.41. The total maintenance fees paid during that six-week period was \$237.61 which will be deducted from the amount of \$1494.66 for a total rent abatement of \$1257.05.
25. 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 \$1310.05 This amount represents:
  - a) \$1257.05 for a rent abatement.
  - b) \$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.
4. If the Landlord does not pay the Tenants the full amount owing by March 31, 2023 the Tenants may recover this amount by deducting \$500.00 from the total rent due owing for April 2023 and May 2023 and the amount of \$310.05 for rent owing for June 2023.

**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.