



Order under Section 31 Residential Tenancies Act, 2006

Citation: Daicos v Paha Saru Ltd., 2023 ONLTB 52057

Date: 2023-08-10

File Number: LTB-T-006958-23

In the matter of: 1605, 2060 Lakeshore Road
BURLINGTON ON L7R0A4

Tenants

Between: Steven Daicos
Angelina Nesci

And

Paha Saru Ltd.

Landlord

Steven Daicos and Angelina Nesci (the 'Tenants') applied for an order determining that Paha Saru Ltd. (the 'Landlord') substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of the Tenants' household.

This application was heard by videoconference on June 14, 2023.

Only the Tenant Steven Daicos attended the hearing.

As of 9:26a.m., 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. The Tenants allege that the Landlord substantially interfered with their, and their young child's reasonable enjoyment of the rental unit by having contractors make 16 entries into the rental unit between December 2021 to November 2022. These entries were to do purely cosmetic renovations that had large entry windows and took hours to complete. Some of the entries also left behind toxic smells for days.

2. The Tenants also allege that after they notified the Landlord of their intention to move out, the Landlord substantially interfered with their reasonable enjoyment of the rental unit by having a real estate agent show the unit without any notice of entry to the Tenants. This entry occurred on November 21, 2022.
3. As explained below, the Tenants proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenants a rent abatement totaling \$2,268.48.

Scope of the Application

4. The Tenants filed their application on January 22, 2023. Pursuant to section 29(2) of the *Residential Tenancies Act, 2006* ('the Act') an application cannot be made more than one year after the day the conduct giving rise to the application occurred. There were 5 entries listed on the Tenants' application that occurred more than one year before the application was filed. As such I've only considered the 12 entries that occurred within one year of the application being filed.

Substantial Interference – The Evidence

5. The rental unit is a condo in a newly constructed building.
6. The Tenants moved into the rental unit December 1, 2021 and vacated a little over a year later, on December 16, 2022.
7. The Tenants do not allege that the majority of the entries were illegal entries. For 11 of the 12 entries the Landlord (or their associates) provided 24 hour written notice by either email or text message. The Tenants allege that the frequency, duration, unnecessariness of the renovations, the noise, and the smell left by the renovations, constitute substantial interference.
8. The Tenant Steven Daicos ('S.D') did not have a memory of the exact duration of all the visits but instead based the duration of the entries on both his memory and the notices of entry. As such S.D testified that the contractors may have arrived later or stayed later than the stated work time, the actual work time may have been less than the arrival window, and that part of the interference was waiting for the contractors to arrive.
9. The Tenant S.D testified that the Landlord's contractors made the following entries to do renovations.
10. On January 26, 2022 the Landlord's contractors entered into the rental unit to replace the cabinets in the rental unit kitchen. They entered at 9:00a.m. and stayed throughout the entire day. S.D testified that the rental unit is a new build luxury condominium that recently

had cabinets installed. S.D testified that there was nothing wrong with the existing cabinets, nor had the Tenants requested a cabinet change.

11. On January 27, 2022 the Landlord's contractors entered into the rental unit to adjust which way the glass door in the master bathroom's shower swung. The shower door previously swung left, and the contractors changed it to swing right. The entry lasted 3 hours.
12. On February 14, 2022 the Landlord's contractors entered again to continue working on replacing the kitchen cabinets. This entry occurred between 2:00p.m. and 5:00p.m.
13. On February 15, 2022, February 16, 2022, February 17, 2023 the Landlord's contractors entered to repair a highline crack in the ceiling of the rental unit's living room. The entries all occurred between 2:00p.m. and 5:00p.m. S.D testified that the Landlord did not indicate that the crack presented a structural or safety issue to the building. The contractors also left mess from their work and the Tenants had to clean it up afterwards.
14. On two dates at the end of February 2022, the Landlord's contractors entered to change the design of the area surrounding the rental unit fireplace. This was a cosmetic change and there was nothing wrong with the function of the existing fireplace. S.D testified that this work lasted for two full workdays and the work involved significant grinding down of the existing fireplace design. The work also left toxic smells that lasted for 2 and a half days after the entries.
15. On March 22, 2022 the Landlord's contractors entered to install locks on the rental unit's bedroom doors. This involved changing the handles of the doors as well. S.D testified that this entry lasted a couple of hours.
16. On May 5, 2022 the Landlord's contractors entered into the rental unit to replace the glass in one of the showers. The previous glass was not broken or bearing any defects. The entry window was 12:30p.m. to 4:00p.m.
17. On May 24, 2022 the Landlord's contractors entered to adjust the balcony screen door and to change which side of the closet a mirror was mounted to. S.D testified that the entry window was between 9:00a.m. and 12:00p.m. and the work took a few hours. S.D testified that the mirror was hung with silicon which resulted in toxic smells in the rental unit for two days.
18. Sometime prior to November 21, 2022 the Tenants notified the Landlords that they intended to move out. On November 21, 2022 S.D testified that a real estate agent entered the rental unit without notice with prospective renters and proceeded to show the unit.
19. The Tenants have a one year-old daughter. S.D testified that is daughter is sensitive to loud noises. S.D explained that he must warn his daughter before turning on appliances

like a vacuum because it is very traumatic for her. S.D testified that the constant entries into the rental unit affected his daughter and her ability to take her scheduled naps.

20. S.D testified that all of the renovations done by the Landlord were purely cosmetic. S.D testified that the building in which the rental unit is located had recently been built, and he knows from speaking with the buildings employees that the Landlord signed off on the design elements in the rental unit. S.D testified that none of the renovations were requested by the Tenants.
21. The Tenants wrote in their application that they “always reminded” their Landlord that their daughter naps midday. S.D testified that the Landlord took no steps to minimize the interference that they work had on his family. S.D testified that on December 30, 2021 he called the Landlord regarding an interaction with the contractors who installed the cabinets, but the Landlord was dismissive.

Substantial Interference – Analysis

22. Section 22 of the Act states that 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.
23. Section 8(3) of O.Reg. 516/06 (‘the regulation’) addresses what the Board must consider when making a determination of whether a landlord substantially interfered with a tenant during maintenance, repairs, or while making capital improvements:
 - (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.
24. I accept all of the uncontested evidence of the Tenant S.D as I found it to be credible.
25. I find on a balance of probabilities that the landlord substantially interfered with the reasonable enjoyment of the rental unit by the Tenants and their young child by making 11

entries to do purely cosmetic work in the rental unit. The Tenants' child has a sensitivity to noise and had her nap schedule repeatedly interfered with. The work often lasted for hours, had large arrival windows for the Landlord's contractors, and left behind toxic smells. I find that the interference was unreasonable in the circumstances as much of the work was trivial in nature, such as changing the direction a shower door swings, and the Landlord took no steps to minimize the impact on the Tenants.

26. I also find that the entry by the Landlord's real estate agent that occurred without any notice substantially interfered with the Tenants. The Tenants have a young child who is disturbed by entries into the unit. The entry was also without notice and the Tenants had no time to prepare beforehand.

Remedies

27. The Tenants request a rent abatement in the amount of \$3,213.68. During the tenancy, the Tenants monthly rent was \$5,750.00. The daily rent of the rental unit (monthly rent multiplied by 12, divided by 365) is \$189.04. The Tenants request a 100% rent abatement for the 17 days on which entries occurred. However, as 5 of the entries listed on the Tenants application are outside the limitation period, I find it reasonable to reduce the requested amount by that number of days. As such I will consider whether it is appropriate to award \$2,268.48.

28. The entries occurred in January 2022, February 2022, March 2022, May 2022, and November 2022. For the affected 5 months \$2,268.48 represents a 7.89% rent abatement.

29. Section 8(4) of the regulation establishes that the Board shall not issue an abatement of rent for substantial interference caused by maintenance, repairs, or capital improvements if all of 10 listed conditions are satisfied. The Landlord does not satisfy four of those conditions and as such a rent abatement can be awarded. The conditions not satisfied by the Landlord are:

1. The Landlord did not give the Tenants 60 days notice;
2. The work was not done for one of the purposes listed in section 8(4)6 of the regulation;
3. The duration of the work was not reasonable in the circumstances;
4. The Landlord did not take reasonable steps to minimize any interference resulting from noise associated with the work.

30. Based upon similar cases at the Board I find a rent abatement of \$2,268.48 appropriate in the circumstances. A rent abatement of 1-10% is typically provided when there is minimal disruption to a tenant's ability to reside in the unit. While the days on which the entries

occurred constituted a substantial interference with the Tenants reasonable enjoyment of the rental unit, the entries did not occur every day. As such I find a 7.89% abatement in the months that the entries occurred to be reasonable.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is \$2,316.48. This amount represents \$2,268.48 for an abatement of rent and \$48.00 for the Tenants' filing fee.
2. The Landlord shall pay the Tenants the full amount owing by August 31, 2023.
3. If the Landlord does not pay the Tenants the full amount owing by August 31, 2023, the Landlord will owe interest. This will be simple interest calculated from September 1, 2023 at 6.00% annually on the balance outstanding.
4. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

August 10, 2023

Date Issued

Amanda Kovats

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.