Order under Section 31
Residential Tenancies Act, 2006

Citation: Ronan v Singh, 2023 ONLTB 13936
Date: 2023-01-09
File Number: LTB-T-002372-22

In the matter of: 1, 100 Waterloo Avenue
Guelph ON N1H3H8

Between: Jesse Ronan — Tenant

And

Jasbir Singh — Landlord

Jesse Ronan (the 'Tenant') applied for an order determining that Jasbir Singh (the 'Landlord'):

- harassed, obstructed, coerced, threatened or interfered with the Tenant;
- changed the locks or the locking system to the rental unit or building without giving the Tenant replacement keys;
- entered the rental unit illegally;
- 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 June 22, 2022, July 8, 2022 and November 2, 2022.

The Landlord's representative, Kiranpreet Kaur, and the Tenant attended the hearing.

Determinations:

1. The application arises from a tenancy which commenced on April 3, 2021. Order SOL-24094-21-RV issued June 21, 2022 previously determined that the tenancy terminated on May 13, 2022. The rent was $600.00 per month for the duration of the tenancy.

2. The residential complex comprises a two-storey house, with one apartment on the ground floor, another on the upper floor. The Tenant's uncontested testimony was that he exclusive use of one bedroom in the main-floor apartment, and that there were shared kitchen, washroom, and other communal spaces within the shared apartment. Up to four other people lived within the apartment, with exclusive use of other bedrooms. The arrangement described constitutes a rooming house-type arrangement. On the basis of the Tenant's uncontested testimony, I find that the rental unit comprised the one bedroom to which he had exclusive possession. The balance of the apartment comprised common areas and was not part of the rental unit.

3. The Tenant has made several allegations of the Landlord having breached statutory obligations under the *Residential Tenancies Act, 2006* (the "Act"), under the rubrics enumerated in the style of cause above. I shall address the allegations thematically, having regard to the evidence presented by the Tenant, before speaking to the remedies sought.

4. I note that no claim advanced that supports the allegation that the Landlord changed the locks or the locking system to the rental unit or building without giving the Tenant replacement keys.

5. Access to the apartment: The Tenant's uncontested testimony was that he was only provided a key to the bedroom to which he had exclusive use. He was never given a key to the doors that gave access to the communal apartment in which the bedroom was located, and this outer door was persistently unlocked. In consequence, the Tenant noted that there were repeated unknown visitors to the common areas, which he estimated took place on almost a weekly frequency.

6. Events specifically enumerated in the Tenant's uncontested testimony included the following:

    a) November 27, 2021: Unknown person in common areas
    b) February 20, 2022 – File unknown people entered common areas to look around.
    c) April 15, 2022 – Unknown person in common areas going through mail.
    d) Tenants in upstairs unit periodically coming downstairs to use the stove when the stove upstairs was not working.

7. From the Tenant's testimony, I find that the Tenant made the Landlord aware of others having unrestricted access to the rental unit because the apartment door was never locked, and did so within the first month of the tenancy. The Tenant introduced a number of text messages ranging in date from June 2021 to February 2022 in support of ongoing contact with the Landlord. I also find that the Landlord took no effective steps to curtail this unrestricted access, as the Tenant's uncontested testimony was that the lock had not been addressed by the time the tenancy terminated.

8. I also find that the Tenant has demonstrated that the Landlord's inaction had a substantial impact on his reasonable enjoyment of the rental unit and residential complex. From the Tenant's uncontested testimony, the common areas in the apartment were subject to incursions from those who were not tenants in the apartment. While these were not constant, the Tenant testified that the uncertainty over who might be in the rental unit has a substantial impact on his enjoyment of the rental unit.

9. Section 22 of the Act imposes the following obligation on a landlord:

> 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.

10. The Landlord's omission noted above amounted to substantially interfering with the Tenant's reasonable enjoyment of the residential complex, as the omission interfered with what I consider to be a reasonable expectation of privacy and security within a communal rooming house-type living arrangement.

11. I therefore find on a balance of probabilities that the Landlord was in breach of his obligations under section 22 of the Act, and that such breach took place for substantially all of the tenancy.

12. Number of occupants in apartment: The Tenant testified that, including himself, five adults occupied the ground-floor apartment, sharing one bathroom and one kitchen and the balance of the common areas. The Tenant testified that, at the commencement of the tenancy, he has understood that "a couple" was also living in the apartment. The Tenant subjectively believed that this arrangement amounted to overcrowding, and noted the competition for washroom and kitchen use to be a source of frustration, and also aggravating to his mental health.

13. The Tenant presented no evidence that the arrangement was contrary to municipal occupancy by-laws. Absent proof that the occupancy in a rooming house was outside of mandated norms, I find it difficult to find that the Landlord has breached his obligations under the Act in relation to a rooming house-type arrangement.

14. I do not find on a balance of probabilities that the Tenant has established any breach of the Landlord's obligations under the Act based on the number of people living in the rental unit.

15. Mould in bathroom: The Tenant alleged that there was black mould in the bathroom, which he found disgusting and made him wish to avoid the bathroom. The Tenant had no microbiological or other analysis to support his unsubstantiated claim that the substances he observed were in fact mould. Photographs presented at the hearing were inconclusive, and at least one suggested mineralization on a faucet rather than mould. I do not find that the presence of mould was proven. I cannot find that a subjectively unclean bathroom could constitute either harassment or a substantial interference.

16. Even were the presence mould proven, I note that the Tenant indicated his unwillingness to clean up the substance. Under section 16 of the Act, parties are required to take reasonable steps to minimize their losses. The failure to mitigate by basic cleaning would in my view severely undermine the Tenant's claim to loss of reasonable enjoyment were mould to have been proven.

17. Temperature control: The lower-level apartment did not have a thermostat located in it. Any control of heat or air conditioning was within the control of the occupants of the upper-level unit. The Tenant indicates that, over the course of a few times a week for one warmer month, he awoke to find the heat on, and had to go upstairs to ask that the furnace be turned off. From the Tenant's uncontested testimony, the tenants upstairs always acceded to his requests.

18. While I accept that the Tenant was momentarily inconvenienced by these events, there is no evidence before that the Tenant's interference with the reasonable enjoyment of the rental unit was in any way substantial. There was no interference with vital services, as there was no withholding or interference with the supply of hot or cold water, fuel,

electricity, gas, or heat, being the "vital services" defined in section 2 of the Act. I find that the Tenant's claim on this ground is without foundation.

19. Construction: From Late November 2021 to January 9, 2022, the Landlord and/or contractors were engaged in construction work in the basement of the residential complex, for four or more hours on some days. Noise emanating from the basement included those of saws and power tools. The Tenant alleged that this noise substantially interfered with his reasonable enjoyment of the rental unit.

20. On my seeking clarification from the Tenant, he indicated that the construction work typically started around 10:00 AM and went until mid-afternoon. Given that the work was undertaken during normal business hours, and the Tenant presented no evidence to suggest that the Landlord at any time breached any municipal noise-abatement by-laws, I cannot find that there was a substantial interference with reasonable enjoyment. Some subjective frustration was clearly occasioned by the noise, but I do not find that such frustration has been proven to be substantial interference.

21. Landlord Entry into the Rental Unit: The Tenant enumerated instances of the Landlord entering the rental unit without lawful notice. On May 29, 2021, the Landlord tried to enter the common areas of the apartment without notice. On June 4, 2021, the Landlord entered the common kitchen area without a mask, ostensibly to check up on rent as he had recently fired his property manager. Approximately six instances in November and December of 2021 were also alleged, incidental to the construction work previously described. The Tenant confirmed that in all instances the Landlord never entered the exclusive-use bedroom.

22. As far as a strict "illegal entry" assertion, the claims must fail, as I have previously determined that the rental unit comprised the bedroom only. Sections 25 through 27 of the Act restrict when the Landlord may legally enter a rental unit. These restrictions do not apply to the common areas of a rooming house. As the Tenant's uncontested testimony was that the Landlord never entered the rental unit, any claims that the Landlord breached the provisions of sections 25-27 are without foundation.

23. Repeated entry to common areas might be considered harassment, and therefore contrary to the Landlord's obligations under section 23 of the Act: "A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant."

24. The term "harassment" is not defined in the Act, but in common with numerous other Board decisions, I accept the definition in section subsection 10(1) of the *Ontario Human Rights Code*: "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome."

25. If other elements (such as frequency, duration or conduct during the visit) suggest that the intention of the Landlord's visit was vexatious, harassment might be made out.

26. For similar reasons, repeated visits to the common areas might give rise to a claim of substantial interference.

27. There was nothing in the Tenant's evidence to suggest that the conduct was in any way vexatious, or had a substantial interference on the Tenant. The instances of May and June 2021 are largely isolated, and the instances of November and December 2021 related to construction that took place during normal business hours. I do not find that any

interference was substantial, and I likewise cannot find that the conduct constituted harassment. The claim must therefore be rejected.

28. Bedbugs: The Tenant alleges that the rental unit became infested with bedbugs, and enumerated instances in July and October of 2021 when he was disturbed by their presence or bites from them. The Tenant claims that the presence of bedbugs made living unbearable. The Tenant however indicated that he could not recall ever telling the Landlord about the presence of the bedbugs. I cannot find that the Landlord has engaged in either harassment or substantial interference by an action of which the Landlord is entirely unaware. The claim must therefore be rejected.

Remedies

29. The Tenant has sought a number of remedies, including an abatement of all rent paid over the course of the tenancy, first-and-last month's rent and moving expenses, and general damages.

30. The Landlord's position is that the Tenant was in arrears of rent for nearly all the tenancy, and therefore the Landlord cannot be held in breach of the Act.

31. In a conventional contract, the Landlord's position is not without logical merit. Payment of rent is, at common law, a fundamental covenant of a tenant, and failure to do so may be treated at common law as a repudiation of the contract. Repudiation of a contract by one party affords the innocent party an election to be relieved of their performance obligations under the contract, and in conventional commercial leasing might entitle a landlord to such recourse as termination of the leasehold estate, distress, or other self-help remedies arising from a tenant's repudiation of the lease.

32. The Act modifies significantly remedies in residential leasehold estates. Self-help remedies of a landlord are largely abolished (e.g., distress abolished by section 40), and for non-payment of rent a landlord must take its recourse against a defaulting tenant within the procedures defined in Act, including the formalities codified by sections 59, 74, and others.

33. As the Act provides a complete code for addressing a tenant's failure to meet the covenant to pay the rent, the common-law contractual remedies flowing from repudiation for non-payment of rent must be seen as extinguished by statute. The Landlord cannot in my view rely on the doctrine of repudiated contracts that an innocent party may elect to be relieved of their performance obligations under a residential tenancy contract. Instead, the Act has codified and formalized the appropriate recourse to a repudiation. The reversal of the common law can be no more clearly stated by having regard to subsection 83(3) of the Act, which bars this Board from terminating a tenancy when a Landlord "is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement."

34. The net effect is that a tenant's breach of a covenant to pay does not allow reliance on the doctrine of repudiation to relieve the Landlord of their obligations under the Act. A landlord remains bound to perform its obligations under the Act, even in the face of a tenant's fundamental default of paying rent.

35. Nevertheless, the findings previously made do not establish a grievous breach of the Act, and therefore do not support a substantial remedy. The Tenant's complaints about unrestricted access to the unit were raised with the Landlord a few weeks into the tenancy. The Landlord took no action. This had the effect of causing some disturbance with the reasonable enjoyment of the rental unit. Restriction of access to an apartment in a rooming house set-up is a reasonable expectation of a tenant in such circumstances. The Tenant bargained for a standard of living and security that the Landlord failed to provide. The Tenant is therefore entitled to an abatement of rent for the disconnect between what was bargained for and what as delivered.

36. I find that an abatement of $1,080.00 is appropriate in the circumstances, being calculated on the basis of a 15% abatement over 12 months. As the Tenant was found liable for arrears by order SOL-24094-21-RV issued June 21, 2022, this award is offset against any outstanding amounts owing under that order.

37. The Tenant has sought a number of other remedies, including moving expenses. The Tenancy was ultimately terminated by order SOL-24094-21-RV issued June 21, 2022 for non-payment of rent, therefore I find any remedies or compensation for moving to be improperly awarded.

38. The Tenant sought $3,000.00 for transportation, food, and shelter for periods during the tenancy when he decided to leave the rental unit to "preserve mental and physical health." No evidence supported the amounts of these claims. They are therefore not allowed.

39. The Tenant sought $7,700.00 for increased medical expenses, although had no evidence of these expenses being incurred, let alone a nexus between these expenses and the conduct of the Landlord. They are therefore not awarded.

40. The Tenant also sought $15,000.00 for "loss of creative work / financial opportunity due to pain and suffering." For these too, the Tenant provided no evidence that would substantiate such a claimed loss, nor did he demonstrate a nexus between these expenses and the any breach of the Landlord's obligations. They are therefore not awarded.

41. The Tenant also sought $5,000.00 for future psychiatrist bills for pain and suffering. There was no independent substantiation of this amount or activity, and it is therefore not awarded.

42. The Tenant also sought an order of the Board requiring a health and safety inspection of the residential complex. As the tenancy is at an end, I do not consider this an appropriate remedy, even were it within the Board's power to give.

Administrative Fine

43. The Tenant has also sought an administrative fine.

44. While it is not binding upon me, the Board's Guideline 16 outlines relevant considerations in determining the appropriateness of an administrative fine:

> An administrative fine is a remedy to be used by the Board to encourage compliance with the Residential Tenancies Act, 2006 (the "RTA"), and to deter

landlords from engaging in similar activity in the future. This remedy is not normally imposed unless a landlord has shown a blatant disregard for the RTA and other remedies will not provide adequate deterrence and compliance. Administrative fines and rent abatements serve different purposes. Unlike a fine, a rent abatement is intended to compensate a tenant for a contravention of a tenant's rights or a breach of the landlord's obligations.

45. Deterrence for egregious conduct, beyond whatever deterrent effect simple damages might provide, is an over-riding factor. There is simply no demonstrated egregious conduct to merit imposing a fine, based on the facts before me.

It is ordered that:

1. The Landlord shall pay to the Tenant $1,080.00 as an abatement for substantially interfering with the Tenant’s reasonable enjoyment of the rental unit at residential complex.

2. The Landlord shall also pay to the Tenant $48.00 for the cost of filing the application.

3. The total amount that the Landlord woes the Tenant is $1,128.00.

4. The total amount the Landlord is owed in order SOL-24094-21-RV issued June 21, 2022 shall be applied to the amount the Landlord owes the Tenant in this order.

January 9, 2023
Date Issued

Ian Speers
Associate Chair, 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.