



**Order under Section 30 and 31
Residential Tenancies Act, 2006**

Citation: HARRIS v RANKINE, 2023 ONLTB 13834

Date: 2023-01-06

File Number: LTB-T-065064-22

In the matter of: BASEMENT, 528 SIMCOE STREET SOUTH
OSHAWA ONTARIO L1H4J8

Between: Horatio Rankine Landlord

And

Corey Harris Tenant

Corey Harris (the 'Tenant') applied for an order determining that Horatio Rankine (the 'Landlord'):

- entered the rental unit illegally.
- altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys.
- 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, obstructed, coerced, threatened or interfered with the Tenant.
- withheld or interfered with the Tenant's vital services.

The Tenant also applied for an order determining that the Landlord failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards.

This application was heard by videoconference on December 20, 2022. The Landlord and the Tenant attended the hearing.

Preliminary Issue:

1. The Tenant stated that the Landlord did not alter or change the locks to the residential complex. Therefore, this part of the Tenant's application is withdrawn.

Determinations:

2. 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 compensation.
3. The Tenant resided in the basement unit of a house. The tenancy began in October 2021. It was a month-to-month tenancy.

Tenant's Evidence

4. The Tenant stated he rented a one-bedroom unit of the basement and had exclusive use of the kitchen and bathroom.
5. On July 16, 2022, there was a septic tank issue. There was sewage water and feces coming through the toilet, sinks, etc. The Tenant reported the septic tank issue to the Landlord, and it was not resolved for the duration of the tenancy. He stated that the floors squeaked from being wet, he had difficulty breathing while in the unit, he could not use the water for showering or drinking.
6. In October 2022, the Tenant became ill from the septic issues. The Tenant went to the ICU at the hospital and was admitted for one week. When he returned, he found a family residing in his unit and using his furniture. He stated that he did not receive a notice of termination, an order from the Board terminating the tenancy or agreed to terminate the tenancy on the date he left for the hospital. He left all of his belongings in the unit when he went to the ICU. He stated he was in the process of moving out of the unit when he discovered the family.
7. On October 21, 2022, the Tenant hired a moving truck to remove his belongings from the unit. Since then, he slept outside for one month and resided in different places. He has since found a place the Thursday before the hearing, but it is only temporary.

Landlord's Evidence

8. The Landlord's position was that at the beginning of the tenancy, the Tenant was only entitled to the use and occupation of one bedroom and the shared use of the kitchen and bathroom. The Tenant was allowed to use the second bedroom for storage.
9. The Landlord agreed that there was a septic tank issue in July 2022. However, he appropriately responded to the issue. He attended the unit and started scooping out sewage water and feces from the Tenant's unit. He then cleaned the unit with a mop and ammonia and vinegar. He stated the Tenant is responsible for the flooding as he found wipes in the toilet. He did not hire a plumber to address the issue until October 2022 because there were parts that could not be obtained, and some plumbers did not want to do it. Further, the septic tank issue did not cause the Tenant's illness as he was quite ill before he moved into the unit.
10. The Landlord submitted that the Tenant agreed to move out at the end of September 2022. The Landlord states that in October 2022, he rented only one bedroom of the basement to the family. The family did not move into the Tenant's bedroom.

Maintenance Issues

11. I am satisfied that the Landlord was in breach of his maintenance obligations.
12. This application is based on the rights and obligations set out in subsection 20(1) of the Act which says:

A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.

13. It was uncontested that there was a septic tank issue in the unit in July of 2022. I am not satisfied that the Tenant caused the septic tank issue by putting wipes in the toilet, as the Landlord did not submit sufficient evidence, such as plumber's report or photographs, to persuade me that the Tenant caused the damage. As such, I am satisfied the rental unit was not in a good state of repair.
14. The next question to be answered is whether the Landlord responded to the disrepair in a timely and effective manner. In *Onyskiw v. CJM Property Management Ltd.*,¹ the Court of Appeal for Ontario rejected the position that a landlord is automatically in breach of its obligation to maintain and repair under subsection 20(1) as soon as an interruption in service occurs or the unit is in need of repair. The Court found that the reasonableness of a landlord's response and conduct to the maintenance issue(s) is a factor in deciding whether a breach occurred and/or a remedy. This is consistent with the Board's *Interpretation Guideline 5*.
15. I do not find that the Landlord responded reasonably to the septic tank issue. While the Landlord stated that he cleaned the unit, the Tenant's believable and credible evidence was that he could not use the water, he could not breathe in the unit, and the floors squeaked until he vacated the unit. Further, the Landlord's own evidence was that a plumber did not attend the unit to repair the septic tank issue until after the Tenant vacated in October 2022.
16. As such, the Tenant is entitled to a remedy. The Tenant's application sought rent abatement, compensation for his sound mixer damaged by the sewage, and money for UberEats as he was unable to cook with the water.
17. In consideration of the impact and the duration of the disrepair issue, I find that the Tenant is entitled to rent abatement in the amount of \$495.00. I fix the abatement percentage at 15%. The Tenant states that he became very ill from the septic tank issue. The Tenant did not submit sufficient evidence, such as medical documents, to persuade me that the septic tank issue caused any illness. While the Tenant states medical documents were submitted with his application, no such evidence was found in the Board's records. Further, the Landlord's testimony was that the Tenant was ill before the septic tank issue. As such, I am not persuaded that the Tenant is entitled to a larger rent abatement for the septic tank issue.
18. I also find that the Tenant is entitled to compensation for having to use food delivery due to the septic tank issue. As I have found that the Tenant could not use the water, it follows that he was unable to cook. However, I find that the amount claimed by the Tenant is unreasonable. The Tenant sought \$1,500.00 in his application but did not provide any receipts to support this claim. In consideration of my prior knowledge and like cases before the Board, I find that the appropriate amount is \$300.00.
19. I do not find that the Tenant is entitled to compensation for damages for his sound mixer. The Tenant did not submit any supporting evidence, such as photographs of the damaged sound mixer or receipts or advertisements for sound mixers, to persuade me that it was damaged or what the reasonable replacement cost might be.

¹ 2016 ONCA 477 [*Onyskiw*].

Withheld or interfered with vital services or care services

20. The Landlord interfered with the Tenant's vital services with the septic tank issue. As found above, the Landlord did not reasonably respond to the septic tank issue. The Tenant's believable and credible testimony was that he was without usable water from the date of the issue and for the duration of the tenancy. Clean water is a vital service. Therefore, I find that the Landlord withheld or interfered with the Tenant's vital services. The rent abatement above appropriately compensates the Tenant.

Illegal entry

21. It was undisputed that the Landlord allowed the family to move into the basement. However, the parties disputed what the Tenant was renting from the Landlord. The Tenant stated he rented one bedroom of the basement and had exclusive use of the kitchen and bathroom. The Landlord stated the Tenant rented only one room from the Landlord and the kitchen and bathroom were shared facilities. The Landlord's position was that the kitchen, bathroom and second bedroom were not for the exclusive use of the Tenant, and therefore, he did not illegally enter the Tenant's unit.

22. On a balance of probabilities, I find that the Tenant was entitled to exclusive use of only one bedroom of the unit and shared use of the kitchen and bathroom. I base this on the Tenant's own testimony that he rented one bedroom of the basement unit. However, I find that the Landlord entered the unit illegally.

23. Sections 25 through 27 of the Act provide that in most cases a landlord must give a tenant a written notice of entry at least 24 hours in advance in order to enter a rental unit, except in the case of an emergency or if the tenant consents to the entry.

24. While the kitchen and bathroom were intended for shared use, this does not entitle the Landlord to enter these areas without providing proper notice to the Tenant. The Landlord led no evidence that proper notice was provided when the Tenant went to the ICU. Therefore, I find that the Landlord illegally entered the unit.

25. As such, the Tenant is entitled to a remedy. I find that the Tenant is entitled to \$100.00 for the entry. The impact on the Tenant was not substantial as it was uncontested that he was in the ICU at the time.

Substantial interference

26. I find that the Tenant was substantially interfered with regarding the septic tank issue, for the reasons outlined above. The rent abatement above appropriately compensates the Tenant.

27. Regarding the family moving into the second bedroom, I do not find that the Tenant was substantially interfered with. In my view, the Tenant knew that the basement was not for his exclusive use. While he was surprised that another family moved in, the believable and credible testimony of the Landlord was that they only occupied the second bedroom and

used the shared kitchen and bathroom. It was also uncontested that the Tenant was already in the process of vacating the unit. As such, I do not find that the Tenant was substantially interfered with when the family moved in.

28. Therefore, I find that the Landlord did not substantially interfere with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household.

Administrative Fine

29. The Tenant also requested the Board order the Landlord pay an administrative fine for breach of the Act. The Board's Interpretation Guideline 16 provides insight into the Board's use of fines and states that an administrative fine is a remedy to be used to encourage compliance with the Act 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 Act and other remedies will not provide adequate deterrence and compliance."
30. In the present case, I do not find that the Landlord exhibited a blatant disregard for the Act. The request for an order for an administrative fine is denied.

Pain and Suffering

31. The Tenant seeks general damages in the amount of \$5,000.00 for pain and suffering as the septic tank issue affected his health and he was denigrated from having to move out due to a new family living in his unit.
32. The Tenant submitted that he had become very ill and was admitted into the ICU due to the septic tank issue. As found above, the Tenant did not provide sufficient medical evidence to persuade me that his health was affected by the septic tank issue.
33. Regarding the family moving into the unit, as found above, the Tenant was not entitled to the exclusive use of the entire basement. As such, I do not find that the Tenant had to vacate the unit as a result of the family moving into the second bedroom. Therefore, I do not find that the Tenant is entitled to any compensation for pain and suffering.
34. This order contains all of the reasons within it. No further reasons shall be issued.

It is ordered that:

1. The Landlord shall pay to the Tenant \$495.00. This amount represents rent abatement.
2. The Landlord shall pay to the Tenant \$300.00. This amount represents out-of-pocket expenses incurred for food delivery.
3. The Landlord shall pay to the Tenant \$100.00. This amount represents compensation for the illegal entry.
4. The Landlord shall pay to the Tenant \$53.00. This amount represents the cost the Tenant incurred to file this application.

5. The total amount the Tenant owes the Landlord is \$948.00.
6. If the Tenant does not pay the Landlord the full amount owing on or before January 17, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 18, 2023 at 2.00% annually on the balance outstanding.

January 6, 2023

Date Issued

Camille Tancioco

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.