



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

Citation: GUISTE v FETTAH, 2022 ONLTB 11666

Date: 2022-11-14

File Number: LTB-T-056062-22

In the matter of: 352 MCDOWELL RD E
Simcoe ON N3Y4J9

Between: SERDAR FETTAH Landlord

And

JUSTIN GUISTE Tenants
KARA SHOLHAN

2022 ONLTB 11666 (CanLI)

SERDAR FETTAH (the 'Landlord') applied for an order to terminate the tenancy and evict JUSTIN GUISTE, KARA SHOLHAN (the 'Tenants') because:

- entered the rental unit illegally.
- altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenants replacement keys.
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of the Tenants’s household.
- harassed, obstructed, coerced, threatened or interfered with the Tenants.

On October 5, 2022 the Board issued interim order LTB-T-056062-22 preventing the Landlord from re-renting the unit and ordering the Landlord to safeguard the Tenants’ property.

On November 15, 2022, the Board issued interim order LTB-T-056062-22-IN2 giving the Tenants 72 hours to retrieve their property.

This application was heard by videoconference on November 7, 2022 and concluded on March 3, 2023.

The Landlord, the Landlord’s Representative, Jamie Pereira, and the Tenant, Justin Guiste attended the hearing. Melanie Dickson, Property Manager, attended as witness for the Landlord.

Preliminary Issues:

Does the Act apply? Yes, the Act applies.

1. I considered submissions from the Landlord about Section 5(j) of the Act with respect to premises occupied for business or agricultural purposes, but I find it does not apply with respect to this tenancy. Approximately 50% of the residential complex is forest and the other 50% is mostly field and includes a house, barn, and warehouse. The residential tenancy

agreement doesn't distinguish or eliminate part of the 100 acres property as being excluded, and there's no indicating that the purpose of the accommodation was for business or agricultural purposes with living accommodations attached. There's no dispute the written tenancy agreement identifies the intended use as a "hobby" and for residential purposes. The Form of the tenancy agreement was also based on residential not commercial use. The Landlord also filed applications with the Board to exercise his rights under the RTA which suggests the real substance of their agreement was residential not for a business or agricultural purposes or both.

2. The Tenants have a vegetable garden for personal use and approximately 2 to 4 cows, 10 pigs and chicken on the property for possible sale but agricultural use is minimal. I considered court cases, *Hahn v. Kramer* (1979), [1979 CanLII 2111 \(ON SC\)](#), 23 O.R. (2d) 689 and *OnTheGoShipping Inc. v. G. Khan Medicine Professional Corporation*, 2020 ONSC 2789 which gives guidance on the test where there's a multi use property. In these cases, the Courts found that *Commercial Tenancies Act*, not RTA, applies to a mixed use property where the "predominant purpose" of the property was for business or agricultural. In this case, I find the predominant use of the property was residential.

Adjournment:

3. On March 3, 2023, the Tenant requested for an adjournment because he was waiting for FOI reports related to an incident on November 20, 2022 and he had hard copies of photographs that he wanted to file through Service Ontario which was over an hour drive away and has not had time to submit. The adjournment request is denied.
4. The FOI request for police report of an event that occurred on November 20, 2022 is irrelevant to the Tenant's claim. The interim order issued on November 15, 2022, allowed the Tenants to retrieve their property between November 19 to November 21, 2022. The Tenant was given clear oral and written direction to send photographs in advance of the hearing to support his claim of property damage and/or loss. The Tenants previously emailed evidence both to the Board and Landlord in advance of the first hearing and there was no explanation why he could not do the same for the second hearing. I considered the Tenant's claim that he was unable to get into the portal yet there was no evidence to suggest that he contacted the LTB to resolve the issue or that the photographs could not be emailed.
5. The Board is required to ensure the most efficient use of their time and to adjourn would not be reasonable in this case as the Tenants had 3.5 months to disclose relevant evidence in advance of the hearing.

Determinations:

6. As explained below, the Tenants have proven on a balance of probabilities the allegations contained in the application.

7. There's no dispute the parties had an agreement to terminate the tenancy on September 30, 2022 as supported by their written communication dated August 12, 2022 which set out terms related to the Tenants vacating the unit. The Landlord inspected the unit on September 26, 2022 and based on information from neighbours that the Tenants was last seen in August, he testified he believed the unit was abandoned. The Landlord texted the Tenants that same day, on September 26, 2022, informing him he changed the locks which the Tenants responded was illegal. The Landlord and MD, without regard to the Tenants' rights, posted a 'abandoned notice' on the door of the house on September 26, 2022" even though the Tenants had communicated to him that he did not move out. The Landlord ignored the Tenant's communication, and it was only on October 6, 2022, after Board order was issued on October 5, 2022, that the Landlord sent a text to backtrack and justify his actions by claiming the unit was abandoned. On October 22, 2022 the Tenants received communication from the Landlord's property manager, MD letting him know his items/property was stored in a bin on the property and he had to retrieve them by October 23, 2022. The Tenants called and texted MD but received no response.
8. I find the Tenants legally had the right of possession of the rental unit up to September 30, 2022. By law, a tenancy can terminate by Board order, notice of termination or by agreement. The tenancy was for a fixed one-year term therefore the earliest date the tenancy could end was October 31, 2022 with 60 days notice doesn't apply in this case. There's no dispute the parties had an agreement to terminate the tenancy on September 30, 2022 as supported by their written communication on August 12, 2022. Whether the Tenants was staying there on occasion from August or September while moving his property out slowly is irrelevant. The Tenants had the right of possession to September 30, 2022.

Entry

9. The Landlord posted a notice of entry before entering on September 26, 2022. Although the Tenants did not see Notice, I find the entry on September 26, 2022 to be lawful. I do find, however that the Landlord entered the unit unlawfully once he changed the locks on and after September 26 to September 30, 2022 and a serious breach of the Tenants' rights who had possession of the unit.
10. The Landlord also substantially interfered with the Tenants' reasonable enjoyment of the rental unit having prevented the Tenants from collecting their property and subsequently collecting, packing and storing the property into a storage bin on the property. The Landlord had no regard to the Tenants' property. Garbage such as the Tenants' mattresses that were meant to be discarded was added to the storage bin where the Landlord mixed shoes, cloths in garbage bags and other items. The Landlord's actions cannot be justified because he deemed the unit uninhabitable, in a poor state of cleanliness and allegedly damaged. There was no evidence that declared the rental unit uninhabitable by housing, safety or maintenance standards and the Landlord cannot deem it so without following due legal process.

Tenants' property:

11. The Tenant stated he was in the process of moving his property to a place (5 hours away) and was slowly moving his property out since August 2022. The Tenant provided a list of

items that was left behind which was moved and held in a storage bin on the property. The Landlord and his witness described the Tenants' property as garbage and the Tenants said there was computers, furniture, cloths, television stands, shoes, and other property that was left behind.

12. At the first hearing the Tenant was unable to present evidence about missing, damaged or lost property because it was still held by the Landlord, therefore interim order LTB-T-056062-22 was issued on November 15, 2022, requiring the Landlord to allow the Tenants access the unit and/or complex to collect his property
13. The Tenant went back to the unit on November 20, 2022, and stated he collected only some of his property and that damages were found to family heirlooms, two living room chair, his grandmother's dining room table, and TV stand. He stated his sports card collection was warped and 60% of the items in the bin were damaged including the kids' toys. The Tenant also referred to planter pots valued at \$1,000.00, fences valued at \$700.00 and three gates valued at \$250.00 each which were left behind including a small trailer. In addition, the Tenants stated the following items were damaged: his stock of 35 pairs of Nike shoes valued at \$6,000.00, his sports card collection including Wayne Gretzky rookie cards estimated value \$2,500.00 to \$3,000.00; his computers valued at \$2,800.00 to \$3,000.00, his gaming desk valued at \$700.00, his chair valued at \$400.00, his box of old video games valued at \$500.00, his glass coffee table was broken valued at \$800.00. The Tenants also stated there was clothing valued at \$2,000.00 that became moldy which had to be thrown away; his two mother cats and five kittens valued at \$1,500.00 each were lost.
14. The Landlord testified that he was present when the Tenants was retrieving his belongings and police presence was a peace call to avoid conflict. The Landlord testified the Tenants showed up on November 20, 2022 at 7:31 p.m. and left at 8:41 p.m. The Tenants attended with a small SUV and a tiny open trailer. The Landlord testified the Tenants' property was intact and that the steel bin container could not be infiltrated with water and was secured by a lock. The Landlord testified he recalls that the Tenants took one pair of shoes, his box of cards, and his computers and that the remaining items was left behind was either garbage or items that the Tenants chose to leave behind. The Tenants did not return the next day and it was his position that the size of his small SUV and tiny trailer shows that most of the items in the 30-foot bin was garbage.

Remedy:

15. I find that the Tenants did not provide enough evidence to establish his damage claim for \$15,000.00. Although the Tenants refer to having lots of photographs, which was available and expected evidence that would support any damaged property, none were provided. Some of the Tenants' property including his sports card collection was damaged by the elements but likely as a result of the Tenants' own action having transported his belongings in an open trailer, albeit tarped, while he drove 5 to 8 hours to return home in a snowstorm. The garden pots, fence posts, 3 gates, small trailer that were left behind, was not as a result of the Landlord's actions but the Tenants' choice. The Tenant made one trip to the unit and the fence and gate that were left behind was due to the Tenant not having time to dig them out. The Tenants did not provide receipts for reasonable expected replacement costs of damaged property that he incurred or was expected to incur to replace the property. There were no details about the alleged furniture and heirlooms/. The Tenants asserts the Landlord lies but

provided no clarifying evidence that directly challenged his testimony. The onus rests on the Tenants to support their damage claim which has not been met.

16. The Landlord is fined for his blatant disregard for legal process and for the Tenants' rights in the amount of \$2,100.00 or \$700.00 per day from the day the locks were changed on September 27 to September 30, 2022, when the tenancy ended.
17. The Board has authority to make any other order that it considers appropriate, and I find the Landlord shall pay the Tenants \$3,000.00 because his action set in motion of sequence of events that substantially interfered with the Tenants' rights, caused significant disruption and duress.
18. I acknowledge the Landlord's request to off set any remedy because of alleged extensive damage to the rental unit and unpaid rent but these issues are not properly before me. The Landlord may file his own application if he has enough evidence to substantiate his claim for Board consideration.

It is ordered that:

1. On or before August 25, 2023, the Landlord shall pay the Tenant \$3,000.00.
2. If the Landlord does not pay the Tenants the full amount owing* on or before August 25, 2023, the Landlord will start to owe interest. This will be simple interest calculated from August 26, 2023 at 6.00% annually on the balance outstanding.
3. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

August 14, 2023

Date Issued

Sandra Macchione

Member, Landlord and Tenants 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.