



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

**Citation:** Lock v Connell, 2022 ONLTB 11570

**Date:** 2022-11-08

**File Number:** LTB-T-057036-22

**In the matter of:** 539 Lower Oakleaf Road  
Athens ON K0E1B0

Tenants

**Between:** Deanna Lee Lock, Ryan Warren  
**And**

Vanessa Connell

Landlord

Deanna Lee Lock and Ryan Warren (the Tenants) applied for an order determining that Vanessa Connell (the Landlord) entered the rental unit illegally and changed the locking system to the rental unit or building without giving the Tenants a replacement key (T2 application).

This application was heard by videoconference on November 7, 2022.

The first named Tenant Deanna Lee, the Landlord and her representative Jesse Valkenier attended the hearing.

**Preliminary Issue:**

1. This matter was brought before the Board on an expedited basis to determine if the Tenants were illegally locked out of the rental unit and a restoration order required.
2. On the date of the hearing, the Landlord’s representative requested an adjournment stating that he was unaware of the allegations in the Tenant’s application. The Board file shows the Landlord was mailed the Notice of Hearing and other documents with no indication of returned mail. The Landlord’s representative also said there was an L2 eviction application based on an N12 notice of termination before the Board involving the same parties. I advised the parties that this matter was scheduled as part of an urgent hearing block based on the Tenants serious allegation of illegal lockout. Accordingly, I denied the adjournment request.

**Determinations and Reasons:**

3. By way of background this is a T2 application, filed with the Board October 3, 2022. The Tenants allege they were illegally locked out of the rental unit on October 1, 2022. The Tenants are only seeking an order putting them back into possession of the rental unit. They are not seeking a rent abatement or any other compensation.

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4. To obtain their requested remedy the Tenants have the burden of establishing, on the balance of probabilities, that the Landlord altered the locking system on a door giving entry to the rental unit without giving them replacement keys in contravention of section 24 of the *Residential Tenancies Act, 2006* ("Act").
5. There is no dispute that the Landlord changed the locks to the rental unit on October 1, 2022 around 12:00 pm and keys were not provided to the Tenants.
6. There was also no dispute that the Landlord and Tenants entered into a verbal agreement to terminate the tenancy on October 1, 2022 and the Landlord paid to the Tenant's the sum of \$3000.00.

#### Tenant's Evidence

7. It was the testimony of the Tenant that the parties entered into a verbal agreement to terminate the tenancy on October 1, 2022. She said that the Landlord changed the locks around noon on October 1, 2022 when they were still in possession of the rental unit and that they were not able to enter the unit to move their possessions as the Landlord did not provide them with a key to the rental unit. The Tenant submitted that the Landlord was in breach of their agreement as the locks were changed while they were still in possession and had right to the rental unit until 11:59 pm on October 1, 2022.
8. The Tenants are currently living with a friend in the basement of their home on a temporary basis and need to find alternative accommodation if they are not permitted to return to the rental unit.
9. During her testimony, the Tenant initially said that the relationship between the Landlord and Tenants was strained and contentious and they did not wish to return. However, later in testimony, she changed her answer and said they would prefer to have their tenancy restored at the rental unit.
10. The Landlord still has many of their possession including but not limited to: a bed, couch, freezer, bike, printer, shelving and clothing and they did not retrieve these items when the Landlord told them to pick them up around October 3, 2022.

#### Landlord's Evidence

11. The Landlord testified that she and the Tenants had a verbal agreement to terminate the tenancy October 1, 2022 and around noon on October 1, 2022, the locks to the rental unit were changed and the Tenants were not provided keys to the rental unit.
12. The Landlord believed that based on the agreement to terminate the tenancy, changing the locks earlier on October 1, 2022 was a moot point and she offered opportunity to the Tenants to retrieve their possession on October 3, 2022 between 9 to 5 pm or make alternative arrangements.
13. The Landlord said she has not re-rented the rental unit as construction is underway and she plans on moving into the rental unit personally sometime the week of November 14,

2022. She said there is an L2 eviction application based on an N12 notice of termination before the Board but no hearing has been held on this matter and no final order for termination of tenancy has been issued by the Board.

### Law and Analysis

#### *Illegal Entry:*

14. With respect to the issue of illegal entry, section 25 of the *Residential Tenancies Act, 2006* (the 'Act') says a Landlord may enter a rental unit only in accordance with section 26 or 27. Section 26 relates to entries where written notice is not required; section 27 is about entry on notice.
15. In this matter, there was no dispute that the Landlord entered the rental unit on October 1, 2022 to change the locks. Nothing was led with respect to the Landlord providing a notice of entry to the Tenants to perform the lock change and the Tenants had possession of the rental unit at the time of the entry.
16. Based on the evidence before the Board, I am satisfied that there was an illegal entry made to the Tenants' rental unit on October 1, 2022 for the purpose of changing the locks.

#### *Changing of the Locks:*

17. It is undisputed that the lock to the Tenants' rental unit was changed on October 1, 2022 and replacement keys were not made accessible to the Tenants.

18. Section 24 of the Act states:

A landlord shall not alter the locking system on a door giving entry to a rental unit or residential complex or cause the locking system to be altered during the tenant's occupancy of the rental unit without giving the tenant replacement keys.  
[emphasis added]

19. Section 39 of the Act states:

A landlord shall not recover possession of a rental unit subject to a tenancy unless,

- (a) the tenant has vacated or abandoned the unit; or
- (b) an order of the Board evicting the tenant has authorized the possession.

20. Regardless of any verbal agreement the parties may have entered into to terminate the tenancy effective October 1, 2022, the fact remains that the Tenants were still in possession of the rental unit at the time the Landlord changed the locking system at the rental unit and the Landlord did not provide keys to the Tenants.
21. Only the Court Enforcement Office (Sheriff) acting pursuant to a direction contained in a Board or Court order has the authority to lock-out a residential tenant while the tenant is

still occupying the rental unit. If a landlord believes that a tenant has agreed to terminate a tenancy but has failed to move out by the agreed upon date, the landlord may apply for an *ex parte* eviction order on that ground under section 77 of the Act. No such application has been filed by this Landlord.

22. Based on the evidence before the Board, I find the Landlord was in breach of section 24 of the Act. The Landlord has a positive obligation to ensure the Tenants are provided with replacement keys despite the short amount of time remaining in the day for the termination of this tenancy.

Remedy:

23. The Board has express authority under subsection 31(3) of the Act to put a tenant that has been illegally locked out back into possession of a rental unit, so long as the unit is vacant.
24. Having found that the Tenants were illegally evicted, I am prepared to grant the Tenants an order requiring the Landlord to return them to possession of the rental unit. I accept the Tenant's position that, in the circumstances, anything short of putting the Tenants' back into possession of the rental unit would not provide an adequate remedy for the Landlords' breach of section 24 of the Act. The fact that the tenancy was not terminated by the Landlord in accordance with the Act means that the Tenants remain 'tenants' and have a lawful right to possession of the rental unit. See: *Ottawa-Carleton Association for Persons with Developmental Disabilities/Open Hands v. Séguin*, 2020 ONSC 7405 (CanLII), paras 68 and 69.
25. The Landlord suggested that restoring the tenancy is not appropriate as the parties entered into an agreement to terminate the tenancy. When I asked the Landlord's representative to identify the section of the Act that suggests that this is the case, he was not able to do so. I disagree and find that the appropriate remedy is to order the Landlord to permit the Tenants to recover possession of the rental unit.
26. I note that subsection 31(3) of the Act provides that the Board may only allow a tenant to recover possession of a rental unit if the Board is satisfied that the unit is vacant. I do not believe that this proviso can be interpreted as preventing the Board from allowing a tenant who has been illegally locked-out to recover possession of a rental unit in circumstances where the landlord has moved into the unit. That, in my view, would be an absurd result. Subsection 31(3) should, in my view, be interpreted as prohibiting the Board from allowing a tenant to recover possession of a rental unit where the unit has been re-leased to a third-party tenant.
27. While it is unfortunate that the Landlord may now find themselves having to locate alternate accommodations until one of their pending applications (or a new application) is determined in their favour, the Landlord is, to a large extent, the author of their own misfortune. When she unilaterally changed the locking system to the rental unit, the Landlord accepted, in my view, the risk that the Board could make a determination that the Tenants were illegally locked out with restoration of the tenancy. In my view, the Landlord chose to take unreasonable self-help measures that interfered with the orderly and lawful

termination of the tenancy.

28. Additionally, I do not accept the Landlord's position that the tenancy was terminated and because the Tenant originally stated they did not want to move back into the rental unit, I should not restore the tenancy. I have discretion under the Act in terms of the remedies that I may order, but I do not find the Landlords' arguments that I should refuse to grant a remedy in this case based on the Tenants' actions compelling. The Landlord's assertions all relate to the conduct and actions of the Tenants that are the subject of other application(s) by the Landlord that are pending before the Board and will be addressed by the Member(s) hearing those application(s).
29. Given all of the above, I am satisfied that the manner in which the Landlord obtained possession of the rental unit constitutes a breach of the Act and an order will issue requiring the Landlord to immediately allow the Tenants to recover possession of the rental unit and provide to the Tenants: (a) keys to the doors of the rental unit; and (b) any pass, access or other codes required for the Tenants to have full and unfettered access to the rental unit.
30. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

**It is ordered that:**

1. The Landlord shall not re-rent the unit and shall immediately allow the Tenants to recover possession of the rental unit and provide the Tenants: (a) keys to the doors of the rental unit; and (b) any pass, access or other codes required for the Tenants to have full and unfettered access to the rental unit.
2. The Tenants may file this order with the Court Enforcement Office (Sheriff) so that the order directing the Landlord to return possession to the Tenants may be enforced. The Tenants are entitled to deduct from the rent any fee charged by the Court Enforcement Office (Sheriff) for this service.
3. Upon receipt of this order the Court Enforcement Office (Sheriff) is directed to give possession of the rental unit to the Tenant on an expedited basis.
4. The Landlord shall pay to the Tenants the application filing fee in the amount of \$48.00.
5. If the Landlord does not pay the Tenants the full amount owing on or before November 19, 2022, the Landlord will start to owe interest. This will be simple interest calculated from November 20, 2022 at 3.00% annually on the balance outstanding.

**November 10, 2022**

**Date Issued**

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Dana Wren

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.

**The Part of this order allowing the Tenants to recover possession of the unit and prohibiting the Landlords from re-renting the unit to anyone else expires and cannot be enforced if:**

- (a) the Tenants does not file this order on or before November 25, 2022 with the Court Enforcement Office (Sheriff) which has territorial jurisdiction where the rental unit is located, or**
- (b) the Tenants files this order with the Court Enforcement Office but the order has not been enforced on or before December 24, 2022.**