



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

Citation: Banafsheh Janieh v Ling Wang, 2023 ONLTB 48247

Date: 2023-07-06

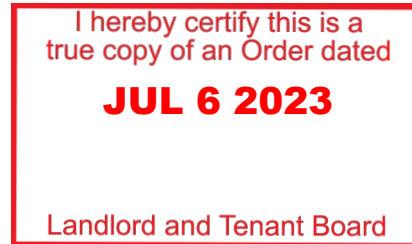
File Number: LTB-T-005499-23

In the matter of: Basement-8 Bowkett Drive
Richmond Hill, ON L4E 0J8

Between: Banafsheh Janieh

And

Ling Wang



Tenant

Landlord

Banafesh Janieh (the 'Tenant') applied for an order determining that Ling Wang (the 'Landlord') or the Landlord's superintendent or the Landlord's agent entered the 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, harassed, obstructed, coerced, threatened or interfered with the Tenant 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 April 6, 2023 and May 26, 2023.

The Tenant and the Tenant's Legal Representative Reyhaneh Lajevardi appeared on behalf of the Tenant. The Landlord's Legal Representative Annie Liu, Shao Jinhua ('SJ') and Ligang Fu appeared on behalf of the Landlord.

Determinations:

Preliminary Issues – Evidence – Previous T6

1. The Landlord's Legal Representative had objected to evidence being admitted on behalf of the Tenant as the evidence had been disclosed less than 7 days prior to the hearing in violation of the Board's *Rules of Procedure*. The Tenant's Legal Representative submitted that evidence had been filed late as a result of a death in the Tenant's family.
2. The Landlord was offered an adjournment of the matter in order to provide additional time to review the evidence however, the Landlord's Legal Representative agreed to accept the Tenant's late evidence as being properly before the Board.
3. Further, the Landlord's Legal Representative had outlined that the Tenant had also filed a T6 application with respect to maintenance of the unit's oven and had also raised the fact that the Tenant's issue with respect to an illegal deposit should have been raised in a T1 application.

4. The Tenant's Legal Representative agreed to not raise those two issues as part of this application.

Heat

5. The unit in question is a basement unit where the Tenant lives with her husband and children. The Tenant testified that she has lived in the unit for 4 years and that SJ started living in the upstairs unit on October 11, 2022. The heat for the residential complex is controlled by the upstairs unit.
6. The Tenant alleges that since SJ moved into the unit, the heat in the unit had been reduced to below 20 degrees Celsius. Various photos of temperature readings were entered into evidence. The Tenant testified that she had complained to SJ on 17 occasions between December 30, 2022 and April 1, 2023.
7. The Tenant testified that SJ would request access to the Tenant's unit after a complaint to check the heat. The Tenant testified that she denied SJ access to the unit for this purpose as she didn't believe the Landlord required access to her unit in order to check the temperature and that SJ could have simply just turned the heat up.
8. In a series of e-mails entered into evidence, the Tenant's Legal Representative told SJ and the Landlord's Legal Representative on February 23, 2023 that SJ is no longer permitted in the unit for any reason, as the Tenant believes that SJ would simply turn the heat up before inspecting the unit. In the alternative, the Tenant's Legal Representative told SJ that the Tenant would purchase space heaters and would no longer pay utilities.
9. The Tenant testified that she believes SJ is intentionally altering the heat to try to force the Tenant and her family to leave the unit as the Landlord had failed to apply for a building permit for the conversion of the basement into an additional residential unit.
10. SJ testified that he would check the thermostat in his unit after every complaint from the Tenant and would advise her of the temperature. SJ testified that he would request to go into the Tenant's unit to compare the temperature between the units, however the Tenant refused and would allege that SJ would just turn up the thermostat and take a picture. SJ testified that if he had intentionally been keeping the temperature at 17 degrees that it would take hours for the temperature to read above 20 degrees.
11. Entered into evidence was a log of temperature readings SJ created from January 28, 2023 until March 31, 2023, showing his test readings in the morning, afternoon and evening. The temperatures listed are all at least 23 degrees Celsius.

Snow Blower

12. The Tenant further alleges that SJ would keep a snow blower in the garage where the Tenant's unit's entrance is located, which had been leaking and had caused a strong gasoline smell in the Tenant's unit. The Tenant testified that she had told SJ about this and that he refused to move it.
13. A video recording from December 19, 2022 was entered into evidence from the garage in which the Tenant was observed yelling. The Tenant testified she was upset because SJ kept closing the garage which exasperated the gasoline smell.

14. The Tenant testified that she had called Richmond Hill Fire & Emergency Services who inspected the unit on December 21, 2022 and had ordered SJ to either fix the snow blower or to not store the snow blower in the garage until it was fixed.
15. The order from February 15, 2023 outlines that when the unit was inspected that day the snow blower was found to be in the garage again. The order goes on to state that all gas appliances were to be removed from the garage.
16. The Tenant testified that SJ had put the snow blower back into the garage because he stated he did not smell any gasoline.
17. SJ testified that when the Fire Department inspected the unit in December of 2022 that a machine was used to test the air and had passed. SJ testified that he was told that he could keep the snow blower in the garage despite the February 15, 2023 order stating the opposite.

Noise Incidents

18. The Tenant alleges that on September 13, 2022 no one had been living in the upstairs unit at the time as the previous tenants had vacated the unit. The Tenant testified that she had put on music when SJ started banging on her door.
19. Entered into evidence was an e-mail sent by SJ to the Tenant from that date advising the Tenant that the music was too loud. The Tenant responded 4 minutes later, asking SJ to "*stop making bullshit up jin to make your self look good over e-mail...*".
20. Entered into evidence was a recording made by SJ from that date in which the music could be heard from the upstairs unit. As well, the recording also included the Tenant yelling and screaming profanities at SJ. The Tenant testified she yelled at SJ because he banged on her door.
21. SJ also testified that the Tenant was aware that someone was in the upstairs unit because there had been cars in the driveway.

September 13, 2022 ESA work

22. On September 1, 2022, the Tenant testified that the Landlord had advised her that a contractor would be conducting electrical work in the unit, which was described as a simple job.
23. On September 13, 2022 When the Landlord's contractor arrived at the unit that date, the Tenant had learned from the contractor that the work would be more extensive. The walls needed to be opened up and there would be dust in the unit.
24. The Tenant testified that she advised the contractor that she was told that the work would be simple and that the work could not be completed that day. The contractor had advised SJ who came to the unit with his father. The Tenant testified that she confronted SJ about this work in front of the contractor and that SJ and his father were pushing against the door to be let in.
25. Entered into evidence was an electrical service quotation and a series of e-mails between SJ and the Tenant regarding the work. On September 1, 2022 SJ sent an e-mail to the

Tenant about the work and advised that the job may take 3-4 days and advised the Tenant that the drywall would be opened up. The Tenant responded the same date advising SJ that she was unsure about the scope of the work due to her kids in the unit.

26. SJ goes on to offer the Tenant the upstairs unit while the work is being conducted however, the Tenant refused as she didn't want to bring her crib upstairs.
27. SJ testified that the Tenant had told the police when they arrived that she had been unaware of the work but testified that all of the details were provided and that the work had been completed on September 13, 2022.

Illegal Entry

28. In August of 2022, the Tenant alleges that SJ had attended at the residential complex after 9:00 pm that date to serve an N4 notice of termination upon the Tenant. Entered into evidence was a video of the incident.
29. In the video, SJ is standing at the edge of the property with a document in his hand. The Tenant and other parties are in the driveway and SJ attempted to serve the Tenant with a document which she refused. SJ then enters into the garage and presumably leaves the notice in the garage. While this is happening, the Tenant and the other individuals she is with are yelling at SJ and threatening to call the police.
30. SJ testified that he had been walking near the edge of the property because the Tenant and her guests had been consuming cannabis and the smell made SJ uncomfortable. SJ testified that the Tenant refused to accept the notice and when she did he entered into the garage and placed the notice outside of her unit's entrance. SJ testified that the Tenant picked up the notice and threw it at him. SJ later admitted in cross-examination that he did open the unit's door but did not enter.

Remedies & Impact

31. While the Tenant's requested remedies in her application had been more extensive, the Tenant's Legal Representative had requested a rent abatement of \$100.00 for each harassment allegation and \$10,000.00 for pain and suffering.
32. The Tenant testified that dealing with SJ has affected her mental health and anxiety. Entered into evidence were prescriptions the Tenant is currently taking as a result of these issues. The Tenant also stated that SJ's actions have affected her ability to study as well.

Analysis & Findings

33. Section 21 of the *Residential Tenancies Act, 2006* (the 'Act') states that a landlord shall not withhold any vital service that they are obligated to provide.
34. Section 4 of Ontario Regulation 516/06 states that a heat shall be at least 20 degrees Celsius in any unit.
35. While the Tenant did provide photos of temperature readings and the e-mails that were sent to SJ regarding the issue of heat, I am not satisfied on a balance of probabilities that

the Landlord withheld vital services, substantially interfered with the Tenant or harassed the Tenant with respect to this issue.

36. The Tenant maintains that SJ is lying about turning the heat up and even went as far as to suggest that SJ had digitally manipulated the photos he had taken of the temperature to prove that he was not lowering the heat.
37. Having reviewed the evidence, I find that SJ had sought to rectify the issue but had been spurned on each occasion by the Tenant, as she did not want the Landlord to enter her unit.
38. Further, an e-mail sent from SJ to the Tenant's Legal Representative dated February 12, 2023 states that he was aware that the Tenant has a baby and advised the Tenant's Legal Representative that he was doing his best to help the Tenant.
39. The Tenant's Legal Representative continued to accuse SJ via e-mail again and again that he was intentionally lowering the heat. As SJ was not permitted in the unit, he had asked the Tenant to take pictures of temperature readings in and around the furnace so that he could get some insight as to the heating issue however, on March 2, 2023 the Tenant's Legal Representative told SJ to do it himself when he was installing a smoke alarm but then reiterated that he was not allowed to take any pictures while in the unit.
40. With respect to the issue with the snow blower, I am satisfied on a balance of probabilities that SJ substantially interfered with the Tenant's reasonable enjoyment of the unit by not removing the snow blower when asked, and then not removing the snow blower after he was directed to by the Fire Department.
41. Despite not smelling anything himself, it was clear from the evidence as outlined in the fire report that the Landlord had been directed to remove the snow blower but failed to do so.
42. With respect to the September 13, 2022 noise incident I am not satisfied on a balance of probabilities that the Landlord harassed or substantially interfered with the Tenant's reasonable enjoyment of the unit.
43. The audio recording provided clearly demonstrated the music that was coming from the Tenant's unit along with the Tenant's yelling and screaming. SJ was certainly justified in knocking on the Tenant's door to ask that she could lower the volume.
44. With respect to the September 12, 2022 incident involving the ESA contractor, I am not satisfied on a balance of probabilities that SJ substantially interfered with the Tenant's reasonable enjoyment of the unit.
45. It is also clear from the e-mails sent by SJ to the Tenant from September 1, 2022 that SJ did his best to outline what work would be needed including opening up the drywall. Notice was also provided in writing about the extent of the work and the work had been completed in two days with seemingly minimal disruption to all parties.
46. While the Tenant alleges that SJ and his father had been pushing at the door, the Landlord had provided to the Tenant well in advance of this date details of the work to be done and the intent to enter the unit. While the Tenant has refused SJ entry into the unit, section 27 of the Act does permit a landlord to enter a rental unit for the purposes of an inspection.

47. With respect to the illegal entry, I am satisfied on a balance of probabilities that SJ illegally entered the Tenant's unit by opening the Tenant's door to provide the N4 notice of termination. SJ should have simply left the notice at the feet of the Tenant when she refused service. That said, SJ was likely not aware of the specific service requirements regarding Board notices at that time.

Remedies

48. While the Tenant is seeking general damages in the amount of \$10,000.00, I find that in this case a more reasonable remedy would be a rent abatement.
49. While the rent abatement had been requested for an unrelated issue that the Tenant decided to not rely upon, I find it reasonable in the circumstances to apply a rent abatement with respect to my findings as opposed to a finding for general damages.
50. With respect to the snow blower, the Landlord was directed on December 21, 2022 by the Fire Department to keep the snow blower outside. SJ testified that wasn't the case however, it is clear from the order provided that it was.
51. Despite this, the Landlord kept the snow blower in the garage until February 17, 2023 a total of 58 days.
52. The Tenant's rent is \$1,300.00. Daily compensation for that amount is \$42.74 ($\$1,300.00 \times 12/365 = \42.74). I find that a reasonable rent abatement for this period is 30% for a total of \$742.98 ($\$42.74 \times 0.3 \times 58 = \742.98).
53. With respect to the issue of the illegal entry, I will impose a rent abatement in the amount of \$130.00 for this incident, or 10% of the rent for the month of August 2022.

It is ordered that:

54. The Landlord shall pay to the Tenant **\$872.98** which represents a rent abatement for the months of August 2022, December 2022, January 2023 and February 2023 in which the Landlord's agent was found to have substantially interfered with the Tenant's reasonable enjoyment of the unit.
55. If the Landlord does not pay the Tenant the full amount owing by on or before July 17, 2023, the Landlord will start to owe interest. This will be simple interest calculated from July 18, 2023 annually on the balance outstanding.

July 6, 2023
Date Issued



Jagger Benham
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.