Order under Section 69 and 88.1 and 31
Residential Tenancies Act, 2006

Citation: Revell v Allicock, 2024 ONLTB 59075
Date: 2024-08-29
File Numbers: LTB-L-022257-24
LTB-T-027520-23

In the matter of: UNIT 56, 50 TURNTABLE CRES
TORONTO ON M6H4K9

Between: Megan Revell — Landlord

And

Sandra Allicock — Tenant

I hereby certify this is a true copy of an Order dated
AUG 29, 2024
Landlord and Tenant Board

LTB-L-022257-24 L2 Application

Megan Revell (the 'Landlord') applied for an order to terminate the tenancy and evict Sandra Allicock (the 'Tenant') because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege, or interest.

LTB-T-027520-23 T2 Application

Sandra Allicock (the 'Tenant') applied for an order determining that Megan Revell (the 'Landlord'):

- 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 their household; and
- harassed, obstructed, coerced, threatened, or interfered with the Tenant.

The T2 application was adjourned on April 17, 2024 to be heard with the L2 application. The L2 application was rescheduled from May 9, 2024 to be heard with the T2 application. Both of these applications were heard together by videoconference on June 18, 2024 for a duration of five hours and 45 minutes, on July 24, 2024 for a duration of six hours and 54 minutes, and on July 31, 2024 for a final duration of nine hours and 49 minutes. The Tenant, the Landlord, and the

Landlord's representative, Sarah Teal, attended the hearing on April 17, 2024, and also attended the adjourned hearings on June 18, 2024, July 24, 2024, and on July 31, 2024. The Tenant received the services of Tenant Duty Counsel for 40 minutes on July 24, 2024.

Preliminary Issues from the hearing on June 18, 2024:

1. The Tenant requested disclosures and application amendment requests be considered that were submitted to the Board and the Landlord on or before June 11, 2024. The Landlord consented to this request. I granted the Tenant's request in accordance with the Board's Rules of Procedure 19.1 and 15.1.
2. The Tenant stated that she suffers from Post-Traumatic Stress Disorder (PTSD) and Attention Deficit Hyperactivity Disorder (ADHD) and requested that the hearing proceed at a slower pace. I granted the Tenant's request for an accommodation on these grounds.
3. The Tenant requested that I withdraw as an adjudicator from these hearings and the Board assign another adjudicator that is better able to adjudicate issues of racial sensitivity. The Tenant acknowledged that she did not submit this request to the Board any time before the hearing. I reviewed the L2 and T2 applications, and I am satisfied that another adjudicator does not need to be assigned to these matters to conduct a fair and adequate hearing. Accordingly, I denied the Tenant's request.
4. The Tenant requested an extension to submit disclosures up to the day of the hearing. I accept that the Tenant is self-represented and also suffers from PTSD and ADHD. However, given the Tenant was advised of the adjourned hearing on May 2, 2024 through the Board's Notice of Hearing, and given the volume of disclosures already submitted by the Tenant, I am satisfied that the Tenant had sufficient time to submit disclosures for both applications in accordance with the Board's Rules of Procedure 19.1 and 19.2. I find that a deviation from these rules, and therefore limiting the Landlord's time to review the Tenant's disclosures, is not warranted. Accordingly, I denied the Tenant's request.
5. The Landlord requested her L2 application be amended, as submitted to the Board on June 8, 2024, to reflect an increase in the out-of-pocket expenses that she incurred from $3,121.21 to $3,220.93. The Tenant consented to the amendment. I granted the Landlord's request pursuant to the Board's Rules of Procedure 15.3.

Preliminary Issues from the hearing on July 24, 2024:

6. As ordered in the combined Interim Order LTB-T-027520-23-IN2 and LTB-L-022257-24-IN2, issued on June 28, 2024, given that considerable evidence had already been heard on June 18, 2024 for the Landlord's L2 application, the parties were not permitted to provide additional disclosures for LTB-L-022257-24 after June 11, 2024. However, given that the hearing for LTB-T-027520-23 had not yet commenced on June 18, 2024, the parties were permitted to provide additional disclosures for LTB-T-027520-23 on or before July 17, 2024.

7. The Tenant requested that I withdraw as an adjudicator from these hearings and the Board assign another adjudicator that is better able to adjudicate issues of racial sensitivity. I advised the Tenant that I had considered and denied this request during the previous

hearing on June 18, 2024, and that my determination has not changed. Accordingly, I denied the Tenant's request.

8. The Tenant stated that as a result of her PTSD and ADHD she did not have sufficient time to prepare and to present her evidence. I advised the Tenant that at the start of the hearing for these matters on June 18, 2024, I granted her request for accommodation to have a slower paced hearing on these grounds. With respect to the Tenant's time to prepare her disclosures, for the Landlord's L2 application the Tenant had from April 3, 2024 (the date of the first Notice of Hearing for the L2) to June 11, 2024 to submit disclosures. For the Tenant's T2 application, the Tenant had from March 1, 2024 (the date of the first Notice of Hearing for the T2) to July 17, 2024 to submit disclosures. I am satisfied that these times were sufficient, given the Tenant's health circumstances, to provide disclosures to the Board and the Landlord for both applications.

T2 Application Amendments

9. As determined in the combined Interim Order LTB-T-027520-23-IN2 and LTB-L-022257-24-IN2, issued on June 28, 2024, the Tenant's T2 application was filed with the Board on April 10, 2023. The Tenant submitted two T2 application amendment requests to the Board, one on May 3, 2024 as directed in LTB-T-027520-23-IN, and the second on June 11, 2024. These T2 amendment requests will be considered, pursuant to the Board's Rules of Procedure 15.3, at the start of the adjourned hearing for LTB-T-027520-23. No further T2 amendment requests will be considered.

10. As ordered in the combined Interim Order LTB-T-027520-23-IN2 and LTB-L-022257-24-IN2, issued on June 28, 2024, the Tenant was required to provide the Landlord and the Board a succinct listing of all her T2 allegations, to include specific incidents and their dates and times of occurrence, on or before July 17, 2024. The required listing had to include the allegations as provided in the T2 application and the requested T2 application amendments submitted on May 3, 2024 and June 11, 2024. On July 17, 2024, the Tenant provided the Board and the Landlord with a detailed listing of tenancy incidents, with page references to her disclosures, to support her T2 and T2 amendment allegations.

Preliminary Issues from the hearing on July 31, 2024:

11. I provided explanations to the parties regarding who can be a respondent to a T2 application, the differences between disclosures and evidence and the types of evidence, and the Board's rules regarding the conduct of parties during hearings.

12. I confirmed, as determined during the hearing on July 24, 2024, that the parties agreed that the Tenant has a total of 24 T2 allegations, to include the allegations in the T2, filed on April 10, 2023, and the allegations in the two T2 application amendment requests, submitted to the Board on May 3, 2024, and on June 11, 2024. During the hearing on July 24, 2024, the Landlord consented to the Tenant's two application amendment requests. I therefore granted the Tenant's request to amend her T2 application, pursuant to the s. 200(1) of the *Residential Tenancies Act, 2006* (the "Act"), and the Board's Rules of Procedure 15.3.

13. The Landlord's representative submitted that the Tenant has a claim with the Human Rights Tribunal of Ontario (HRTO) that may overlap with one or more of the Tenant's T2 allegations, and therefore on the basis of res judicada, the Board should not consider

these allegations during the T2 hearing. The Tenant stated that any claims that she has before the HRTO do not overlap with her T2 allegations. I advised the parties that I will consider, as agreed, the Tenant's 24 T2 allegations, and I will interpret and apply the *Residential Tenancies Act, 2006*, having regard to the *Ontario Human Rights Code.*

14. Section 2 of the *Ontario Human Rights Code* states:

    (1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability, or the receipt of public assistance.

    (2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, marital status, family status, disability, or the receipt of public assistance.

LTB-L-022257-24 L2 Application

Determinations:

15. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the Landlord's claim for compensation. However, the Tenant has been granted relief from eviction subject to the conditions as ordered below.

16. The Tenant was in possession of the rental unit on the date the application was filed, and remains in possession of the rental unit as of the day of this hearing.

N5 Notices of Termination

17. On February 19, 2024, the Landlord served the Tenant with an N5 Notice of Termination (N5) to end the tenancy for substantial interference with the Landlord's lawful rights, privileges, or interests. The N5 has a date of termination of March 11, 2024. I am satisfied that the N5 was properly served and complied with s. 64 of the *Residential Tenancies Act, 2006* (the "Act").

18. The N5 alleges that on February 12, 2024, the Landlord learned that the Tenant had altered the locking system of the unit door without the Landlord's knowledge or consent, and this lack of unit access for the Landlord substantially interfered with the Landlord's lawful rights, privileges, or interests.

19. In accordance with section 64(3) of the Act, the Tenant had an opportunity to void the N5 notice within 7 days from being served, from February 20, 2024 to February 26, 2024, by providing the Landlord with a key for the new unit lock, or by reinstalling the original lock.

20. On March 15, 2024, the Landlord served the Tenant with a second, non-voidable N5 Notice to end the tenancy for substantial interference with the Landlord's lawful rights, privileges, or interests. The termination date of the second N5 is March 31, 2024.

21. The second N5 alleges that:

    a) On February 28, 2024, the Tenant granted unit access to the Landlord's realtor; however, the Tenant interfered with the realtor conducting her duties;
    b) On March 4, 2024, the Tenant denied unit access to the Landlord's appraiser;
    c) On March 4, 2024, the Tenant denied unit access to the Landlord's realtor;
    d) On March 6, 2024, the Tenant denied unit access to the Landlord's realtor;
    e) On March 7, 2024, the Tenant denied unit access to the Landlord's realtor;
    f) On March 9, 2024, visit #1, the Tenant denied unit access to the Landlord's realtor;
    g) On March 9, 2024, visit #2, the Tenant denied unit access to the Landlord's realtor;
    h) On March 10, 2024, visit #1, the Tenant denied unit access to the Landlord's realtor;
    i) On March 10, 2024, visit #2, the Tenant denied unit access to the Landlord's realtor;
    j) On March 10, 2024, visit #3, the Tenant denied unit access to the Landlord's realtor; and
    k) On March 10, 2024, visit #4, the Tenant denied unit access to the Landlord's realtor.

22. I am satisfied that the second N5 notice was properly served, and complies with s. 68 of the Act.

23. The Landlord filed her L2 application with the Board on March 19, 2024, in compliance with s. 69(1), s. 69(2) for the second N5, and s. 70 of the Act.

Landlord's Evidence – unit entry for appraisers

24. The Landlord testified that on February 12, 2024, after the Tenant was provided a written Notice of Entry (NOE) 24 hours in advance, her appraiser and Property Manager (PM) attended the unit, but they were not able to gain access to the unit given that the lock had been changed. The Landlord noted that door knocks and phone calls to the Tenant were not answered. The Landlord remarked that her appraiser was not able to complete his inspection of the unit, but she still incurred a cost of $401.15 for the failed appraisal. The Landlord submitted a copy of the NOE, and a receipt for the failed appraisal costs of $401.15.

25. The Landlord testified further that she regained access to the unit when the Tenant reinstalled the old lock on the unit door during the void period of the N5 from February 20, 2024 to February 26, 2024. She asserted that on March 4, 2024, after the Tenant was provided a written NOE 24 hours in advance, her appraiser once again attended the unit to complete the appraisal, but the Tenant asked the appraiser to leave. The Landlord submitted a copy of the NOE and a written note from the appraiser, dated March 4, 2024, stating that the appraiser did not feel safe to enter the unit.

26. The Landlord stated that she incurred another cost of $401.15 for the second failed appraisal, and submitted a copy of the receipt for this cost. The Landlord explained that as a result of her inability to complete an appraisal for her unit, she could not renew her mortgage at an interest rate of 7.95%, and therefore had to accept a new mortgage with an interest rate of 9.49%. The Landlord noted that her additional monthly interest costs are $205.99, and this has resulted in additional interest expenses from April 1, 2024 to July 31, 2024 of $823.96. The Landlord submitted a copy of an email from her mortgage broker explaining why the increased interest rate to 9.49% was necessary, a copy of a payment

receipt from her mortgage company listing the interest rate of 9.49%, and a tabular calculation of the monthly interest rate differential of $205.99.

27. The Landlord testified further that she also incurred legal fees of $1,594.67 for her new mortgage with Manulife Bank, a mortgage she noted was only necessary given that she was unable to renew her previous mortgage as a result of the failed appraisals. The Landlord submitted an invoice for these legal fees.

Landlord's Evidence – unit entry for realtors

28. The Landlord testified that she advised the Tenant in February 2024 that she intended to sell the unit.

29. The Landlord testified that over the period of February 28, 2024 to March 10, 2024, the Tenant denied realtors access to the unit on 9 occasions. The Landlord submitted that over this period realtors successfully entered the unit on 4 occasions, and during two of those entries the Tenant was not in the unit. The Landlord noted that for each scheduled realtor visit the Tenant was provided a written NOE posted to her unit door 24 hours in advance. The Landlord submitted photos of all NOEs.

30. The Landlord stated that on February 28, 2024, the Tenant granted access to the realtor; however, the Tenant became enraged and screamed obscenities at the relator, and the realtor was concerned for her safety. The Landlord submitted of a copy of the realtor's email to the Landlord detailing her safety concerns.

31. The Landlord stated that for the 9 realtor entry attempts, listed above in paragraph 21c) through 21k), the realtors were told by the Tenant that there were no showings today and that they should leave. The Landlord remarked that for the last three realtor entry attempts on March 10, 2024, the Tenant relayed this message by placing a note on the unit door. The Landlord submitted a photo of the Tenant's note.

32. The Landlord asserted that the Tenant's denial of the first scheduled real estate showing on March 10, 2024, paragraph 21h), resulted in the potential purchasers, who were offering the full asking price, not proceeding with their offer. The Landlord submitted a copy of an email from her realtor, explaining that the offer did not proceed on the basis of the Tenant's aggression toward the potential purchasers.

33. The Landlord testified that the only reason she was selling the unit was for financial reasons, and for no reason in any manner to discriminate against the Tenant. She remarked that her primary residence has an upcoming mortgage renewal, and she wanted to reduce the size of her mortgage with the sale proceeds of the rental unit. The Landlord noted that she always strives to maintain a professional and respectful relationship with the Tenant.

34. The Landlord testified further that she served the Tenant with two N5s and filed her L2 application with the Board for the sole reason that the Tenant was substantially interfering with her lawful rights, privileges, and interests to enter the unit with notice, pursuant to the Act. The Landlord explained that the Tenant's interference prevented an appraisal and real estate showings in the unit, thus preventing the sale of the unit, and this is causing her financial hardship.

35. The Landlord explained that she tried to accommodate the Tenant's requested real estate showing times, but the Tenant's timeframe for showings was too restrictive. The Landlord submitted a copy of an email from the Tenant, dated March 5, 2024, with the Tenant demanding real estate showings only between the hours of 3:00 pm and 6:00 pm Tuesday to Saturday. The Landlord remarked that she avoided real estate showings beyond 7:00 pm to accommodate the Tenant's family requirements, and understood that with the Tenant working from home, real estate showing were inconvenient both for the Tenant's work and family. The Landlord submitted a copy of another email from the Tenant, dated March 7, 2024, with a revised showing timeframe of Tuesdays and Thursdays from 10:00 am to 4:00 pm, Wednesdays and Fridays from 1:00 pm to 6:00 pm, and on the first Saturday of each month from 10:00 am to 4:00 pm.

Landlord's Evidence – since the L2 was filed

36. The Landlord stated that since she filed the L2 application on March 19, 2024, the number of real estate showings of the unit have continued to decline because realtors are concerned about the Tenant's conduct and are hesitant to show the property. The Landlord submitted that from March 20, 2024 to June 6, 2024 there were 13 scheduled real estate showings for the unit; however, the Tenant denied entry for 7 showings, and of the 6 successful showings, the Tenant was not home in two instances. The Landlord noted that she is highly motivated to sell the property for financial reasons, and since filing the L2 she has coordinated with the Tenant for a suitable showing schedule, but the Tenant's demands remain too restrictive.

37. The Landlord submitted a copy of an email from the Tenant, dated April 18, 2024, proposing a showing schedule of every Friday from 9:00 am to 6:00 pm, and every Saturday from 10:00 am to 4:00 pm. The Landlord submitted a copy of her counteroffer email, dated April 19, 2024, with a schedule of Tuesday through Sunday from 12:00 pm to 6:00 pm. The Landlord submitted a copy of another email from the Tenant, dated April 24, 2024, proposing an amended showing schedule of Tuesday through Saturday between 10:00 am and 6:00 pm, with all NOEs provided to the Tenant the previous Friday. The Landlord submitted a copy of her counteroffer email, dated April 25, 2024, accepting the Tenant's April 24, 2024 proposal, but with NOEs only provided 24 hours in advance, as required by the Act. The Tenant did not accept the Landlord's final counteroffer.

Tenant's Evidence – unit entry for appraisers

38. The Tenant testified that she changed the lock on her unit door in February 2024 because she was concerned about her safety. She noted that she felt unsafe in the presence of the PM, who she asserted, harassed her. The Tenant remarked that the harassment from the PM is an allegation in her T2 application. The Tenant stated that she reinstalled the old lock on the unit door on February 26, 2024.

39. The Tenant stated that on March 4, 2024 she did not ask the appraiser to leave, and did not deny the appraiser entry to the unit.

Tenant's Evidence – unit entry for realtors

40. The Tenant testified that on February 28, 2024, she permitted the Landlord's realtor to enter the unit; however, the realtor discussed private matters with her and was harassing her, and she therefore became angry. The Tenant remarked that the harassment from the realtor is an allegation in her T2 application.

41. The Tenant testified further that for 9 scheduled real estate visits to the unit from March 4, 2024 to March 10, 2024, listed above in paragraph 21c) through 21k), she denied unit access to the realtors for valid reasons, to include: an entry attempt on March 4, 2024 close to her son's bedtime at 7:00 pm, the second entry attempt on March 9, 2024 when she and her son were ill, and four entry attempts on Sunday March 10, 2024, after advising the Landlord that she would not accept entries on Sundays or Mondays. The Tenant did not provide a reason for her Sunday and Monday real estate showing prohibition.

42. The Tenant remarked that she denied realtor access to the unit on the days and times that she advised the Landlord that real estate showings would not be permitted. The Tenant added that she expected realtors to knock at the door or use the doorbell to announce their entry before accessing the lockbox key to gain entry. The Tenant submitted copies of text messages and emails, from March 4, 2024 to April 24, 2024, sent to the Landlord, the Landlord's realtor, and the Landlord's representative, regarding her requested real estate showing timeframes.

43. The Tenant asserted that the Landlord never coordinated with her before listing the unit for sale with respect to appropriate days and times to conduct real estate showings. The Tenant explained that the showings needed to be scheduled in a manner that respected her privacy and provided a dignified living arrangement for her family. The Tenant asserted further that the frequency of the real estate showings, and the provision of only 24 hours of notice, caused significant disruption to her work and her family life, but the Landlord was not willing to accommodate her well-being.

Analysis

44. On the basis of the evidence provided, I am satisfied that on February 12, 2024, the Tenant substantially interfered with Landlord's lawful right to enter the unit, by changing the locks of the unit door without the Landlord's consent. I am also satisfied that on February 26, 2024, during the void period of the first N5, the Tenant reinstalled the old lock on the unit door, thereby providing the Landlord with access to the unit. I therefore find that the Tenant voided the first N5 notice.

45. Only the incidents from February 28, 2024 to March 10, 2024, identified in the second N5, can be considered as grounds for termination of the tenancy with respect to this application.

46. On the basis of the evidence provided, I am satisfied that the Tenant substantially interfered with the Landlord's realtor's duties on February 28, 2024, and also substantially interfered with the Landlord's appraiser's duties on March 4, 2024 by denying unit access to the appraiser. Although the Tenant testified that she did not ask the appraiser on March 4, 2024 to leave the unit, in this matter I find the Landlord's evidence, with a written note

from the appraiser that he was not able to complete his assignment and did not feel safe to enter the unit, more compelling than the Tenant's testimony.

47. I am also satisfied that the Tenant denied unit access to realtors attempting to enter the unit on 9 occasions over the period of March 4, 2024 to March 10, 2024. Of the 9 denied unit entry attempts, I am satisfied that only on March 9, 2024 during the second entry attempt, did the Tenant have a valid reason to deny entry – the illness of her and her son.

48. I therefore find that the Tenant's interference of the realtor on February 28, 2024, and the Tenant's denial of unit entry on 9 occasions on March 4, 6, 7, 9 and 10, as listed in paragraph 21a) through 21f) and 21h) through 21k), after being provided with written notification 24 hours in advance, substantially interfered with the Landlord's lawful rights, privileges, and interests.

49. Section 27 of the Act states:

> (1) A landlord may enter a rental unit in accordance with written notice given to the tenant at least 24 hours before the time of entry under the following circumstances:
>
> 2. To allow a potential mortgagee or insurer of the residential complex to view the rental unit.
>
> (2) A landlord or, with the written authorization of a landlord, a broker or salesperson registered under the Real Estate and Business Brokers Act, 2002, may enter a rental unit in accordance with written notice given to the tenant at least 24 hours before the time of entry to allow a potential purchaser to view the rental unit.
>
> (3) The written notice under subsection (1) or (2) shall specify the reason for entry, the day of entry and a time of entry between the hours of 8 a.m. and 8 p.m.

50. I accept that the scheduled appraisal inspection on March 4, 2024, and the 13 scheduled real estate showings from February 28, 2024 to March 10, 2024, disrupted the Tenant's privacy, her work, and her family's daily routine. Nevertheless, both the Landlord and the Tenant are required to comply with the Act, and specifically for this matter, s. 27 of the Act as provided in paragraph 49.

51. I find that the Landlord's 13 scheduled real estate visits in accordance with s. 27 of the Act, over the period of February 28, 2024 to March 10, 2024, were not an unreasonable number of visits. I find that the Tenant denying unit entry for 8 of these 13 visits, without a valid reason, is unreasonable and not in accordance with s. 27 of the Act. I accept illness as a valid reason to deny unit entry; however, the Tenant did not provide any other specific reasons, other than lifestyle disruptions, for the restricted real estate showing timeframes that she imposed on the Landlord. When asked, the Tenant never provided a reason for her Sunday and Monday real estate showing prohibition.

52. On the basis of the evidence provided, over the period of February 28, 2024 to March 10, 2024, I find that the Landlord negotiated with the Tenant in good faith in an effort to accommodate the Tenant's unit entry timeframes; however, the Tenant's requirements were too restrictive, not appropriate, not in accordance with s. 27 of the Act, and ultimately not tenable for the purpose of actively selling the unit.

Daily Compensation and Rent Deposit

53. The Tenant was required to pay the Landlord $11,100.78 in daily compensation for use and occupation of the rental unit for the period from April 1, 2024 to July 31, 2024.
54. Based on the monthly rent, the daily compensation is $90.99. This amount is calculated as follows: $2,767.50 x 12, divided by 365 days.
55. Since the termination date in the notice of termination, the Tenant paid the Landlord $11,070.00 in rent.
56. The Landlord incurred costs of $186.00 for filing the application and is entitled to reimbursement of those costs.
57. The Landlord collected a rent deposit of $2,767.50 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of $57.63 is owing to the Tenant for the period from October 1, 2023 to July 31, 2024.
58. If the tenancy is terminated, the amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenant is required to pay.

Compensation for Substantial Interference

59. As provided in paragraph 48, the Tenant has substantially interfered with the Landlord's lawful rights, privileges, and interests. As a result of this substantial interference, the Landlord has incurred reasonable out-of-pocket expenses of $3,220.93. These expenses include $802.30 for two failed appraisals, as provided in paragraphs 24 to 26, $823.96 for mortgage interest differential costs as provided in paragraph 26, and $1,594.67 for mortgage legal fees as provided in paragraph 27.

Refusal of Eviction and Relief from Eviction

60. The Tenant asserted that as a result of the tenancy issues in her T2 application, the Board must refuse to grant the Landlord's application for eviction, pursuant to s. 83(3)(a) of the Act, because the Landlord is in serious breach of the Landlord's responsibilities under the Act. The Tenant also asserted that the Board must refuse to grant the Landlord's application for eviction, pursuant to s. 83(3)(c) of the Act, because the Landlord filed her application as a result of the Tenant trying to enforce her legal rights. The Tenant stated that the tenancy issues in her T2 application are also grounds for the Board to provide her with eviction relief pursuant to s. 83(1) and s. 83(2) of the Act.
61. Accordingly, the Tenant's T2 application was heard to determine the merits of the Tenant's allegations, and to consider if the tenancy issues were grounds for refusing the Tenant's eviction, or for providing the Tenant with eviction relief.

LTB-T-027520-23 T2 Application

Determinations:

62. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.

63. The Tenant was in possession of the rental unit on the date the application was filed, and remains in possession of the rental unit as of the day of this hearing.

64. On April 10, 2023, the Tenant filed a T2 application (T2) pursuant to s. 29(1) of the Act alleging the Landlord:

    a) altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys;

    b) substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of her household; and

    c) harassed, obstructed, coerced, threatened, or interfered with the Tenant.

65. As provided in paragraphs 9 and 12 above, and as agreed by both parties, the Tenant has a total of 24 T2 allegations, to include the allegations in the T2, filed on April 10, 2023, and the allegations in the two T2 application amendment requests, submitted to the Board on May 3, 2024, and on June 11, 2024.

66. The Tenant's 24 T2 allegations are all from incidents later than April 10, 2022, and therefore fall within the limitation period pursuant to s. 29(2) of the Act. Accordingly, all the Tenant's allegations will be considered.

Altered the Locking System

67. The Tenant testified that upon her request, the Landlord changed the unit lock on December 17, 2022, and gave her a key for the new lock on December 17, 2022. The Landlord testified that, at the request of the Tenant, the unit locks were changed on December 17, 2022, and the Tenant was given a key to the new locks on December 17, 2022.

68. I am satisfied that on December 17, 2022, at the request of the Tenant, the unit locks were changed, and the Landlord provided the Tenant with a key for the new locks the same day – on December 17, 2022. I therefore find that the Landlord did not breach s. 24 of the Act.

Substantial Interference and Harassment

69. Substantial Interference. Section 22 of the Act states:

> 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.

70. Harassment. Section 23 of the Act states:

> A landlord shall not harass, obstruct, coerce, threaten, or interfere with a tenant.

71. While there is no definition of "harassment" in the Act, the *Ontario Human Rights Code* defines "harassment" as:

> engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.

Landlord's key retention

72. The Tenant testified that on January 3, 2023, she learned that the Landlord had retained a key when the unit locks were changed on December 17, 2022. The Tenant acknowledged that the Landlord had the right to retain the key; however, the Landlord's failure to inform her that the Landlord would retain a key, and who had access to her unit, substantially interfered with her reasonable enjoyment of the unit and was harassing in nature. The Landlord testified that she retained the new unit key on December 17, 2022, and did not advise the Tenant that she would retain a key.

73. On the basis of the evidence provided, I am not satisfied that the Landlord's failure to advise the Tenant that she had a unit key substantially interfered with the Tenant's reasonable enjoyment of the unit or was an act of harassment. The Tenant did not establish, with sufficient evidence, that the Landlord substantially interfered with her reasonable enjoyment and harassed her. The Tenant was aware that the Landlord had the right to retain a key; therefore, the Landlord's retention of a key at the time of the lock change should have been understood by the Tenant, and required no further communication. I am satisfied that the Landlord's retention of a key without advising the Tenant was not vexatious conduct. For these reasons, I find that the Landlord did not breach her responsibilities pursuant to s. 22 and s. 23 of the Act.

Landlord's email to the Tenant on January 3, 2023

74. The Tenant testified that on January 3, 2023, the Landlord sent her an unsolicited, aggressive, and harassing email explaining why the Landlord retains a key for the unit and who has access to the key. The Tenant stated that this email substantially interfered with her reasonable enjoyment of the unit, and was an act of harassment. The Tenant submitted a copy of the email. The Landlord identified the email as hers, and testified that she did not send it to the Tenant to harass her, but rather to provide the Tenant with clarity regarding why she retains a unit key and how the key is safeguarded.

75. On the basis of the evidence provided, I am not satisfied that the Landlord's email to the Tenant on January 3, 2023, substantially interfered with the Tenant's reasonable enjoyment of the unit or was an act of harassment. The Tenant did not establish, with sufficient evidence, that the Landlord substantially interfered with her reasonable enjoyment and harassed her. I am satisfied, upon reading the email, that the email is professional in its tone, and not vexatious, intimidating, coercive, or threatening. I am satisfied that it was not reasonable for the Landlord to know that the Tenant would find this

email harassing. For these reasons, I find that the Landlord did not breach her responsibilities pursuant to s. 22 and s. 23 of the Act.

Landlord declines Tenant's invitation

76. The Tenant testified that on January 12, 2023, the Landlord sent her an email declining her invitation to talk in person about tenancy issues. The Tenant stated that the Landlord's refusal of the invitation showed the Landlord's lack of responsiveness and cooperation in addressing tenancy issues. The Tenant explained that the invitation refusal substantially interfered with her reasonable enjoyment of her unit and contributed to the harassment she experienced during her tenancy. The Tenant submitted a copy of the email. The Landlord identified the email as hers, and testified that she did not send it to the Tenant to harass her, but rather to positively and politely decline the Tenant's invitation. The Landlord explained that she believed that there was no requirement for an in-person meeting.

77. On the basis of the evidence provided, I am not satisfied that the Landlord's email to the Tenant on January 12, 2023, declining the Tenant's invitation, substantially interfered with the Tenant's reasonable enjoyment of the unit or was an act of harassment. The Tenant did not establish, with sufficient evidence, that the Landlord substantially interfered with her reasonable enjoyment and harassed her. I am satisfied, upon reading the email, that the email is polite and provides reasonable reasons for the Landlord declining the invitation. I am satisfied that the Landlord's comments in her email are not vexatious, and that it was not reasonable for the Landlord to know that the Tenant would find this email harassing. For these reasons, I find that the Landlord did not breach her responsibilities pursuant to s. 22 and s. 23 of the Act.

Landlord's rent payment accommodation

78. The Tenant testified that at the start of the tenancy she agreed to pay the rent via e-transfer; however, she wanted to change the method of rent payment by depositing cash directly into the Landlord's account. The Tenant asserted that the Landlord responded to her request, via email on March 30, 2023, hesitant to provide her banking details, but suggesting "SingleKey" as a possible option. The Tenant explained that the Landlord refusing to accommodate a change in the rent payment method substantially interfered with her reasonable enjoyment of her unit and was obstructive. The Tenant submitted a copy of the email. The Landlord identified the email as hers, and testified that she was open to changing the method of rent payment, but was cautious, for financial security reasons, regarding the method of payment and providing the Tenant with her banking details.

79. On the basis of the evidence provided, I am not satisfied that the Landlord's hesitance in providing her banking information to the Tenant on March 30, 2023, substantially interfered with the Tenant's reasonable enjoyment of the unit or was obstructive. The Tenant did not establish, with sufficient evidence, that the Landlord substantially interfered with her reasonable enjoyment and was obstructive. I am satisfied, upon reading the email, that the email is professional in tone, and provides the Tenant will an alternate potential method of payment in the form of "SingleKey". I am satisfied that the Landlord's comments in her email, and her preference not to provide her banking details, are appropriate and

cooperative – not obstructive. For these reasons, I find that the Landlord did not breach her responsibilities pursuant to s. 22 and s. 23 of the Act.

Landlord's email to the Tenant on April 29, 2023 (seven allegations)

80. The Tenant testified that the Landlord sent her an email on April 29, 2023 that substantially interfered with her reasonable enjoyment of the unit, and was harassing, for the following reasons:

    a) The Landlord thanked the Tenant for payment of rent for May 2023, after issuing an N4 Notice of Termination. The Tenant explained that the Landlord's gratitude immediately after serving an N4 Notice is insincere, condescending, and coercive.

    b) The Landlord requested limited communication, and when required, to do so in writing. The Tenant explained that this request reinforces a hostile and threatening environment that obstructs effective communication and the resolution of tenancy issues.

    c) The Landlord remained unwilling to provide her banking information to allow the Tenant to change the method of paying the rent. The Landlord stated that the Tenant's international bank had a "bug". The Tenant explained that the Landlord's refusal was obstructive and coercive.

    d) The Landlord advised the Tenant if the rent is not paid then an N4 Notice of Termination will be served to the Tenant. The Tenant explained that this demonstrated the Landlord's pattern of disproportionate actions for minor issues.

    e) The Landlord served the Tenant an N4 on April 2, 2023, and the Tenant paid the rent on April 4, 2023. The Tenant explained that the Landlord's immediate response of serving an N4 before communicating with the Tenant to resolve the issue, creates a hostile, threatening, and intimidating environment.

    f) The Landlord's reluctance to send the Tenant emails only during business hours, and her suggestion to the Tenant to check her emails when convenient to the Tenant – during business hours.

    g) The Landlord's statement that this email, based on legal advice, is her final response to the Tenant regarding the Tenant's T2 application, until the application is heard by the Board. The Tenant explained that the Landlord, through restricting dialogue with the Tenant, created barriers to resolving tenancy issues, and this resulted in harassment, coercion, and obstruction.

81. The Tenant submitted a copy of the email. The Landlord identified the email as hers, and testified that she did not send it to the Tenant to harass, obstruct, coerce, threaten, or interfere with the Tenant, but rather to provide the Tenant with a preliminary response to her T2 application. The Landlord asserted that the tone of the email was formal and professional.

82. On the basis of the evidence provided, I am not satisfied that the Landlord's email to the Tenant on April 29, 2023, substantially interfered with the Tenant's reasonable enjoyment of the unit or was harassing, obstructive, coercive, or threatening in any manner. The Tenant did not establish, with sufficient evidence, that the Landlord substantially interfered with her reasonable enjoyment, or was harassing, obstructive, coercive, or threatening.

83. I am satisfied, upon reading the email, that the email is formal and professional. I find that the Landlord's advisement to the Tenant about the service of an N4, serving the N4, request for communication in writing, reluctance to provide banking information, reluctance to sending emails only during business hours, and sending the April 29, 2023 email to the Tenant – are all reasonable and appropriate actions for a landlord.

84. I am satisfied that the Landlord's comments in her email are not vexatious, and that it was not reasonable for the Landlord to know that the Tenant would find this email harassing. For these reasons, I find that the Landlord did not breach her responsibilities pursuant to s. 22 and s. 23 of the Act.

Air conditioner inoperative

85. The Tenant testified that the air conditioning for the unit malfunctioned on June 7, 2023, and was resolved on June 13, 2023. The Tenant testified further that on July 4, 2023, she contacted the Landlord's technician regarding the air conditioning failing again, and the technician responded that he would inspect the unit on July 6, 2023; however, the air conditioning was not adequate and was not fixed for over two months during the summer. The Tenant submitted copies of emails and text messages of her coordination regarding the air conditioner. The Tenant asserted that the Landlord's failure to remedy the air conditioning problem in a timely manner substantially interfered with her reasonable enjoyment of her unit and contributed to the harassment she experienced during her tenancy.

86. The Landlord testified that a new air conditioning unit was installed on June 12, 2023, in response to the Tenant's June 7, 2023 maintenance issue. The Landlord testified further that her technician attended the unit to inspect the new air conditioner on July 18, 2023, in response to the Tenant's communication to him on July 4, 2023, that the air conditioner was not working properly. The Landlord asserted that the inspection revealed that the new air conditioner was not cooling below 23 degrees Celsius; however, this issue was fixed sometime before July 21, 2023. The Landlord submitted copies of email correspondence to the Tenant regarding the air conditioning, as well as a receipt, dated June 12, 2023, for the purchase of a new air conditioner at a cost of $4,463.50.

87. On the basis of the evidence provided, and on a balance of probabilities, I am satisfied that the Landlord's response to the malfunctioning air conditioner on June 12, 2023, and on July 18, 2023, was reasonable and appropriate, and that the new air conditioner was working properly sometime before July 21, 2023. In this matter, I find the Landlord's evidence more compelling than the Tenant's evidence. I am satisfied that the new air conditioner cooled to 23 degrees Celsius on June 12, 2023, but required further adjustments to ensure cooling below 23 degrees, and this was accomplished before July 21, 2023, within a few days after the technician's inspection on July 18, 2023. For these reasons, I am not satisfied that the Landlord substantially interfered with the Tenant's reasonable enjoyment of the unit or harassed the Tenant as a result of her response to the

maintenance issue. I am satisfied that the Landlord's conduct in this matter was not vexatious or obstructive. For these reasons, I find that the Landlord did not breach her responsibilities pursuant to s. 22 and s. 23 of the Act.

Laptop Damage

88. The Tenant testified that the breakfast bar in the unit fell and damaged her laptop, and that the Landlord was unwilling to compensate the Tenant for the damage, preferring to have their respective insurance companies settle the matter. The Tenant submitted an email from the Landlord, dated July 6, 2023, requesting the Tenant work through her insurance company regarding the damage. The Tenant explained that the Landlord refusing to resolve the matter substantially interfered with her reasonable enjoyment of her unit and was obstructive.

89. The Landlord identified the email as hers, and testified that she was not prepared to give the Tenant cash for her damaged laptop, but believed that she and the Tenant should go through their respective insurance companies to resolve the Tenant's claim. The Landlord noted that she provided the Tenant's insurance particulars to her insurance company when she filed her own claim for the breakfast bar damage, but she believed that the Tenant never filed a claim for the laptop damage. The Landlord submitted her email correspondence with the Tenant regarding this matter, as well as an email to her insurance agent, dated August 18, 2023, providing her insurance agent with an update on any Tenant damage claims.

90. On the basis of the evidence provided, I am not satisfied that the Landlord's request that the Tenant coordinate with the Tenant's insurance company for the damage to her laptop, substantially interfered with the Tenant's reasonable enjoyment of the unit or was obstructive. The Tenant did not establish, with sufficient evidence, that the Landlord substantially interfered with her reasonable enjoyment and was obstructive. I am satisfied, upon reading the Landlord's July 6, 2023 email, that the email is professional in tone, and provides the Tenant will a method to seek compensation for any damage to her laptop. I am satisfied that the Landlord's comments in her email, and her preference to work through the respective insurance companies, are appropriate and reasonable – not obstructive or interfering. For these reasons, I find that the Landlord did not breach her responsibilities pursuant to s. 22 and s. 23 of the Act.

Property Manager's (PM) emails to the Tenant dated July 11, 2023

91. The Tenant testified that on July 11, 2023, after the PM had attended the unit to resolve excessive smoke in the kitchen, the PM sent her two emails regarding stove coil and filter cleaning, and the reduction of oil on the baking tray below the coils, to remedy excessive smoke in the kitchen. The Tenant submitted these two emails, as well as an audio recording of the PM's visit to the unit just before the emails were sent. The Tenant asserted that these emails were paternalistic, culturally insensitive, and condescending, and therefore, substantially interfered with her reasonable enjoyment of the unit, and were harassing in nature. The Landlord confirmed the PM's emails, and noted that the PM was always professional and was only providing the Tenant with possible remedies for the smoke that she encountered in the kitchen.

92. On the basis of the evidence provided, I am not satisfied that the PM's emails to the Tenant on July 11, 2023, substantially interfered with the Tenant's reasonable enjoyment of the unit or were harassing in nature. The Tenant did not establish, with sufficient evidence, that the Landlord substantially interfered with her reasonable enjoyment and harassed her as a result of the PM's emails. I am satisfied, upon reading the emails, that the emails in good faith attempted to provide the Tenant with solutions to her issue of excessive kitchen smoke, and are reasonable and appropriate given the PM's scope of duties. I am not satisfied that the emails are paternalistic, culturally insensitive, condescending, or vexatious. I am satisfied that it was not reasonable for the Landlord or PM to know that the Tenant would find these emails unwelcome. For these reasons, I find that the Landlord did not breach her responsibilities pursuant to s. 22 and s. 23 of the Act.

Property Manager (PM) email notifications to the Tenant

93. The Tenant testified that on July 12, 15, 16, 17, 18, and 19, 2023, each day she received an automated email notification from the PM that her lease will be renewed. The Tenant provided copies of the six email notifications. The Tenant stated that these emails substantially interfered with her reasonable enjoyment of the unit, and were harassing in nature. The Tenant stated that on July 19, 2023, she advised the Landlord and the PM to remove her from this automated notification application. The Tenant submitted a copy of her July19, 2023 email.

94. On the basis of the evidence provided, I am not satisfied that the PM's six automated email notifications to the Tenant substantially interfered with the Tenant's reasonable enjoyment of the unit or were harassing in nature. The Tenant did not establish, with sufficient evidence, that the Landlord substantially interfered with her reasonable enjoyment and harassed her. I am satisfied that the automated emails to the Tenant promptly ceased when the Tenant advised the Landlord and the PM that the emails were not welcome. I am satisfied that these notifications were not provided to be vexatious, and it was not reasonable for the Landlord or the PM to know that the Tenant would find these emails unwelcome. For these reasons, I find that the Landlord did not breach her responsibilities pursuant to s. 22 and s. 23 of the Act.

Property Manager (PM) text messages and call to the Tenant on July 14, 2023

95. The Tenant testified that on July 14, 2023, the PM sent her a series of eight text messages that were rude. The Tenant provided a copy of the text messages. The Tenant testified further that after the text messages were sent, she tried to call the PM to reduce tensions, and when the PM called her back an argument ensued. The Tenant stated that she did not audio record her conversation with the PM, but that the PM responded to her with microaggressions and anti-black racist remarks. When asked what these remarks were, the Tenant testified that the PM stated, "he believed that the Tenant thought that he was a racist". The Tenant stated that the PM's text messages on July 14, 2023, followed by his conversation with her, substantially interfered with her reasonable enjoyment of the unit, were harassing in nature, and were discriminatory.

96. The Landlord testified that she hired the PM on July 10, 2023, and although she never met him in person, he was highly recommended as a PM. The Landlord stated that the PM only attended the unit on one occasion on July 11, 2023, and by the end of July 2023 the

Tenant had advised her that she would not communicate with the PM again. The Landlord testified that the PM was always professional, and kept her informed of all his coordination and communication with the Tenant. The Landlord asserted that in her dealings with the PM, he was never prejudicial or discriminatory toward the Tenant or anyone else.

Analysis

97. There is no definition of discrimination in the *Ontario Human Rights Code*, but is generally considered to be a disadvantageous impact because of a *Code* ground.

98. On the basis of the evidence provided, I am not satisfied that the PM's text messages to the Tenant on July 14, 2023, and subsequent conversation, substantially interfered with the Tenant's reasonable enjoyment of the unit, or were rude, harassing, or discriminatory. The Tenant did not establish, with sufficient evidence, that the Landlord substantially interfered with her reasonable enjoyment, harassed her, or discriminated against her pursuant to s. 2(1) and s. 2(2) of the *Ontario Human Rights Code,* as a result of the PM's text messages and follow-on conversation. I am not satisfied that the PM's comments or conduct in this matter resulted in a disadvantageous impact for the Tenant because of a *Code* ground.

99. I am satisfied, upon reading the text messages, that the PM in good faith is asking the Tenant why she cancelled a scheduled appointment to repair the unit countertop, with the goal of avoiding a similar occurrence in the future. I find the PM's text messages to be professional, reasonable, and appropriate given the circumstances and the PM's scope of duties. I am not satisfied that the PM saying: "he believed that the Tenant thought that he was a racist" substantially interfered with the Tenant's reasonable enjoyment of the unit, or was vexatious or discriminatory. The Tenant did not establish how this comment disadvantageously impacted her on the basis of a *Code* ground. I am satisfied that it was not reasonable for the Landlord or PM to know that the Tenant would find these text messages and comments unwelcome. For these reasons, I find that the Landlord did not breach her responsibilities pursuant to s. 22 and s. 23 of the Act, or s. 2(1) and s. 2(2) of the *Ontario Human Rights Code*.

Property Manager's (PM's) email to the Tenant on July 24, 2023

100. The Tenant testified that on July 24, 2023, the PM sent her an email that was racist, culturally insensitive, harassing, and coercive. The Tenant explained that in the email the PM attributed the smoke issues in the kitchen to her excessive use of oil, cooking habits, and kitchen cleanliness. The Tenant asserted that her use of cooking oil is a part of her culture. The Tenant provided a copy of the email and stated that the email substantially interfered with her reasonable enjoyment of the unit, was harassing, and was discriminatory.

101. The Landlord confirmed the email and testified that she believed the PM's email was professional, not harassing, and not discriminatory. The Landlord testified further that the PM was always professional, and kept her informed of all his coordination and communication with the Tenant. The Landlord asserted that in her dealings with the PM, he was never prejudicial or discriminatory toward the Tenant or anyone else.

Analysis

102. On the basis of the evidence provided, I am not satisfied that the PM's email to the Tenant on July 24, 2023, substantially interfered with the Tenant's reasonable enjoyment of the unit, or was harassing or discriminatory. The Tenant did not establish, with sufficient evidence, that the Landlord substantially interfered with her reasonable enjoyment, harassed her, or discriminated against her pursuant to s. 2(1) and s. 2(2) of the *Ontario Human Rights Code.* I am not satisfied that the PM's comments in his email resulted in a disadvantageous impact for the Tenant because of a *Code* ground.

103. I am satisfied, upon reading the email, that the PM in good faith attempted to explain his role as a PM, and why he provided recommendations to the Tenant to minimize her kitchen smoke. I am satisfied that the email was professional, reasonable, and appropriate given the PM's scope of duties. I am not satisfied that the PM's email comments related to kitchen cleanliness and the use of cooking oil were racist, culturally insensitive, harassing, coercive, interfering, or discriminatory.

104. The Tenant did not establish how the email comments disadvantageously impacted her on the basis of a *Code* ground. I am satisfied that it was not reasonable for the Landlord or PM to know that the Tenant would find this email unwelcome. For these reasons, I find that the Landlord did not breach her responsibilities pursuant to s. 22 and s. 23 of the Act, or s. 2(1) and s. 2(2) of the *Ontario Human Rights Code*.

Realtor audio recording of the Tenant on February 28, 2024

105. The Tenant testified that on February 28, 2024, the Landlord's realtor, during a 15-minute pre-listing walkthrough of the unit, audio recorded her conversation with the realtor without her consent or knowledge. The Tenant asserted that this recording, without her consent, substantially interfered with her reasonable enjoyment of the unit, and was harassing. The Landlord testified that she was aware that her realtor made the 6-minute recording because of claims that the Tenant had with the Human Rights Tribunal of Ontario (HRTO). The Landlord stated, for this reason, the realtor wanted to make sure that her conversation with the Tenant was documented.

106. On the basis of the evidence provided, I am not satisfied that the realtor's audio recording of her conversation with the Tenant on February 28, 2024, substantially interfered with the Tenant's reasonable enjoyment of the unit, or was harassing. The Tenant did not establish, with sufficient evidence, that the Landlord substantially interfered with her reasonable enjoyment, and harassed her, as a result of the audio recording.

107. I accept that under the Criminal Code of Canada's one-party consent rule, only one person in a conversation needs to be aware of and consent to a recording of a conversation. Furthermore, the audio recording was not played during the hearing or accepted as evidence for the Landlord's L2 application. I am also satisfied that the realtor made the recording for the purpose of a possible HRTO proceeding, and not for public dissemination or vexatious reasons. Accordingly, there was no violation of the Tenant's privacy interests. For these reasons, I find that the Landlord did not breach her responsibilities pursuant to s. 22 and s. 23 of the Act.

Realtor's email to the Landlord on February 28, 2024

108. The Tenant testified that on February 28, 2024, after the realtor attended the unit for a pre-listing walkthrough, the realtor sent an email to the Landlord regarding the Tenant's threatening conduct. The Tenant asserted that this email substantially interfered with her reasonable enjoyment of the unit, and was harassing in nature. The Landlord submitted a copy of the email, and testified that the realtor sent her the email to provide her observations during the walkthrough of the unit on February 28, 2024. The Landlord asserted that her realtor was concerned about the Tenant's frightening temperament, and the safety of realtors during upcoming showings of the unit.

109. On the basis of the evidence provided, I am not satisfied that the realtor's email to the Landlord on February 28, 2024, substantially interfered with the Tenant's reasonable enjoyment of the unit or was harassing in nature. The Tenant did not establish, with sufficient evidence, that the Landlord substantially interfered with her reasonable enjoyment and harassed her as a result of the realtor's email. I am satisfied, upon reading the email, that the purpose of the email is not to be vexatious, but rather for the realtor to relay to the Landlord concerns about showing the unit. I accept that this type of correspondence is necessary for the realtor to fulfill her professional obligations to her client – the Landlord. I am satisfied that the email is reasonable, appropriate, not vexatious, and was not addressed or sent to the Tenant. For these reasons, I find that the Landlord did not breach her responsibilities pursuant to s. 22 and s. 23 of the Act.

Real Estate showings not in accordance with the Tenant's schedule

Landlord's refusal to negotiate a reasonable showing schedule

110. The Tenant testified that the Landlord scheduled real estate showings of the unit on Sundays, Mondays, and on days that she expressly restricted entries for showings, as provided in paragraphs 40 to 42. The Tenant testified further that the Landlord refused in good faith to negotiate a reasonable real estate showing schedule, as provided in paragraph 43. The Tenant asserted that the Landlord's failure to abide by her requested showing schedule or to negotiate a reasonable showing schedule, substantially interfered with her reasonable enjoyment of the unit, and was harassing.

111. The Landlord testified that although she tried to schedule real estate showings as per the Tenant's requested time frames, the Tenant's schedule was too restrictive, and did not permit the unit to be marketed effectively, as provided in paragraphs 29 to 32, and 36. The Landlord testified further that she tried to negotiate with the Tenant in good faith to accommodate her privacy, work, and lifestyle requirements; however, the Tenant's demands remained too restrictive, as provided in paragraphs 35 and 37. The Landlord asserted that she complied with s. 27 of the Act for all scheduled real estate entries to the unit.

112. On the basis of the evidence provided, and as determined in paragraphs 47 through 52, I am satisfied that it was the Tenant who substantially interfered with the Landlord's lawful rights, privileges, and interests, through her refusal to permit unit entries that complied with s. 27 of the Act, despite the Landlord persistently negotiating with the Tenant in good faith to significantly curtail the showing times. I accept that the scheduled real

estate showings disrupted the Tenant's privacy, her work, and her family's daily routine; however, both the Landlord and the Tenant are required to comply with the Act. The Landlord did, and the Tenant did not. I am satisfied that the Landlord's comments and conduct in negotiating a suitable schedule for real estate showings, and scheduling these showings, was not vexatious. For these reasons, I find that the Landlord did not breach her responsibilities pursuant to s. 22 and s. 23 of the Act.

Landlord's intent not to sell the unit

113. The Tenant testified that the Landlord placed the rental unit on the market in an effort to force the Tenant to move, and not to sell the property. The Tenant explained that the unit has not sold despite a strong real estate market, proving that the Landlord is not aggressively marketing the unit, and does not intend to sell it. The Tenant testified further that the Landlord's attempted sale of the unit to motivate her to move has substantially interfered with her reasonable enjoyment of the unit, and is harassing.

114. The Landlord testified, as provided in paragraph 33 above, that the only reason she was selling the unit was for financial reasons, and for no reason in any manner to discriminate against the Tenant. She remarked that her primary residence has an upcoming mortgage renewal, and she wanted to reduce the size of her mortgage with the sale proceeds of the rental unit. The Landlord noted that she always strives to maintain a professional and respectful relationship with the Tenant.

115. On the basis of the evidence provided, I am satisfied that the Landlord has listed the unit for sale for appropriate financial reasons, and not to force the Tenant to vacate the unit. I therefore find that the Landlord's motivation to sell the unit has not substantially interfered with the Tenant's reasonable enjoyment of the unit, and is not harassing in nature. The Tenant did not establish, with sufficient evidence, that the Landlord substantially interfered with her reasonable enjoyment and harassed her. I am not satisfied that the Landlord's financial motivation to sell the unit was vexatious. For these reasons, I find that the Landlord did not breach her responsibilities pursuant to s. 22 and s. 23 of the Act.

Faulty N5 Notices of Termination

116. The Tenant testified that the two N5 Notices of Termination that the Landlord served to her, as part of application LTB-L-022257-24, are faulty N5s given that they misrepresented incidents and fabricated claims to evict her. Tenant stated that as a result of the N5s, she is living in fear of losing her home, and for this reason the Landlord has substantially interfered with her reasonable enjoyment of the unit, and is harassing her.

117. The Landlord asserted that she did not fabricate evidence, and as provided in paragraph 34, she served the Tenant with the N5s for valid reasons.

118. On the basis of the evidence provided, I am satisfied that the Landlord was acting in good faith when she served the N5s to the Tenant, and the notices were served for a proper purpose – the Tenant's substantial interference of the Landlord's lawful rights, privileges, and interests. I also determined, as provided in paragraphs 44 and 48, that the Tenant substantially interfered with the Landlord's lawful rights, privileges, and

interests, as alleged in the two N5s. Accordingly, I am not satisfied that the Landlord's service of two N5s to the Tenant substantially interfered with the Tenant's reasonable enjoyment of her unit, or harassed her. The Landlord's conduct in serving the N5s was not vexatious. The Landlord had the right to serve the N5s pursuant to s. 64 and s. 68 of the Act. For these reasons, I find that the Landlord did not breach her responsibilities pursuant to s. 22 and s. 23 of the Act.

Consideration of all 23 allegations of Substantial Interference and Harassment

119. I considered all 23 Tenant allegations of substantial interference and harassment to determine, if in their totality, they collectively resulted in the Landlord substantially interfering with the Tenant's reasonable enjoyment of her rental unit, or resulted in harassment.

120. On the basis of the evidence provided in paragraphs 69 though 118, I am satisfied that the Landlord did not substantially interfere with the Tenant's reasonable enjoyment of her unit, or harass her, when all the Tenant's allegations are considered as a whole. For these reasons, I find that the Landlord did not breach her responsibilities pursuant to s. 22 and s. 23 of the Act.

Summary - T2 Application

121. The Tenant did not establish that the Landlord breached her responsibilities pursuant to s. 22, s. 23, and s. 24 of the Act, or pursuant to s. 2(1) and s. 2(2) of the *Ontario Human Rights Code*. Accordingly, the Tenant's request for remedies will not be considered and the Tenant's application must be dismissed.

LTB-L-022257-24 L2 Application

Refusal of Eviction

The Tenant attempted to secure her legal rights

122. The Tenant testified that the reason the Landlord filed the L2 application is that she attempted to secure her legal rights, and that pursuant to s. 83(3)(c) of the Act, the Board must therefore refuse to grant the Landlord's application for eviction. The Tenant did not provide any details of events or circumstances, or any documentary evidence, to support this allegation. The Landlord testified, as provided in paragraph 34, that the only reason she filed the L2 application on March 19, 2024 was the Tenant's substantial interference with her right to have an appraisal and real estate showings in the unit, thus preventing the sale of the unit, and causing financial hardship.

123. The burden of proof to establish a causal relationship between the Tenant's attempt to secure or enforce her legal rights, and the Landlord's filing of the L2 application, rests with the Tenant; however, the Tenant has not provided sufficient evidence to establish this causal relationship. I am not satisfied on the basis of the evidence provided that the Tenant's attempt to secure or enforce her legal rights with respect to the tenancy was the reason the Landlord filed the L2. Accordingly, there are no circumstances to refuse the eviction pursuant to s. 83(3)(c) of the Act.

The Landlord is in serious breach of the landlord's responsibilities under the Act

124. The Tenant asserted that as a result of the tenancy issues in her T2 application, the Board must refuse to grant the Landlord's application for eviction, pursuant to s. 83(3)(a) of the Act, because the Landlord is in serious breach of the Landlord's responsibilities under the Act. The Tenant also asserted that these tenancy issues are grounds for the Board to provide her with eviction relief pursuant to s. 83(1) and s. 83(2) of the Act.

125. On the basis of the evidence provided in paragraphs 69 through 120, and for the reasons listed in paragraph 121, I find that there are no circumstances to refuse the eviction pursuant to s. 83(3)(a) of the Act. As provided in the Board's Interpretation Guideline 7, mandatory refusal of eviction is generally accepted to refer to serious breaches existing at the time of the hearing, not breaches from the past that have been remedied. As determined for Tenant application LTB-T-027527-23, provided in paragraph 121, the Landlord did not breach her responsibilities pursuant to s. 22, s. 23, and s. 24 of the Act.

Relief from Eviction

Tenant Circumstances

126. The Tenant testified that she suffers from Post-Traumatic Stress Disorder (PTSD) and Attention Deficit Hyperactivity Disorder (ADHD), and that her tenancy is causing her emotional distress. The Tenant submitted a letter from her family physician, dated April 14, 2024, that she was diagnosed with PTSD, depression, and ADHD on February 15, 2024. The Tenant also submitted a letter from her social worker, dated April 16, 2024, that she has been actively seeking mental health counselling since March 2023, in part, as a result of tenancy issues.

127. The Tenant testified further that she is a single parent with a single income and is raising her 7-year-old son. She noted that she has been receiving Ontario Works (OW) benefits since December 2022 as a result of COVID related disruptions to her employment income. The Tenant stated that she is also experiencing emotional stress as a result of adjusting to life in Canada, after having moved to Canada in July 2022.

128. The Tenant asserted that she wants to retain her tenancy; although, she has been searching for alternate accommodations in the event of her eviction. She remarked that she has no tenancy history in Canada; therefore, given her single income and no tenancy history, securing an alternate rental unit is difficult.

Landlord Circumstances

129. The Landlord testified that as a result of the difficulties that she has had with this tenancy, and the interruption it caused to her teaching duties, she has been off work as a schoolteacher since the end of March 2024 to mitigate her anxiety. The Landlord submitted a letter from her family physician, dated March 26, 2024, on the subject of her anxiety and required medication as a result of tenancy issues. The Landlord also submitted a letter from the Peel District School Board, dated June 3, 2024, indicating that the Landlord's medical leave had been extended.

130. The Landlord testified, as provided in paragraphs 36 and 37, that since she filed her L2 application, the Tenant continues to impose restrictions on real estate showings, resulting in more than 50% of scheduled showings being denied entry. The Landlord asserted that this has resulted in fewer and fewer showings, and with her increased mortgage payments as a result of her inability to get a unit appraisal, she is now at risk of defaulting on her mortgage. The Landlord stated that this financial hardship is further increasing her anxiety.

Analysis

131. As determined for Tenant application LTB-T-027527-23, provided in paragraph 121, the Landlord did not breach her responsibilities pursuant to s. 22, s. 23, and s. 24 of the Act. I therefore find that there are no circumstances to provide eviction relief as a result of the tenancy issues raised in the Tenant's T2 application.

132. As provided in paragraph 126, I am satisfied that the Tenant suffers from PTSD and ADHD, and that these disorders are mental impairments pursuant to s. 10(1)(b) of the *Ontario Human Rights Code*. However, I am satisfied that this impairment was not the cause of the problem that resulted in the Tenant's denial of lawful unit entries and the Landlord's subsequent two N5 notices to terminate the tenancy. The Tenant never alleged that her PTSD or ADHD were the reasons for her restrictive unit entry schedule. Accordingly, s. 2(1) of the *Code* does not apply, and the Landlord was not required to accommodate the Tenant to the point of undue hardship.

133. I find however, that even if s. 2(1) of the *Code* applied in this matter, the Landlord had accommodated the Tenant to the point of undue hardship, as provided in paragraphs 35, 36, 37, 43, 51, and 52. I find that the Landlord was unable to sell the unit (undue hardship), as a result of the Tenant's substantial interference, despite the Landlord's significant accommodation with respect to the real estate showing schedule.

134. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

135. I accept that the Landlord is experiencing anxiety and financial hardship as a result of this tenancy. I also accept that since the Landlord filed her L2 application the Tenant continues to deny entries to the unit that comply with s. 27 of the Act, and therefore, the Tenant continues to substantially interfere with the Landlords lawful rights, privileges, and interests.

136. I am satisfied that the Tenant suffers from mental health disorders, and despite these health issues and employment disruptions, she continues to pay the rent on-time and has complied with a significant number of unit entry notices. I find that the Tenant's substantial interference of the Landlord's lawful right for unit entry is based on her belief that she is not obligated to fully comply with the Act when the Act conflicts with her interests. The Tenant is mistaken.

137. Under these circumstances, I find that offering the Tenant full relief from eviction would allow the substantial interference to continue unabated, and would result in undue

hardship for the Landlord. However, I find it appropriate and reasonable to provide the Tenant with a final opportunity to retain her tenancy, by granting relief from eviction subject to the conditions ordered below. I am satisfied that this conditional relief from eviction will not result in undue financial hardship for the Landlord.

Request for Costs

138. The Landlord's representative requested that the Tenant pay legal costs to the Landlord of $700.00 as a result of a delay in the hearing from the Tenant's frequent interruptions, and from the Tenant's failure to provide a succinct listing of all her T2 allegations as ordered in LTB-T-027520-23-IN2 and LTB-L-022257-24-IN2.

139. The Board may award legal costs to a landlord if a tenant's conduct is unreasonable causing undue delays. In this matter, I find that the Tenant's disruptions were caused for two reasons. First, the Tenant did not have a legal representative and therefore was not familiar with the rules of procedure of an administrative tribunal. Second, the frequent interruptions from the Landlord's representative contributed significantly to the number of disruptions from the Tenant.

140. Regarding the provision of a succinct listing of T2 allegations, I accept that the Tenant, without legal representation, provided reasonable disclosures, to include her amended T2 applications, in an effort to provide this information to the Board and the Landlord. Accordingly, for the reasons provided in paragraphs 139 and 140, the Landlord's request for compensation for legal costs of $700.00, in accordance with the Board's Rules of Procedure 23.3, is denied.

It is ordered that:

LTB-T-027520-23 T2 Application

1. The Tenant's application is dismissed.

LTB-L-022257-24 L2 Application

2. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.

3. From September 1, 2024 to August 31, 2026, the Tenant shall permit, between the hours of 10:00 am and 7:00 pm on any day of the week:

   a) the entry of an appraiser in the unit providing the Landlord gives the Tenant at least 24 hours written notice of the entry pursuant to s. 27(1)2 and s. 27(3) of the *Residential Tenancies Act, 2006.* The Tenant shall not interfere with the appraiser for the duration of the entry*;* and

   b) the entry of a broker or salesperson in the unit providing the Landlord gives the Tenant at least 24 hours written notice of the entry pursuant to s. 27(2) and s. 27(3) of the *Residential Tenancies Act, 2006*. The Tenant shall not interfere with the

broker or salesperson for the duration of the entry. The broker or salesperson must be registered under the *Real Estate and Business Brokers Act, 2002.*

4. If the Tenant fails to comply with the conditions set out in paragraph 3 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
5. The Tenant shall pay to the Landlord $3,220.93, which represents the reasonable out-of-pocket expenses the Landlord has incurred as a result of the substantial interference.
6. The Tenant shall also pay to the Landlord $186.00 for the cost of filing the application.
7. The total amount the Tenant owes the Landlord is $3,406.93.
8. If the Tenant does not pay the Landlord the full amount owing on or before September 9, 2024, the Tenant will start to owe interest. This will be simple interest calculated from September 10, 2024 at 7.00% annually on the balance outstanding.

August 29, 2024
Date Issued

Frank Ebner
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.