



Order under Section 31 Residential Tenancies Act, 2006

Citation: Proulx v Gratton, 2024 ONLTB 91855

Date: 2024-12-18

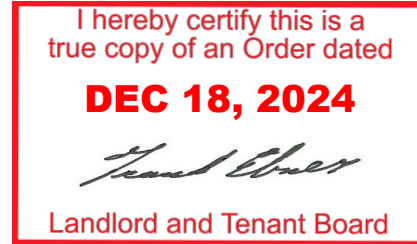
File Number: LTB-T-063096-22

In the matter of: UPPER, 68 PALMERSTON AVE
TORONTO ON M6J2J1

Between: Darren Proulx

And

Mary Louise Gratton



Tenant

Landlord

Darren Proulx (the 'Tenant') applied for an order determining that Mary Louise Gratton (the 'Landlord'):

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of his household.
- harassed, obstructed, coerced, threatened, or interfered with the Tenant.

This application was heard by videoconference on December 3, 2024. The Tenant and the Tenant's representative, Anthony Smith, attended the hearing. The Landlord and the Landlord's representative, Wendy Burgess, also attended the hearing.

Preliminary Issue:

1. The Tenant requested to amend his T2 application to remove allegations of Landlord harassment with respect to the Tenant's Linked-In profile, bank e-transfer and patio bench use, as well as to remove remedies that the Landlord cease interference and harassment activities, and that tenant Richard Vieira be evicted from his unit.
2. The Landlord consented to these application amendments.
3. I granted the Tenant's request to amend his application in accordance with the Board's Rules of Procedure 15.4.

Determinations:

4. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
5. The residential complex has three units, a basement unit, a main floor unit, and the Tenant's upper second floor unit. All three units share a common front hallway that leads from the front entrance of the residential complex to their respective unit doors.

6. The Tenant moved into the upper unit on March 1, 2022 and moved out of the unit on March 2, 2023. The monthly rent during the tenancy was \$1,995.00.
7. On October 27, 2022, the Tenant filed a T2 application (T2) pursuant to s. 29(1) of the *Residential Tenancies Act, 2006* (the "Act"). The Tenant's T2 application alleges the Landlord:
 - a) substantially interfered with the Tenant's reasonable enjoyment of the unit, and harassed the Tenant, by failing to ensure the basement unit tenant remained clear of the Tenant after an alleged assault on August 16, 2022;
 - b) substantially interfered with the Tenant's reasonable enjoyment of the unit by restricting the Tenant from using the residential complex's patio bench on October 10, 2022; and
 - c) substantially interfered with the Tenant's reasonable enjoyment of the unit, and harassed the Tenant, by installing a security camera in the interior common hallway of the residential complex on October 17, 2022.
8. The Tenant's T2 allegations are from incidents later than October 27, 2021, and therefore fall within the limitation period pursuant to s. 29(2) of the Act. Accordingly, the Tenant's allegations will be considered.

Substantial Interference and Harassment

9. 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.

10. Section 23 of the Act states:

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

11. 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.

Tenant's Safety after Alleged Assault – August 16, 2022

Tenant's Evidence

12. The Tenant testified that on August 16, 2022 on the sidewalk in front of the residential complex, the tenant in the basement unit, Richard Vieira, knocked the phone out of the Tenant's hand, placed it in his pocket, and retained the Tenant's phone for two to three minutes. The Tenant testified further that he then went immediately up to his unit and called the Landlord and the police regarding the altercation. The Tenant noted that the Landlord responded right away by attending the residential complex, and when the police arrived the basement tenant was charged with assault. The Tenant stated that he had a bruise on his arm from the assault. The Tenant acknowledged that the basement tenant's charge of assault was withdrawn by the crown on May 12, 2023. The Tenant submitted a video of the alleged assault on August 16, 2022, as well as a copy of an email with Toronto Police Services, dated May 16, 2023, indicating that the crown withdrew the charge of assault.
13. The Tenant asserted that after the assault the Landlord permitted the basement tenant, for three days, to complete patio stone work at the front entrance of the residential complex, and that this entrance was the Tenant's only access to his unit. The Tenant submitted two photos of the basement tenant completing this patio stone work. The Tenant also asserted that the Landlord dismissed his requests to have the basement tenant use the back entrance to the residential complex rather than the front entrance, which was the only entrance available to the Tenant. The Tenant provided copies of this October 7, 2022 email exchange. The Tenant remarked that the Landlord did not take appropriate action to minimize contact between him and the basement tenant, and as a result the Landlord substantially interfered with his reasonable enjoyment of the unit. The Tenant explained that he did not feel safe living near the basement unit tenant, and therefore decided to vacate the unit on March 2, 2023.

Landlord's Evidence

14. The Landlord testified that when the Tenant called her on August 16, 2022 after the alleged assault, she immediately attended the residential complex, believing that the situation was urgent. She noted that she advised the police that the basement tenant was completing work for her near the front entrance of the residential complex, and that the police advised her that the basement tenant does not have to leave the property. The Landlord submitted copies of her email exchanges with the Tenant on August 16, 2022, with the Tenant's objection to the basement tenant completing the front entrance work, and the Landlord's responses to the Tenant on the basis of the guidance she received from the police.
15. The Landlord testified further that at the time of the alleged assault the front entrance was a construction site, and she wanted to complete the work as soon as possible to avoid any safety hazards for the tenants. She therefore decided to permit the basement tenant to complete the work under her supervision, as well as under the supervision of plumbers who were also working on the project. The Landlord explained that after speaking with the basement tenant, she believed that the basement tenant would not interfere with the

Tenant any further. The Landlord stated that given the seriousness of the assault allegation, on August 17, 2022, she served the basement tenant with a voidable N5 Notice to terminate his tenancy. The Landlord submitted a copy of the N5 Notice, as well as its corresponding Certificate of Service.

16. The Landlord stated further that the daily use of the back entrance by basement tenant, rather than the front entrance used by the Tenant, was not feasible given that the back entrance exited to an enclosed backyard, and could not be used for street access unless neighboring private property was trespassed.
17. Richard Vieira, the basement tenant, testified that on August 16, 2022 the Tenant was taking a video of him with his phone so he swatted the Tenant's phone out of his hand. Mr. Vieira noted that this was not the first occurrence of the Tenant filming him without his consent. Mr. Vieira testified further that he was charged with assault as a result of this incident, and that the condition of his release was to stay away from the Tenant, which he did. He noted that he also promised the Landlord to stay away from the Tenant during the completion of the patio stone construction, and thereafter. Mr. Vieira remarked that his charge of assault was later dropped, and that he did not have to complete an anger management course as a result of this incident.

Analysis

18. On the basis of the evidence provided, I find that the Landlord did not substantially interfere with the Tenant's reasonable enjoyment of the rental unit by failing to take appropriate action to address the Tenant's safety concerns. I am satisfied that the Landlord took immediate, reasonable, and appropriate action to minimize contact between the Tenant and the basement tenant to include: immediately attending the unit on August 16, 2022 to engage with the Tenant, the basement tenant, and the police; serving a voidable N5 notice of termination to the basement tenant the day after the alleged assault; supervising the basement tenant's completion of patio stone work at the front entrance; and, advising the basement tenant to remain clear of the Tenant. Given that the alleged assault on August 16, 2022 took place on the public sidewalk in front of the residential complex, as well as the nature of the alleged assault, I find that a voidable N5 notice rather than a non-voidable N6 notice was the appropriate notice under these circumstances.
19. Furthermore, I am satisfied that after the alleged assault the basement tenant did not contact, engage with, or interfere with the Tenant, as per the condition of his release and his commitment to the Landlord, prompting the crown to withdraw the charge of assault on May 12, 2023, more than eight months after the charge was laid. For these reasons, and those provided in paragraph 18, I find that the Landlord did not breach her responsibilities pursuant to s. 22 of the Act.
20. On the basis of the evidence provided, I find that the Landlord's responses, either through correspondence or conduct, to the alleged assault on August 16, 2022, were always professional and courteous. The Tenant did not establish, through sufficient evidence, that the Landlord's correspondence or her conduct were vexatious with respect to the Tenant's safety concerns. Accordingly, I find that the Landlord did not breach her responsibilities pursuant to s. 23 of the Act.

Patio Bench Restriction – October 10, 2022

21. The Tenant testified that the Landlord restricted his use of the residential complex's patio bench on October 10, 2022, and after his complaint to the Landlord about the restriction, the Landlord relented and removed the restriction. The Tenant confirmed that he was only restricted from using the patio bench for one day.
22. The Landlord testified that she never restricted the Tenant's use of the patio bench. The Landlord submitted a copy of email correspondence with the Tenant, dated October 9 and 10, 2022, stating to the Tenant that she has no issue with the Tenant using the patio bench, but advising the Tenant that the patio bench belongs to the basement tenant and she wants to avoid any conflicts between the Tenant and the basement tenant.

Analysis

23. On the basis of the evidence provided, I find that the Landlord did not substantially interfere with the Tenant's reasonable enjoyment of the rental unit by restricting the Tenant's use of the patio bench. The Tenant has the burden to prove that the Landlord restricted the Tenant's use of the patio bench. The Tenant did not establish, through sufficient evidence, that the Landlord restricted the Tenant's bench use. In this matter, I find the Landlord's evidence, both testimony and the emails dated October 9 and 10, 2022, more compelling than the Tenant's testimony. Furthermore, even if the Tenant had proven that a one-day bench use restriction had been imposed by the Landlord, I would not find this restriction to be substantial interference by the Landlord. For these reasons, regarding the patio bench use, I find that the Landlord did not breach her responsibilities pursuant to s. 22 of the Act.

Common Hallway Security Camera – October 17, 2022

24. The Tenant testified that on October 17, 2022 the Landlord installed a security camera in the common hallway that was pointing at his unit door. The Tenant explained that when his unit door was open the camera would be able to peer into his unit. The Tenant asserted that the operation of this camera diminished his privacy and security, and he therefore immediately complained to the Landlord, and taped a grocery bag around the camera. The Tenant stated that a few days later the camera "look" angle was changed away from his unit door.
25. The Landlord testified that a security camera was installed in the common hallway of the residential complex on October 17, 2022, for the benefit of the tenants' security. The Landlord noted that the "look" angle of the camera was changed on two occasions to appease the concerns of the Tenant. The Landlord explained that the camera was pointed more towards the main floor tenant's door who wanted the camera installed. The Landlord submitted copies of her email correspondence with the Tenant on October 17, 2022, explaining the rationale for the common hallway security camera, and responding to the Tenant's privacy concerns.
26. Michael Giel, the Landlord's maintenance technician, testified that he installed a security camera in the common area hallway on October 17, 2022, that was not pointed at any unit,

and was missing a battery and therefore not operational. Mr. Giel testified further that the Tenant became enraged with the Landlord about the security camera during an in-person encounter with the Landlord on October 17, 2022, and therefore he changed the camera “look” angle to appease the Tenant.

Analysis

27. On the basis of the evidence provided, I find that the Landlord did not substantially interfere with the Tenant’s reasonable enjoyment of the rental unit by installing a security camera in the interior common hallway of the residential complex on October 17, 2022. I am satisfied that the Landlord installed this camera in good faith to address security concerns of some tenants, and responded immediately to the Tenant’s privacy concerns by adjusting the security camera “look angle” on two occasions. I am satisfied, on a balance of probabilities, that the adjusted security camera look angle did not violate the Tenant’s privacy. I accept that security cameras in common areas of residential complexes are installed to enhance tenant security while also respecting tenant privacy. I am satisfied this is also true in this matter. For these reasons, with respect to the common hallway security camera, I find that the Landlord did not breach her responsibilities pursuant to s. 22 of the Act.
28. On the basis of the evidence provided, I find that the Landlord’s in person and email communication with the upset Tenant on October 17, 2022, was patient, responsive, professional, and courteous. The Tenant did not establish, through sufficient evidence, that the Landlord’s communication with him regarding the installation of the security camera on October 17, 2022, or the installation of the camera itself, was harassing, threatening, or vexatious. I am satisfied that the Landlord installed this camera in good faith to address security concerns, not to harass, threaten, annoy, or frustrate the Tenant. Accordingly, I find that the Landlord did not breach her responsibilities pursuant to s. 23 of the Act.

Summary

29. As the Tenant has not established that the Landlord substantially interfered with his reasonable enjoyment of the rental unit, or harassed him, the Tenant’s requested remedy of a 100% rent abatement from August 16, 2022 to March 2, 2023 will not be considered, and the Tenant’s application must be dismissed.

It is ordered that:

1. The Tenant’s application is dismissed.

December 18, 2024
Date Issued



Frank Ebner
Member, Landlord and Tenant Board

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