



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

Citation: Alves v Payne, 2025 ONLTB 22029

Date: 2025-03-17

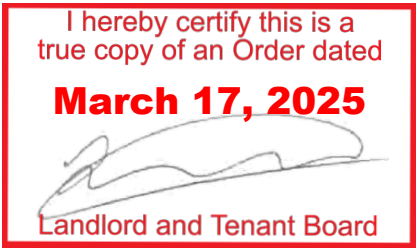
File Number: LTB-T-013013-25

In the matter of: 1692 HALL AVE
WINDSOR ON N8X4S1

Between: Jessica Alves

And

Eslin Payne



Tenant

Landlord

Jessica Alves (the 'Tenant') applied for an order determining that Eslin Payne (the 'Landlord'):

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

This application was heard by videoconference on March 14, 2025. The Landlord and the Tenant attended the hearing. The Landlord was represented by Hugh Mai. Natasha Payne, the Landlord's daughter and property manager appeared as the Landlord's witness and agent.

At the conclusion of the hearing the parties agreed that the Tenant would have a final opportunity to attend at the rental unit on March 20th, 2025 between 9am and 5pm to collect her remaining belongings.

Determinations:

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

Background

2. This tenancy was terminated by an order of the Board on consent of the parties.
3. On December 4, 2024 the parties appeared before the LTB on a hearing of the Landlord's application LTB-L-050808-24. The hearing resulted in order LTB-L-050808-24-AM issued by the LTB on January 6, 2025.
4. Pursuant to the order and on consent of the parties:
 - a. **The tenancy is terminated on January 31, 2025;**
 - b. The Tenant must vacate the rental unit on or before January 31, 2025;

- c. The Tenant shall pay the Landlord \$18,483.45 for arrears and compensation up to December 4, 2024;
 - d. The Tenant shall pay the Landlord \$75.62 per day for the use of the unit after December 5, 2024.
5. The Tenant moved out of the rental unit and started living elsewhere between January 25, 2025 and February 2, 2025. At the hearing the Tenant claimed that she did so because of heat issues at the rental unit, but her application filed on February 13th makes no mention of any heat issues. I also note that utilities were supposed to be paid by the Tenant, which she apparently failed to do. She admitted that she asked utilities to be disconnected when she learned that the Landlord was living at the unit.
6. The Tenant moved most of her belongings out of the rental unit before by February 2, 2025.
7. On February 1, 2025 the Tenant and the Landlord's realtor had the following exchange:
 - Realtor: Hi Jessica, is the key to the front door inside the property?
 - TT: No im not done moving yet
 - Realtor: Eslin is supposed to regain possession today, is there a time frame you have in mind to clear your belongings?
 - TT: **Well technically she would have to contact a sheriff if I was that ignorant but I'll be done by tomorrow and change the locks!** I've already spoken to RHUE. They are well aware I'll be done by Monday. I'm just curious why Eslin is not the one communicating with me and having you when you are only a real-estate agent". [sic] [emphasis added] (document 5225273 in Tribunals Ontario Portal 'TOP')
8. On February 2nd the Landlord regained possession of the rental unit. According to the Landlord, they entered the rental unit with their own key because the Tenant had finally changed the lock back to the Landlord's own old lock, and the house was vacant other than some items the Tenant had left in the garage.
9. According to the Tenant, she had "legal possession" of the property until she was evicted by a sheriff, and she was "illegally locked out" on February 3rd when the Landlord regained possession of the property. The Tenant filed this application on February 13, 2025 alleging same.
10. It is undisputed that some of the Tenant's belongings are still in the garage of the rental unit. The Tenant claims that there may be some additional belongings at the rental unit.
11. Both parties filed some evidence through TOP that they didn't introduce into evidence at the hearing. I didn't review it and didn't consider it.

Tenant's evidence

12. The Tenant filed no videos or photographs of the rental unit. She provided no corroborating evidence about what she left inside of the rental unit. Her application contains a short list of items she claims to be in possession of the Landlord but her testimony at the hearing didn't match that list. She provided no corroborating evidence that she was still occupying the unit on February 3. She provided no corroborating evidence that any locks were ever changed by the Landlord.
13. She provided screenshots of an exchange with the Landlord that took place a week after the alleged lockout into evidence (documents 5155050 and 5155061 in TOP) and made some arguments about the Landlord's own evidence (documents 5193777 in 5193439 in TOP), but as far as the key issue of illegal lockout is concerned, The Tenant's only evidence was her testimony.
14. Her testimony was full of self-contradictions, was inconsistent with documentary evidence, and was very seriously undermined by cross-examination.
15. The Tenant testified that she was still "living" at the property and had "legal" possession of it when the locks were changed by the Landlord. She said she never changed any locks. On cross-examination she admitted that she changed one lock but claimed that it didn't matter because she provided the Landlord with a keypad combination to it. She said she didn't change any locks "back".
16. According to the Tenant, she was still living at the property. She thought the unit was hers until a sheriff evicted her. She was only temporarily staying on a friend's couch because there was no heat at the rental unit.
17. The Tenant moved a lot of her belongings out but still had some items at the property as of February 1. On February 2 she went back to the rental unit to collect her belongings. Some items were still there when she left.
18. On February 3 she attended at the property and found that the Landlord changed the locks. Rental Housing enforcement was called.
19. The Tenant's application claims that on February 1, 2025 the Landlord attempted to break into the rental unit through a window. At the hearing she changed the story somewhat and testified that she didn't see the Landlord attempt to break into the unit but there was a ladder at the property, and she thinks the Landlord tried using it to get into the property through a window. She didn't "know for sure" whether the Landlord did so.
20. The Tenant claims that she still had a TV, couches, tires, kids' birth certificates, medication and other items at the rental unit. She testified that she wasn't even sure what was still there.
21. She testified that her door lock with her code was still on the door, and her cameras were still at the property.
22. On February 11 the Landlord sent the Tenant an aggressive email about the Tenant's failure to collect the rest of her belongings. The Landlord told the Tenant to come for all of

the items at the same time, and to collect them in 30 minutes. The email threatened the Tenant that she may be trespassing if she attends at the property without notice and that she would be harassing the Landlord if she contacts her.

23. The Tenant explained that she couldn't collect the rest of her belongings before February 11th because she had no money to pay for gas to drive to the unit. She takes issue with some of the language in the Landlord's email, but her application makes no mention of this, and the application was filed after the date of the email.
24. The Tenant claims that the Landlord should have been aware that she is going to be in possession of the unit until she gives her key back to them. She claims that her email exchange with the realtor "clearly states that". The Tenant's message is reproduced above, and it makes no mention of the Tenant's plan to return her key to the Landlord whatsoever. To the contrary, the Tenant's message states that she will change the locks, the implication apparently being that it will not be necessary for her to leave a key behind.
25. The Tenant was evasive and argumentative during cross-examination. She denied telling the Landlord's realtor that on February 1 that she would be done "tomorrow". This is contradicted by the text message dated February 1 that clearly states that the Tenant will be done by "tomorrow".
26. The Tenant was asked about her belongings left at the property. The Landlord's photo of the belongings left behind by the Tenant includes a TV, some chairs et c. The Landlord asked the Tenant whether she left her TV outside. The Tenant said that she only left things that "belonged outside" of the rental unit outside. She was asked whether TVs belong outside and replied that she has multiple TVs.
27. The Tenant denied that she changed any locks. After some follow-up questions she claimed that she was going back to property on February 3rd to change the locks.
28. She was asked about what was left inside the house. She claimed that she had some boxes, an air mattress, a TV stand, a TV, some chairs, blankets, documents and medications.
29. The Tenant confirmed that she didn't give the Landlord a key. She was asked how the Landlord gained access to the property and claimed that she had no idea. I note that she didn't reply that the Landlord changed the locks, which would have been an obvious answer if the Tenant believed it to be true.
30. The Tenant was asked why she hasn't picked up her belongings in over a month. She once again claimed that she couldn't afford it. She also added that she is still a legal tenant in possession of the unit, and she has no reason to pick anything up – she should be allowed to move back in. She admitted she had no proof that any medication or documents were inside the house.

Landlord's evidence

31. Only NP testified. I will refer to her testimony as the Landlord's at times.

32. NP's version of the events was dramatically different from the Tenant's. According to her, the Tenant had changed the locks to the property around October or November 2024. The Tenant installed a keypad and gave the combination to the Landlord. On or about February 1 when the Landlord expected to get their property back in accordance with the parties' agreement and the corresponding LTB order, but they discovered that keypad combination did not work.
33. The Tenant then changed the locks back to the Landlord's locks and that's how the Landlord was able to access the rental unit on February 2nd. On that day the Landlord attended at the property and found it abandoned. The rental unit was empty other than some items the Tenant had left behind.
34. The Landlord provided multiple photographs of the Tenant moving out with a truck and a minivan. The authenticity of the photos was not disputed. (5193661, 5206123). The Tenant and her family can be clearly seen loading a truck and a minivan. The garage was full of items when the Tenant was still in possession of the rental unit.
35. NP took photos and videos of the house on February 2 (5193627). The house looked empty and completely vacant. There was no food, no diapers, no beds, no clothes. The authenticity of the photos was not disputed. The only belongings the Tenant left behind are in the garage. They include a TV and a few boxes (5206123 in TOP). The contents of the garage appear to be consistent with the items that could be seen in the garage in the photos of the Tenant loading her truck.
36. The Landlord confirmed that she didn't gain access to the rental unit on February 1. They attended at the property to see whether the Tenant had left. The keypad didn't work so the Landlord had no way to access the property. The Tenant called the police because the Landlord was there. The Landlord spoke to the police, and parties exchanged messages.
37. On February 2 the Landlord was able to gain access to the rental unit. Their key worked because the Tenant had changed the lock back to the Landlord's original lock. The property was tidied up inside, there were no belongings inside and only a few items outside in the garage.
38. The Landlord gave the Tenant multiple opportunities to pick up her belongings, but the Tenant never did.
39. The Tenant declined the opportunity to cross-examine NP. I found NP's testimony to be credible and reliable. It seemed logical, it was consistent with independent evidence, and it wasn't self-contradictory.

Law and analysis

40. This application is brought pursuant to s. 24 of *the Residential Tenancies Act, 2006* (the 'Act'), which states: "A landlord shall not alter the locking system on a door giving entry to a rental unit or residential complex or cause the locking system to be altered during the tenant's occupancy of the rental unit without giving the tenant replacement keys."

41. This is the Tenant's application, and she bears the burden of proof on a balance of probabilities.
42. Based on the totality of the evidence I am not satisfied that it is more likely than not that the Landlord altered the locking system during the Tenant's occupancy. It is unclear whether the Tenant was still occupying the rental unit. It is unclear whether any locks were changed by the Landlord.
43. I have two different versions of the event and the Landlord's version appears to be at least as plausible as the Tenant's. I am unable to find that it is more likely than not that the Tenant's version should be preferred over the Landlord's. Her version that she never changed any locks, that she had not moved out as of February 2nd is not entirely consistent with the text messages and with photographs of the rental unit taken on February 2. The Tenant's claim that she was waiting to be evicted by a sheriff is inconsistent with her own message of February 1 where she claims that she could wait for the sheriff if she was "ignorant", but isn't going to.
44. The Tenant's story that she went back to the unit on February 3rd to change the locks is rather improbable and illogical. It contradicts her testimony that she never changed any locks. She clearly had no love for the Landlord, and it seems unlikely that she was going back as a favor to the Landlord to spare them the cost of changing locks. This story also suggests that the Tenant expected February 3rd to be her final visit to the property. It would therefore seem logical that she would bring a truck to the property to collect her last belongings but there is no evidence before me that she did so. Alternatively, this story would suggest that the Tenant had no intention of picking up those remaining items and chose to abandon them. In any event, this story does not fit the rest of the Tenant's narrative. It appears to have been invented during cross-examination.
45. I have serious concerns about the Tenant's credibility and reliability of her testimony. She has gone back and forth about whether she ever changed any locks. Her claim that she never changed them makes little sense in the context of her message of February 1 where she says that she will change them. A reasonable reading of the message would suggest that she is changing the lock(s) back instead of leaving a key behind. The Tenant provided no alternative explanation about the meaning of her message.
46. The Tenant was inconsistent about the nature of the items she left behind and their location. She claimed that inside items were left inside the unit but then appeared to admit that a TV was left outside, apparently because she had many TVs. She claims that she had cameras at the property but provided no footage from the cameras to corroborate her story. She claims that she was still at the property on February 2, was concerned about the Landlord's conduct and attempted break-in on February 1, yet she failed to take a single photo or video of what she claims she had left behind at the property.
47. She claimed that she only temporarily moved out but did not explain how she was sleeping on a friend's couch with a whole house worth of belongings that required at least one full truck and one full van to transport. She did not explain how she would leave important documents and vital medication behind despite moving out of the rental unit over the period of over a week, and having unlimited opportunities to pack them before February

3rd. She didn't explain what her plan was considering the imminent termination of the tenancy that she had agreed to, and the potentially imminent eviction with a sheriff if her story is to be believed.

48. The Landlord's version of the events is not perfect but is much more logical and consistent. I note that the Landlord does not bear the burden of proof in this application and even if I found their version to be as unpersuasive of the Tenant's, this application would have likely been dismissed. The Landlord could have filed a video of entering the property with their own key, they could have provided a copy of the police report from February 1, they could have called independent witnesses to corroborate NP's testimony. They did, however, provide a large number of photographs that are entirely consistent with their version of the events. The text messages exchanged by the parties are consistent with it as well. It seems likely that the Tenant in fact moved out in accordance with the LTB order they consented to. The Tenant simply overstayed the termination date by a day or two, knowing that the Landlord had no mechanism to legally force them out any sooner. The Tenant then vacated the premises on February 2nd. She left some belongings of very limited value behind either because she had no use for them whatsoever, because they didn't fit in the truck and were not worth making an additional trip for, because she couldn't afford to make that final trip with a truck, or possibly even with malicious intent to hurt the Landlord one last time by making them go through this process.

49. As the Tenant failed to establish their allegation that they were locked out during their occupancy on a balance of probabilities, this application is dismissed.

It is ordered that:

1. The Tenant's application is dismissed.
2. Interim order LTB-T-013013-25-IN issued by the LTB on March 3, 2025 is cancelled.

March 17, 2025
Date Issued



Vladimir Nikitin
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.