



Order under Section 31
Residential Tenancies Act, 2006

I hereby certify this is a true copy of an Order dated
Apr 25, 2022
Robert Brown
Landlord and Tenant Board

File Number: TNT-33487-21

In the matter of: BASEMENT LEVEL, 139 BLOSSOM CRESCENT
NORTH YORK ON M3N2B1

Between: Aksh Parekh Tenants
Vedanti Kapasi

and

Rajendrakumar Patel Landlord

Aksh Parekh and Vedanti Kapasi (the 'Tenants') applied for an order determining that Rajendrakumar Patel (the 'Landlord') harassed, obstructed, coerced, threatened or interfered with them, entered the rental unit illegally and substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household (T2 Application).

The Tenants also applied for an order determining that the Landlord has collected or retained money illegally (T1 Application).

This application was heard via videoconference on March 24, 2022.

The Tenants, the Tenants' Representative, Rajan Mahavalirajan, the Landlord, the Landlord's Representative, Shikha Kapoor and the Landlord's witness, Rama Patel, attended the hearing.

Determinations:

Preliminary Matter: Jurisdiction

1. The Landlord brought forward a motion to dismiss the application because the applicants do not meet the definition of "Tenants" according to section 5(i) of the *Residential Tenancies Act, 2006* (the "Act"). Section 5(i) states:

This Act does not apply with respect to,

- (i) living accommodation whose occupant or occupants are required to share a bathroom or kitchen facility with the owner, the owner's spouse, child or parent or the spouse's child or parent, and where

the owner, spouse, child or parent lives in the building in which the living accommodation is located;

2. The Tenants testified that the unit was self-contained. They also stated that the kitchen and the bathroom were not shared.
3. The residential complex is a house. The basement unit is rented by the Tenants, the Landlords live on the main floor.
4. I asked the Landlord the following:
 - a) Is there a kitchen on the main floor? The Landlord responded "yes".
 - b) Is there a bathroom on the main floor? The Landlord responded "yes".
 - c) Is there a separate entrance directly to the rental unit? The Landlord responded "yes".
5. The Landlord stated that the laundry facilities are shared by both the Landlord and the Tenants. "Shared laundry facilities" are not a factor when engaging section 5(i) of the Act.
6. I find that the use of section 5(i) as a defense in this matter to be based on convenience rather than fact. My reasons are listed below:
 - a) The video footage showed RP entering the Tenants unit and then leaving the unit minutes later. Despite RP's testimony, she did not stay in the basement long enough to do any cooking.
 - b) If the video footage had been of a single day event, there could be an argument that RP chose not to cook that day. However, the Tenants submitted several videos of RP entering the unit over the time span of a couple weeks.
 - c) In each of those videos, there is not one example of RP utilizing the kitchen for any cooking or retrieving any food from the refrigerator or cupboards to bring upstairs to prepare. The purpose of the video footage was to illustrate the illegal entries and the substantial interference that occurred.
 - d) The Landlord testified that the reason they used the entry through the Tenants' rental unit to access the laundry room rather than to go through the outside, less intrusive, entrance was because they are senior citizens, and it would be unreasonable to do so. If that was the case, then I do not see how preparing any food in a basement kitchen and then bringing it upstairs for consumption would be any easier.
 - e) ~~The Landlord admitted to having a full kitchen and bathrooms on the main floor. It does not make sense that a person would choose to cook~~

in another kitchen further away from where the food will be consumed while also having to contend with the possibility that the Tenants may be using the kitchen at that time.

7. I find it unreasonable that the Landlord would have access to their own kitchen and bathroom but would also insist on using another kitchen and bathroom in the complex that is not as easily accessible to them and is shared with another couple. I do not find that the parties share a bathroom or kitchen within the meaning of s. 5(i) of the Act.
8. Therefore, the Landlord's motion to dismiss the application is denied. The Board has jurisdiction over this matter.

T1 Application

9. The Tenants allege that the Landlord illegally increased the rent from \$943/month to \$1,040.00/month on September 1, 2020.
10. The Tenant Aksh Parekh (AP) stated that the Landlord increased the rent because the Tenant Vedanti Kapasi (VK) was moving into the unit. AP provided evidence of a text conversation with the Landlord stating that he will need to pay the Landlord \$1,000.00/month and that parking and internet would be additional charges. AP countered that he was already paying for parking and was not receiving any new services than what he had received already. The Tenant and the Landlord agree to \$1,040.00/month, which included an additional \$40/month for utilities.
11. Section 3(1) of the Act states:

This Act, except Part V.1, applies with respect to rental units in residential complexes, despite any other Act and despite any agreement or waiver to the contrary.
12. Section 116(1) of the Act states the following:

A landlord shall not increase the rent charged to a tenant for a rental unit without first giving the tenant at least 90 days written notice of the landlord's intention to do so.
13. The rent increase was applied to the Tenants contrary to section 116(1) of the Act. Furthermore, although AP was able to negotiate an agreement to pay a rent increase, this is an attempt to "contract-out" of the Act itself, which is a breach of Section 3(1). In the end, the Act states that when the Act and a contract conflict, the Act's authority supersedes that of the contract.
14. I find that the Landlord did illegally increase the rent for the period from September 1, 2020, to January 23, 2021, which is the date that the tenancy terminated.

15. The Tenants are seeking \$440.00 for the amount that the Landlord overcharged the Tenants. When I calculate the *per diem* amount that the Landlord overcharged the Tenant, the total is \$462.41. However, since I cannot award a party more than what was requested in the application, I order the Landlord to pay to the Tenants \$440.00 for rent illegally collected.

T2 Application

16. The Tenants allege that the Landlord, and the Landlord's wife, Rama Patel (RP), enter the rental unit illegally on a frequent basis.
17. The Tenants allege that the Landlord improperly enters their unit in order to access shared laundry facilities, and also allege that his wife entered the unit on a number of occasions. They allege that she snooped through their belongings and ate their food. AP stated that he had noticed that items in his unit were being moved or used while he was not in the unit. After VK moved into the unit, AP testified that he was becoming more uncomfortable and suspicious of the Landlord and RP. The Tenants set up a surveillance camera in the living room and the Tenants' bedroom.
18. The Tenants submitted this video footage as evidence:
 - a) December 25, 2020: The living room footage shows RP entering the unit from the Tenants' entrance. She is carrying a load of laundry. She is seen returning from the laundry room a few minutes after. The bedroom footage shows RP entering the Tenants' bedroom, retrieving a towel from the Tenants' bedroom and using it to clean the floor in the laundry room. RP then returns the towel to the Tenants' bedroom.
 - b) December 26, 2020: Footage from the living room camera shows RP entering the unit the same way as she did on the 25th however this time she does not have a laundry basket when she enters. This time she is seen peering into the Tenants' bags in the living room. She also is looking at pots on the stove and opens the refrigerator. She then enters the hallway to the laundry room. A few moments later, she is seen entering the living room/kitchen area again with what appears to be a basket of laundry.
 - c) December 28, 2020: RP is seen entering the unit in the same manner that she had the previous other days; however, she did have what appeared to be a small laundry basket. When RP returned from the laundry room, she is observed to be peering into the Tenants' bags again.
 - d) January 1, 2021: RP enters the unit and is observed eating food from pans on the Tenants' stovetop, tried to open a container that AP stated was a "cookie jar" and then opened the fridge to eat something from the fridge. RP then enters the hallway. When she returns from the hallway, she is seen opening and looking into bags in the unit and

is seen taking (what AP testified was) a cookie from one of the bags and proceeded to eat it.

- e) Video footage for January 2, 2021, also showed a similar entry as was seen on December 25th.

19. The Tenants then stated that they confronted the Landlord about the illegal entry on January 6th. In that confrontation, the Tenants stated that they wanted a lock on their unit entrance and that if the Landlord did not install one, that they would install one themselves. The Tenants stated that the Landlord's response was that if the Tenants installed a lock on the door that they would break the door down. The situation became tense enough that the police were called.
20. The Tenants stated that after the confrontation, the Landlords began giving written notice to enter daily. The Tenants submitted examples of the notices as evidence. Each one stated that the reason for entry was to access the laundry room.
21. The Tenants then presented evidence from January 11, 2021; however, the angle was from the kitchen rather than the living room. The footage shows both RP and the Landlord entering the unit. RP walked in first with a laundry basket and the Landlord is seen videotaping RP with his phone right behind her.
22. When the Landlord and RP gave testimony, they reiterated that at the onset of the tenancy, all parties agreed that the kitchen and bathroom were to be shared. RP testified that she liked to cook downstairs while the laundry was being done.
23. When addressing the "food tasting" that occurred, the Landlord stated that the Tenant had often asked for cooking advice from RP and that RP was just trying to help the Tenants out. Regarding the food in the refrigerator, the Landlord stated that they stored items in the refrigerator in that kitchen and that RP was seen eating her own food.
24. When asked why the Landlord did not use the other, less intrusive, entrance from the outside of the unit, the Landlord stated that he and his wife (RP) were both senior citizens and it would be unreasonable for them to have to go outside in the middle of winter to access the laundry room due to the cold and icy conditions.
25. When the Tenants questioned whether RP used AP's towel to clean the floor, RP admitted to doing so.
26. When the Landlord was asked if the kitchen on the main floor was fully functional, he responded in the affirmative.

Analysis

What is the rental unit?

27. The residential complex is a residential house, with the Landlord and their family occupying the upper floors and the Tenants residing in the basement unit. As noted, the

basement unit has its own kitchen and bathroom. The parties agree that the laundry room, which is also located in the basement, is a shared area. However, there are two different means of accessing the laundry facilities, and they disagree about which entrance the Landlord ought to use. Part of the Tenants' argument is that the Landlord illegally enters the unit when accessing the laundry room via the more intrusive method.

28. Neither party submitted a copy of a tenancy agreement into evidence. AP did however submit a floorplan of the rental unit. The floorplan shows that there are two ways to access the laundry room:
- a) Down a staircase from the main floor of the residential complex to the Tenants' entrance, through the Tenants' living room and kitchen and past the bathroom in order to get to the short hallway leading to the laundry room; and
 - b) From an entrance from the outside of the complex directly to the laundry room, which like the first option necessitates walking near the entrance to the Tenants' bedroom.
29. The second route is obviously less intrusive to the Tenants' privacy, but it requires the Landlord to go outside of the house in order to access the laundry room. This is something the Landlord says is unreasonable given the ages of he and his wife.
30. For the reasons that follow, I find that the rental unit consists of the majority of the basement but does not include the laundry room or the space between the back entrance and the laundry room, both of which I find to be common areas. In my view, this interpretation of the tenancy agreement is consistent with the Act's provisions and the parties' intent. Having heard no evidence regarding the storage room, I make no finding as to whether that area is part of the rental unit, a shared area or within the Landlord's exclusive right to possess.
31. There was no dispute about the laundry room being a common area. Given the lack of tenancy agreement in evidence, there is obviously no provision delineating the common areas from the rental unit. Thus, this is arguably a question of what the parties intended when they entered the tenancy, however I also think the issue can be resolved solely with reference to the Act.
32. The Act clearly prohibits landlords from entering a rental unit without written notice except in certain exigent circumstances. The Landlord asks the Board to find that it is entitled to walk through essentially the entirety of the rental unit every time they need to do laundry. In my view, such a finding would be contrary to the Act and would thus be void as an impermissible attempt to contract out of the Act.
33. By definition, a premises cannot be a rental unit if a landlord is permitted to enter it without notice for the purpose of doing laundry (unless there was a provision in the tenancy agreement allowing for it and such provision was reasonable: s. 27(1)). Such an arrangement would, in my view, be inconsistent with the Act's entry provisions, and would

thus run afoul of the prohibition on contracting out of the Act pursuant to s. 4. For this reason, I would decline to adopt the Landlord's position.

34. Instead, I am satisfied based on the evidence before me that the rental unit does not include the laundry room or the area between it and the back entrance. In my view, this is a common area within the residential complex, and when entering into the tenancy the parties agreed that the area would be shared such that the Landlord could enter for the purpose of doing their laundry.
35. In my view, this finding is consistent not just with the Act's provisions, but also with the parties' intent. I do not think it is likely that when entering into the tenancy, the Tenants agreed that the Landlord would be permitted to walk through almost the entire unit every time they wished to do laundry. In my view, if the Landlord wished this to be the case, they ought to have insisted upon inserting express language in a tenancy agreement to that effect.
36. I find that the Tenants have established that the Landlord illegally entered the unit 6 times (December 25-28, 2020; January 1-2, 2021) prior to January 6, at which point they were confronted by Tenants. Thereafter, the Landlord began providing 24 hour's notices in order to do laundry. However, given my finding above, I find that these entries too were unauthorized, and thus constituted a breach of the Act. Doing laundry is not a purpose for which notice may authorize an entry under s. 27 unless it is specified in the tenancy agreement, which is not the case here. Thus, I find the Landlord entered the unit illegally in this regard on January 9, 10, 11, 12, 17, and 18, 2021.
37. Even if I had found that somehow the Landlord was entitled to use the more intrusive means of accessing the laundry room, I would still have found illegal entries given that the Landlord's wife went well beyond simply "doing laundry" when she went through the Tenants' belongings and ate their food.
38. The correspondent between the parties, including the written notices served by the Landlord, showed that the Landlords were not going to alter their habits. Based on this, I find that the Tenants had no other option than to move from the rental unit.

Remedies- T2 Application

39. The Tenants are seeking the following remedies on their application:
 - a. Rent abatement of \$12,480.00
 - b. Rent differential over a twelve-month period of \$15,900.00,
 - c. Moving and storage expenses of \$88.28,
 - d. Out-of-Pocket expenses of \$100.00, and
 - e. ~~Issue an Administrative Fine against the Landlord.~~

40. The illegal entry of a rental unit is a breach of privacy. The leading case on the appropriate quantum of remedy for a breach of privacy is the Divisional Court's decision in *Wrona v. Toronto Community Housing Corp.*, [2007] O.J. No. 423. In that case, the Court awarded the tenant \$1,000 for a single illegal entry.
41. As *Wrona* is the leading case from the higher courts in Ontario with respect to privacy rights, I believe the remedy awarded by the Court in that case is the starting point for determining the appropriate amount to award the Tenants in this case.
42. One of the elements present in *Wrona* was the fact that the tenant had made a previous complaint to the Tribunal about the landlord's behaviour in terms of entry, so the landlord knew or ought to have known getting the notice of entry right was important to the tenant.
43. In my view the facts of this case are considerably more egregious than those in *Wrona*. The Landlord did not just enter the unit without notice, but his wife actually ate the Tenants' food and looked through their belongings. In one instance the Landlord's wife used one of the Tenant's towels to clean the floor before putting it back. These are actions that any reasonable landlord would know constitute a serious breach of a tenant's privacy.
44. The Tenants have submitted compelling evidence of these illegal entries from December 25-28, 2020, as well as January 1-2, 2021. I find that each of these entries were at the more serious end of the scale given the aforementioned conduct in relation to the Tenants' food and belongings. Based on the rationale and amount awarded in *Wrona*, I am satisfied that \$1,000 for each illegal entry during this time period, or \$6,000.00, is appropriate and reasonable in light of the nature of the breaches and their obvious impact on the Tenants.
45. After January 6th, the Landlord began giving written notice to enter the Tenants' rental unit on a near daily basis for the sole purpose of using their rental unit as a means to get to the laundry room, rather than using the less-intrusive entrance from the outside. The Landlord gave 24-hour's notice to enter the rental unit on January 9, 10, 11, 12, 17, and 18.
46. As noted, these entries, purportedly made under the authority of s. 27 of the Act, were not so authorized as there was no provision in the tenancy agreement allowing for it within the meaning of s. 27(1)5 of the Act. By then the Landlord's entries into the unit had been challenged, and it would have been clear to the Landlord that the Tenants did not want he or his wife in the unit. I find that the Landlord's continued insistence on entering the unit after January 6 amounted to harassment and have considered that in crafting the appropriate remedy.
47. Based on *Wrona*, as well as the nature of these entries, I find an award of \$750 for each entry to be appropriate, for a total of \$4,500.00.
48. Therefore, the total amount awarded for the twelve illegal entries is \$10,500.00. This is a significant amount but as noted, I have found that the entries were repeated and

egregious, some of which were done after the Tenants had made it expressly clear the Landlord was not to walk through their unit to access the laundry.

49. I will also grant a rent abatement of 50% for the days where the illegal entries did not occur from December 29th to January 23rd, or 18 days, or \$279.02, in recognition that the pattern of the entries substantially interfered with the Tenants' enjoyment of the unit. I find this impact was occasioned even on days where the entries themselves did not take place.
50. The Tenants are also seeking a rent differential of \$1,325.00/month for a 12-month period, for a total of \$15,900.00. However, I found that the Tenants' calculations to be incorrect when calculating the rent differential. The legal rent was \$943.00/month and not \$600 as stated in their application. If their new rent was \$1,925.00/month, then the requested rent differential would be \$982.00/month or \$11,784.00.
51. Because the Tenants presented no evidence about the new residential unit that they reside in, I cannot gauge with exact accuracy whether their current unit is an upgrade from the Landlord's rental unit. Judging by what I saw of the Tenants' new rental unit in their video feed, however, I find that it was at least a partial upgrade. However, I accept that there was a need for the Tenants to move, and the need was a result of the Landlord's unlawful conduct.
52. In my view, accounting for the apparent upgrade in the unit, but also accounting for the fact that the Tenants' move was necessitated by the Landlord's breach, I find an award of a rent differential in the amount of \$500/month for a 12-month period, or \$6,000.00, to be fair and appropriate in the circumstances.
53. The Tenants are also seeking \$88.28 in moving costs and \$100 for out-of-pocket expenses. The Tenants did not present any evidence regarding the number of people who helped the Tenants move out of their unit or how these numbers were calculated. Therefore, I will not consider any award for these expenses.
54. The Tenants also request that the Board issue a fine against the Landlord.
55. The Board's Guideline 16 clearly sets out the purpose of an administrative fine:

An administrative fine is a remedy to be used by the Board to encourage compliance with the Residential Tenancies Act, 2006 (the "RTA"), and to deter landlords from engaging in similar activity in the future. This remedy is not normally imposed unless a landlord has shown a blatant disregard for the RTA and other remedies will not provide adequate deterrence and compliance. Administrative fines and rent abatements serve different purposes. Unlike a fine, a rent abatement is intended to compensate a tenant for a contravention of a tenant's rights or a breach of the landlord's obligations.


56. ~~An administrative fine is considered appropriate when other remedies will not provide adequate deterrence and compliance.~~ Based on the evidence before me, I am satisfied

that the significant financial compensation I have ordered the Landlord to pay will ensure adequate deterrence and compliance by the Landlord in the future. For this reason, I find that an administrative fine is not appropriate in this instance and the Tenants' request for a fine is denied.

It is ordered that:

1. The Landlord shall pay to the Tenants \$17,219.02. This includes the following:
 - a) Illegally Charged rent of \$440.00,
 - b) Total rent abatement of \$10,779.02 which includes the Landlord's illegal entries; and
 - c) Rent differential of \$6,000.00.
2. The Landlord shall also pay to the Tenants \$53.00 for the cost of filing the application.
3. The total amount the Landlord owes is \$17,272.02.
4. The Landlord shall pay the Tenants the full amount owing by May 15, 2022.
5. If the Landlord does not pay the Tenants the full amount owing by May 15, 2022, the Landlord will owe interest. This will be simple interest calculated from May 16, 2022, at 2.00% annually on the balance outstanding
6. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

April 25, 2022
Date Issued


Robert Brown
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.