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Riddell v Gashaw, 2024 ONLTB 81387

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2024 ONLTB 81387 (CanLII)

Order under Section 31
Residential Tenancies Act, 2006

Citation: Riddell v Gashaw, 2024 ONLTB 81387
Date: 2024-11-27
File Number: LTB-T-015486-22

In the matter of: UPPER UNIT, 4401 VIOLET ROAD
MISSISSAUGA ON L5V1K1

Tenant

Between: Matthew Riddell

And

Landlords

Asrat Fikre Gashaw Mahlet
Beyene

Matthew Riddell (the 'Tenant') applied for an order determining that Asrat Fikre Gashaw and Mahlet Beyene (the 'Landlords') harassed, obstructed, coerced, threatened or interfered with the Tenant.

This application was heard by videoconference on February 1, 2024, June 27, 2024, and October 24, 2024.

The Tenant and the first-named Landlord (the ‘Landlord’) attended the hearing held on June 27, 2024 but only the Tenant attended on February 1, 2024 and October 24, 2024. The Tenant testified on his own behalf and called as a witness: Chris Sapusak (the ‘Tenant’s Contractor’). The Landlords called as witnesses: Dawit Gebrawold (‘Landlords’ Witness 1’); and Tewodros Woldemeskel (‘Landlords’ Witness 2’).

As of 2:45 p.m. on October 24, 2024, the Landlords were not present or represented at the hearing although properly served with notice of this hearing by the Board. There is no record of a request to reschedule the hearing.

Determinations:

1. This application is about a single incident that allegedly occurred on February 21, 2022. The application says the Tenant asked the Landlord if he was aware of issues with the tenancy to which the Landlord replied yes, and “So, am I going to have to break your legs, or are you just going to leave on your own?”

2. This means that the primary issue before the Board is a factual one: what happened on February 21 2022?

3. For the reasons that follow I am satisfied that on the afternoon of February 21, 2022 the Landlord threatened the Tenant with bodily harm, thereby breaching s. 23 of the *Residential Tenancies Act, 2006* (the 'Act'). The Landlords are ordered to pay to the Tenant $2,172.81 for abatement of the rent and costs, and to refrain from uttering any further threats of bodily harm.

FINDINGS OF FACT

4. The residential complex is single family home with an illegal basement apartment. The Tenant lives in the main unit upstairs but has access to the basement where he has some storage space and a shared laundry facility. Although the basement has been tenanted in the past, at all material times it was vacant.

5. February 21, 2022 was Family Day and the Tenant was at home. A few days previously he had arranged for a contractor to come to the rental unit to repair some drywall the Tenant had damaged when he was moving furniture. The Tenant did not know the contractor and had never met him before. He found him on the internet.

6. Sometime around 3 p.m. in the afternoon, while the Tenant's Contractor was in the rental unit working, the Tenant heard someone enter the exterior side door that leads to the basement unit. His rental unit has an interior door that gives onto the hallway just inside that exterior door. As no one was living in the basement at the time, the Tenant got up to investigate who was there. When he opened the interior door, he saw the Landlord and asked him who he was. The Landlord told him he had just purchased the residential complex and was the new landlord.

7. The Tenant says he then asked the Landlord if he was aware of issues with the tenancy. In response, the Landlord became "confrontational" and said "Are you going to leave on your own or am I going to have to break your legs?" The Tenant then closed the interior door in question and asked the Tenant's Contactor if he had heard what the Landlord said. The Tenant's Contractor said yes he had.

8. The Tenant says this was really the first time the Tenant had any conversation with his new Landlord. The only other contact between them had been the Landlords serving the Tenant with an N12 notice of termination for landlord's own use. In response to receiving that notice of termination the Tenant had informed the Landlord he was not going to vacate pursuant to the notice so the Landlord would have to apply to the Board to evict him. The Tenant believes that is why the Landlord was so angry and behaved the way he did.

9. The evidence of the Tenant's Contractor differs from the testimony of the Tenant but essentially corroborates the Tenant's statement that the Landlord threatened the Tenant with bodily harm. The Contractor says he was working on the drywall in a hallway near a

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staircase leading to the basement when a man entered and started threatening the Tenant saying things like “going to fucking kill you and take care of you”. The Tenant’s Contractor is unsure but he may also have said he was going to punch the Tenant in the head.

10. The Tenant’s Contractor also confirms the Tenant’s statement that they did not know one another. The Contractor advertises on kijiji and the Tenant contacted him over the internet looking for someone to do dry wall repairs.

11. Both the Tenant and the Tenant’s Contractor say they did not see anyone else with the Landlord that day. The Tenant says when he went to the door he heard someone else down below in the basement but he never saw them. The Contractor says he never saw anyone else, just the man who threatened the Tenant.

12. At the hearing held on June 27, 2024, the Landlord called two witnesses to testify. They say they live with the Landlord at his home. They both say they went to the rental unit with the Landlord to see the basement unit on February 21, 2022. But there are discrepancies in their evidence.

13. The Landlords’ First Witness says he went down the stairs to the basement unit first, followed closely by the Landlord’s Second Witness and then the Landlord. There was no one who came out of the unit on the first floor who spoke to the Landlord. No confrontation occurred. The Second Witness says the Landlord was the first to go down the stairs and he followed with the Landlords’ First Witness close behind. He says he believes the Tenant opened the interior door of the rental unit when they were finished in the basement and on the way out but he did not hear any conversation that occurred.

14. After the evidence of the Landlord’s two witnesses was complete, the hearing of June 27, 2024 had to be adjourned because I ran out of time. The Landlord failed to attend the hearing resumption on October 24, 2024, so the Board has no further or additional testimony to consider.

15. So that leads me to the question that must be answered here: is the evidence sufficient to establish that it is more likely than not that on the afternoon of February 21, 2022, the Landlord threatened the Tenant with bodily harm? I believe the answer to that question is yes. I say this for the following reasons.

16. The testimony of the Landlords’ two witnesses differs in important ways. One says the Landlord was in the lead when they went down the stairs; one says the opposite. One says he saw someone open the interior door leading to the rental unit, perhaps the Tenant. One says he saw no one else there. But both claim they were close together at all material times. In other words, the discrepancy in the details of their testimony give rise to concerns about their credibility.

17. The Tenant’s evidence and that of the Tenant’s Contractor also differs in some ways but they are consistent in that the individual who the Tenant identified as the Landlord was angry and threatened him with serious bodily harm. They are also consistent in describing

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the Tenant's reaction to the event – it made him afraid. In my experience it is not unusual in circumstances like these for witness accounts to differ as to exactly what was said because such an event is stressful and stress can interfere with memory recall. In contrast the Landlords' witnesses essentially say nothing happened so there was nothing for them to be stressed about.

18. The other thing I would take note of in this regard is video evidence that was not entered into the record.

19. As part of the Landlords' disclosure the Landlord loaded into the Tribunals Ontario's Portal ('TOP') video clips which are named in part with the date February 21, 2022. At the hearing of June 27, 2024, I was anticipating the Landlord would testify he recorded those clips on the day in question and would ask for them to be entered into evidence. So I asked the Tenant if he wished to comment on them. The Tenant took the position the video clips were manipulated and not from February 21, 2022. The Landlord conceded they were edited. As we were adjourning due to lack of time the Tenant asked that the Landlords be directed to produce the original unedited footage prior to the return date so the Tenant could have it analyzed. The Landlord agreed to do so by July 11, 2024, so the Board issued interim order LTB-T-015486-22-IN on July 10, 2024 ordering the Landlords to give to the Tenant and the Board an unedited copy of the original video allegedly shot by the first-named Landlord on February 21, 2022. The Landlords subsequently gave the Tenant another video but it was the same edited video recordings already disclosed.

20. I believe it is logical to draw a negative inference from the Landlords' failure to disclose the promised unaltered recordings. It suggests that the video recordings may have been manipulated and the recordings were not shot on February 21, 2022 as the Tenant believes. In turn, that supports the conclusion the Landlords are not above manufacturing false evidence which adds credence to the conclusion that the Landlords' witnesses are not credible.

21. Given all of the above, I find that it is more likely than not that on the afternoon of February 21, 2022 the Landlord threatened the Tenant with bodily harm. The Tenant's evidence and that of the Tenant's Contractor is simply more credible than that of the Landlords' two witnesses given all of the circumstances here.

ANALYSIS

22. Pursuant to section 23 of the Act, a landlord is not permitted to harass, obstruct, coerce, threaten or interfere with a tenant. By threatening the Tenant with bodily harm on February 21, 2022, the Landlord breached s. 23 of the Act.

REMEDY

23. The Tenant's application seeks abatement of the rent and a cease and desist order.

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24. Clearly a landlord cannot be permitted to threaten a tenant with bodily harm. The request for a cease and desist order is a reasonable request. The Landlords will be ordered to refrain from threatening bodily harm to the Tenant.

25. With respect to the request for abatement of the rent, abatement is a contractual remedy designed to reflect the idea that a tenant is paying rent in exchange for a bundle of goods and if the tenant does not receive what the tenant is paying for the rent should be abated proportional to the difference between what is being paid for and what is being received.

26. One of the things a tenant pays for with the rent is freedom from threats and harassment by their landlord. But that did not happen here so the Tenant is entitled to abatement of the rent.
27. With respect to quantum of abatement, the primary consideration is with respect to the impact on the Tenant of the Landlords' breach.

28. Here, both the Tenant and the Tenant's Contractor stated that the Landlord's behaviour on February 21, 2022, made the Tenant afraid. The day after the incident in question the Tenant called the police. He says the police told him that because the incident was about a verbal threat, and the police and the Crown were busy due to COVID, charges would not be laid. After that, the Tenant started keeping a baseball bat and a mag light under his bed. He no longer keeps the baseball bat there but he still has the mag light which he says can be used as a weapon. A few weeks after the incident the Tenant had cameras installed.

29. This behaviour on the part of the Tenant supports the conclusion that although the verbal threat of bodily harm was a one-time event, it had a lasting impact on the Tenant's peace of mind and his sense of security in his own home. It still has an impact.

30. The Tenant's application asks for abatement of $1,900.00 which represents one month's rent at the time the application was filed. Given all of the above, and my experience of like similar cases, it seems to me that is a reasonable amount for abatement of the rent. An order shall issue accordingly.

COSTS

31. The issue of costs including Board costs is before the Board on this application for a number of reasons.

32. First, the Tenant incurred costs of $48.00 for filing the application and is entitled to an order requiring the Landlords to reimburse him that cost.

33. Second, the Tenant seeks party costs. He says he spent $224.81 for a report from an expert confirming the Landlord's video recordings allegedly taken on February 21, 2022, were doctored, and he seeks costs of $250.00 for the last day of hearing as he had to take a day off work.

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34. Pursuant to the Board's Interpretation Guideline #3 on Costs, the Board does not usually order party costs beyond a successful party's filing fee. The policy intent behind that practice is that the Board does not want to discourage vulnerable individuals from seeking redress before it out of a fear of costs awards. The exception where the Board will order costs is where a party has behaved unreasonably in the course of the hearing causing unnecessary or unreasonable delay or expense.

35. With respect to the fact the Tenant had to take October 24, 2024 off work to attend the hearing, that is not the result of the Landlord failing to act reasonably. The October 24, 2024 date was necessary because the hearing was incomplete on June 27, 2024, when the Board ran out of time. So I do not believe the Tenant is entitled to an order for costs against the Landlords for taking time off work on October 24, 2024.

36. That being said, I do believe the Tenant is entitled to the cost incurred for the expert's report concerning the Landlords' video recordings. That cost was incurred because the Landlords indicated they planned to rely on video recordings allegedly taken on February 21, 2022, and because they indicated at the hearing of June 27, 2024 that they would produce an unredacted version of those recordings for the Tenant's expert to examine. But they failed to produce the unredacted video recordings they were ordered and agreed to produce, and they failed to attend the hearing of October 24, 2024 and enter the recordings into evidence. In other words the Landlords acted unreasonably in failing to comply with the Board's order and the Tenant incurred costs that were wholly unnecessary given that and the Landlords' failure to appear on October 24, 2024.

37. So the Landlords will be ordered to pay costs of $224.81 to the Tenant for the expert's report that turned out to be unnecessary due to the Landlords' behaviour.

38. Third is the issue of costs, including Board costs, with respect to the adjournment of February 1, 2024. I ordered that adjournment in the absence of the Landlords on my own motion out of an abundance of caution because I suspected the Landlords' nonattendance might not be within their control. I then issued an interim order indicating the parties should be prepared to speak to the issue of costs, including Board costs for the adjournment of February 1, 2024. (See interim order LTB-L-023271-22-RV-IN3/LTB-T015486-22-IN/LTB-T-077404-22-IN issued on February 12, 2024.) At the hearing of June 27, 2024 the Landlord told me he had difficulty dialing into the hearing on February 1,
2024, and his representative was not there because no one will represent him due to the Tenant's alleged reputation for being difficult to deal with in legal proceedings. I can corroborate that the Landlord attempted to dial into the hearing room after the adjournment on February 1, 2024, was granted. So in the end, I am not convinced that the Landlords' non-attendance on February 1, 2024 was wilfully designed to frustrate the hearing process or otherwise so unreasonable as to draw an order of costs. None shall be ordered for the adjournment of February 1, 2024.

39. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

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It is ordered that:

1. The Landlords shall pay to the Tenant $2,172.81, for abatement of the rent and costs.

2. The Landlords shall pay the Tenant the full amount owing by December 8, 2024.

3. If the Landlords do not pay the Tenant the full amount owing by December 8, 2024, the Landlords will owe interest. This will be simple interest calculated from December 9, 2024 at 6.00% annually on the balance outstanding.

4. If the Landlords do not pay the Tenant the full amount owing by December 8, 2024, the Tenant may recover this amount by deducting it from the rent that comes due for the period commencing January 1, 2025.

5. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

6. The Landlords must refrain from threatening bodily harm to the Tenant.

November 27, 2024
Date Issued

_____
Ruth Carey
Vice Chair, 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.

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