Order under Section 30, 31 and 135
Residential Tenancies Act, 2006

File Number: LTB-T-061878-23

In the matter of: 721 BROCK ST
WINDSOR ON N9C2T3

Between: Rebecca Grimmelt
Hassaan Abbasi
Tenants

And

Deneil Green
Landlord

Rebecca Grimmelt and Hassaan Abbasi (the 'Tenants') applied for an order determining that Deneil Green (the 'Landlord'):

- collected or retained money illegally.
- entered the rental unit illegally.
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household.
- failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards.

This application was heard by videoconference on July 29, 2025.

Only the Tenants attended the hearing.

As of 9:32 a.m., the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenants' evidence.

Determinations:

1. As explained below, the Tenants proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenants $7,226.00 which represents the illegally retained key deposit, compensation for an illegal entry, a rent abatement, out-of-pocket expenses, and the costs of filing this application.

<u>Illegal Charge Collected</u>

2. On the basis of the Tenants' uncontested evidence, I find that on June 30, 2022, the Landlord collected a $100.00 key deposit from the Tenants. I further find that the Tenants returned the keys to the Landlord when the tenancy terminated on February 1, 2023. However, as of the date of the hearing, the Landlord has not returned the $100.00 key deposit to the Tenants.

3. Section 134 of the Act provides that a Landlord may not collect or require or attempt to collect or require from a tenant, prospective tenant or former tenant of the rental unit a fee, premium, commission, bonus, penalty, key deposit or other like amount of money whether or not the money is refundable.

4. Section 17 of *Ontario Regulation 516/06* under the Act provides for the following exceptions to the prohibition of key deposit charges in s. 134:

    1. Payment for additional keys, remote entry devices or cards requested by the tenant, not greater than the direct costs.

    2. Payment for replacement keys, remote entry devices or cards, not greater than the direct replacement costs, unless the replacement keys, remote entry devices or cards are required because the landlord, on the landlord's initiative, changed the locks.

    3. Payment of a refundable key, remote entry device or card deposit, not greater than the expected direct replacement costs.

5. I find that the Landlord did not refund the deposit once the keys were returned. Therefore, I find that the Landlord's collection of this deposit was contrary to section 134 of the Act and does not fall within any of the exceptions contained in Section 17 of *Ontario Regulation 516/06.*

Maintenance issues

6. The Tenants submit that for the duration of their tenancy, the rental unit was in a poor state of repair while the Landlord was performing construction on the rental unit, and large portions of the rental unit remained unusable for the duration of the tenancy.

7. The Tenants testified that they moved in on August 1, 2022. There was no running water in the unit until September 6, 2022, no kitchen countertop until September 27, 2022, no working fridge until September 29, 2022, and no working washing machine or dryer in the rental unit until October 17, 2022.

8. The Tenants testified that for the duration of the tenancy there were ongoing issues including a front door that would not close or lock properly, unfinished floors and walls and other surfaces. The Tenants also testified that they had no usable sink in the bathroom and that the bathroom door would not close.

9. The Tenants entered into evidence videos of the rental unit dated August 28, 2022, September 14, 2022, September 18 2022, September 27, 2022 and January 30, 2023.

10. The Tenants' videos dated January 30, 2023 show that as of the date the Tenants vacated the rental unit, many of the walls and surfaces were still without proper sealing and paint, the unit was still without a dishwasher, the windows in the rental unit were cracked and many of the exterior facing doors and windows were not properly sealed as of the date the Tenants vacated the rental unit.

11. Section 20 of the Act states that:

> A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.

12. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, the Court of Appeal held that the LTB should take a contextual approach and consider the entirety of the factual situation in determining whether there was a breach of the landlord's maintenance obligations, including whether the landlord responded to the maintenance issue reasonably in the circumstances. The court rejected the submission that a landlord is automatically in breach of its maintenance obligation as soon as an interruption in service occurs.

13. In this case, I was satisfied based on the evidence before me that the Landlord was aware of the maintenance issues as the Landlord had been performing construction in the rental unit since the date the Tenants moved in.

14. The Tenants' videos dated August 28, 2022 show the rental unit in a state that is uninhabitable. The walls and floors are unfinished and the appliances appear to be disconnected. The shelving and other fixtures appear to be uninstalled as of the date the Tenants moved in and many of the maintenance issues persisted until the Tenants vacated the rental unit.

15. I find that the Landlord failed to meet the Landlord's obligations under subsection 20(1) to maintain the rental unit.

Illegal Entry

16. The Tenants submit that on December 28, 2022 at approximately 6:00 p.m., the Landlord entered the rental unit without giving notice as required under the Act.

17. The Tenants testified that on December 28, 2022, while the Tenants were away on vacation, the Tenants' security camera recorded footage of the Landlord entering without giving prior notice as required under the Act.

18. Video footage submitted into evidence by the Tenants shows the Landlord entering the unit, muttering profanities and making disparaging comments about the Tenants. The video also shows the Landlord turning up the heat in the rental unit before disconnecting the security cameras.

19. The Tenants testified that they received no written notice from the Landlord for the entry.

20. Based on the uncontested evidence of the Tenants, I find that the Landlord entered the rental unit illegally.

<u>Substantial Interference</u>

21. The Tenants also testified that there was substantial noise, dust, debris and smells of paint and dust due to ongoing work in the rental unit during the month of September 2022. The Tenants submit that for the first month of their tenancy, the Landlord would enter the unit for 8-12 hour intervals and perform substantial construction within the rental unit. The Tenants submit that they were not made aware of the construction that was to be done in the unit as they were advised construction on their unit would be completed prior to the Tenants taking possession of the rental unit on August 28, 2022.

22. Section 22 of the Act states that:

> 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.

23. However, in determining whether the Landlord substantially interfered with reasonable enjoyment during repairs, I must consider section 8 of O. Reg. 516/06, which establishes the criteria to be applied by the Board if it is determining whether to award an abatement due to substantial interference caused by a landlord's maintenance, repairs or capital improvements. When making such a determination, the regulation states as follows:

> (a) the Board shall consider the effect of the carrying out of the work on the use of the rental unit or residential complex by the tenant or former tenant, and by members of the household of the tenant or former tenant; and
>
> (b) the Board shall not determine that an interference was substantial unless the carrying out of the work constituted an interference that was unreasonable in the circumstances with the use and enjoyment of the rental unit or residential complex by the tenant or former tenant, or by a member of the household of the tenant or former tenant.

24. Even if a tenant establishes that the interference was not reasonable in the circumstances, the LTB still may not award an abatement if the Landlord can establish that they met a list of prescribed conditions in section 8(4).

25. Subsection 8(6) of the regulation says the abatement awarded cannot exceed 25% unless permitted under subsection 8(7).

26. Subsection 8(7) contains a two-part test. First, the Board must be satisfied that the interference with the reasonable enjoyment of the rental unit or residential complex "far exceeded" the level that would normally be expected, taking into consideration all of the relevant circumstances. If it is, then the Board must find that one out of a list of five factual criteria exists in this particular situation.

27. In order to meet the bar of section 8 of O. Reg 516/06, the Tenants must establish that the interference was also "unreasonable in the circumstances." In this case, it appears that the

work persisted for a period of 5 months with the Landlord coming intermittently during this time. In the absence of any explanation from the Landlord as to why the work took so long, I find that the interferences caused by the renovations were unreasonable in the circumstances. The Tenants were forced to live through noise and dust and interruptions sporadically for five months.

28. However, as stated in subsection 8(6) of the regulation:

> Except as permitted under subsection (7), no abatement of rent shall exceed 25 percent of the monthly rent for each month or part of a month during which there was substantial interference with the reasonable enjoyment of the rental unit or residential complex for all usual purposes by the tenant or former tenant, or by a member of the household of the tenant or former tenant.

29. I do not find that a larger abatement is warranted pursuant to subsection 8(7) of the regulation as I was not satisfied that the interference “far exceeded” the level that would be normally expected. There was no evidence that the work was carried out at unreasonable times or a time that was not permitted by a noise control by-law, that it contravened a condition or requirement of a building code or was carried out over a period of time far in excess of the amount of time that would normally be required or that the landlord refused to take reasonable steps to minimize interference. As a result, I find that an abatement of 25% is appropriate in the circumstances due to the interference.

<u>Remedies</u>

Key Deposit

30. The Landlord shall return the illegally collected key deposit of $100.00.

Out-of-Pocket Expenses

31. The Tenants submit that they paid out-of-pocket expenses to rent an AirBnB due to the ongoing construction in the rental unit as the unit was not in a liveable state as of August 28, 2022 when the Tenants moved into the rental unit. The Tenants testified that they paid costs of $158.00 for the costs to rent an AirBnB for the period of August 31, 2022 to September 1, 2022 to allow the Landlord some additional time to perform work in the rental unit. Based on the Tenants’ videos dated August 28, 2022 and the testimony of the Tenants, I was satisfied that the out-of-pocket expenses for the AirBnB were reasonable in the circumstances.

32. The Tenants also sought out-of-pocket expenses of $1,070.00 for the cost of eating out and doing laundry at the laundromat for the duration of time that the kitchen and laundry were inoperable. While there were no receipts provided for any of these expenses, I am not surprised they do not have receipts from their laundry costs, and in any event I accept their testimony that they incurred additional costs as a result of the kitchen and laundry being unusable. In my view these amounts are reasonable.

33. The Tenants sought an out-of-pocket expense for the increased gas costs incurred as a result of the Landlord turning the heat in the rental unit up while the Tenants were away.

However, as it is impossible to calculate the increased cost of the utilities, I find that this is better addressed under the Tenant's request for general compensation for the illegal entry.

34. Therefore, the total out-of-pocket expenses incurred by the Tenants is $1,228.00.

General Compensation for Illegal Entry

35. The Tenants sought a rent abatement of $1,000.00 for the illegal entry and substantial interference. However, as the allegation of substantial interference was dismissed, I only considered the illegal entry when considering the rent abatement based on the T2 Application.

36. Based on the evidence before me, it appears the Landlord only entered on one occasion and the interference in this case was largely the fact that the Landlord turned up the heat in the rental unit.

37. With respect to the illegal entry, in *Wrona*, the Divisional Court ordered the landlord to pay to the Tenant $1,000.00 for a single illegal entry. In *Wrona* the application before the Board involved a large non-profit landlord and a vulnerable tenant. It was a second application by the tenant about the same complaint – notices of entry that had a very broad range of entry for a scheduled inspection. The first application resulted in an order telling the landlord that a range of entry of more than six hours made its notice of entry invalid. But the landlord did not alter its practice despite the prior order. The second application involved an incident where the tenant received a notice of entry the same as the first one. I believe it is fair to say that the remedy in *Wrona* took into account the landlord's refusal to change its illegal practice despite a prior finding that it was illegal. That is not the situation here.

38. In the case before me, it appears the illegal entry had a very small impact on the Tenants as they were not home when it occurred and nothing was missing as a result of the Landlord entering. The Tenants' submit they incurred approximate costs of $100.00 as a result of the Landlord turning up the heat in the rental unit. Based on the interference to the Tenants and my knowledge of similar cases, I find that an award of $250.00 is reasonable in the circumstances.

Rent Abatement

39. Given the significant disrepair of the rental unit for the duration of the tenancy, I find that a rent abatement of 80% for the first two months of the tenancy is appropriate followed by 30% for the remaining three months the Tenants resided in the rental unit is reasonable in the circumstances. Therefore, I find that a rent abatement of $4,750.00.

40. Given the substantial interference found above, I find that the Tenants are entitled to a further 25% rent abatement for the duration of the renovations that interfered with the Tenants. The Tenants requested an abatement of $1,000.00 for the period of September 2022. While I may have ordered a higher abatement than what was claimed by the Tenants for the interference with reasonable enjoyment, as per *Beauge v. Metcap Living Management Inc*, [2012] O.J. No. 1052 (Div. Ct.), it is not open to the LTB to order any remedies in excess of that claimed in an application which has not been amended. As a

result the Landlord shall be ordered to pay $1,000.00 which is the amount of rent abatement sought by the Tenants for the interference with reasonable enjoyment.

Fine

41. The Tenants also sought an order for a fine as the Landlord blatantly disregarded the Act by illegally entering the rental unit without providing adequate notice as required under the Act.

42. In terms of an administrative fine, the Board's Guideline 16 suggests that the purpose of a penalty is to encourage compliance with the Act and to deter landlords from engaging in similar activities in the future. It does on to say, "this remedy is most appropriate in cases where the landlord has shown a blatant disregard for the Act, and other remedies will not provide adequate deterrence and compliance."

43. Although the illegal entry breached the Act, I do not find that the behaviour meets the threshold that warrants an administrative fine. As such, the request for an administrative fine is denied.

It is ordered that:

1. The total amount the Landlord shall pay the Tenants is $7,226.00. This amount represents:
   - $100.00 for the illegal charge collected.
   - $100.00 for general compensation for the illegal entry.
   - $5,750.00 for a rent abatement for the period ending January 31, 2023.
   - $1,228.00 for the reasonable out-of-pocket expenses that the Tenants incurred.
   - $48.00 for the cost of filing the application.

2. The Landlord shall pay the Tenants the full amount owing by January 19, 2026.

3. If the Landlord does not pay the Tenants the full amount owing by January 19, 2026, the Landlord will owe interest. This will be simple interest calculated from January 20, 2026 at 4.00% annually on the balance outstanding.

January 8, 2026
Date Issued

Christopher Lin
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.