



Order under Section 31 Residential Tenancies Act, 2006

File Number: LTB-T-027890-24

In the matter of: BASEMENT UNIT, 1 MILNE AVE
SCARBOROUGH ON M1L 1J7

Between: Diana Grant
Megan Wheeler Tenants

and

Freda Kemp
John Gora Landlords

Diana Grant and Megan Wheeler (the 'Tenants') applied for an order determining that Freda Kemp and John Gora (the 'Landlords'):

- entered the rental unit illegally.
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.
- harassed, obstructed, coerced, threatened or interfered with the Tenants.
- withheld or interfered with their vital services or care services and meals in a care home.

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

The Tenant Diana Grant, the Tenants' legal representative Sarah Vaz and the Landlords attended the hearing. The Landlords called Brian Gogek to testify.

Determinations:

1. The Tenants say the Landlords violated their privacy and substantially interfered with their right to quiet enjoyment forcing them to vacate on May 31, 2024. The allegations involve surreptitious surveillance, two unlawful entries and harassing communications.
2. The Tenants' request to amend their application in the form delivered on March 6, 2025 is granted.
3. For reasons that follow, I find the Tenants have proven on a balance of probabilities that the Landlords made an entry on February 14, 2024 without notice in breach of the *Residential Tenancies Act, 2006* (the 'Act'). I find the remainder of the Tenants' claims must be dismissed because there is insufficient cogent evidence to support them.

Illegal Entries

4. The Tenants testified that their security camera captured the Landlord Freda Kemp entering their unit on February 14, 2024. The parties agree this entry was without notice. The Landlords say they needed access to the electrical panel which was in the rental unit in order to shut off the electricity so they could service their malfunctioning stove. They rely on clause 26(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') and say they entered because of an emergency. They also rely on clause 26(1)(b) to say they had consent to enter because the Tenants knew the electrical panel was located in their rental unit and accepted that as a term of the tenancy.
5. I cannot accept the Landlord's position that fixing their stove constitutes a case of emergency within the meaning of clause 26(1)(a). They did not testify to any safety concern or any other urgent situation.
6. I also cannot accept the Landlords' position that they had implied consent from the Tenants to enter at any time without notice simply because the Tenants may have known the fuse box was located in their unit. I have reservations about whether any such agreement would be a valid as it seems to amount to a waiver of the express privacy protections of the Act. But in any case, I must reject this defence because I find there is insufficient evidence to support it. There is simply no evidence that the Tenants' shared the Landlords' understanding that the location of the fuse box in the rental unit amounted to consent allowing the Landlords to enter at any time without notice. I find the Tenants have proven this unlawful entry on a balance of probabilities.
7. The Tenants testified that again on May 18, 2024, their security equipment captured Ms. Kemp entering the rental unit without notice or consent. They weren't home so they called police. Ms. Kemp admits she made this entry but submitted that she needed access to the water shut-off valve because there was water pooling on the floor of their unit upstairs and they needed to shut off the main water supply to prevent further water buildup and to investigate the source. I accept the Landlords' evidence in this regard because there is no evidence to contradict it. I agree this situation constitutes a case of emergency justifying the Landlord's entry into the rental unit without notice or consent under clause 26(1)(a) of the Act.

Surveillance

8. The Tenants allege that the Landlords also invaded their privacy by surreptitiously listening to their conversations. They say that during a private conversation on March 12, 2024 they mentioned they were not happy living at the rental unit. The next day, the Landlords sent them an email containing the expression "Happy Places" which the Tenants had used during their private conversation. They ask me to infer that the Landlords must have been listening to their private conversations. They mentioned another instance where they had been privately discussing dirt on the door and found the dirt removed the next day, also suggesting to them that the Landlords must have been listening to their private conversations.
9. In support of the allegation, the Tenants filed a photograph of what appears to be a bracket or a brace of some kind attached to the outside of the rental unit. The Tenants speculate a camera or listening equipment of some kind must have been installed here although

they've never seen one. This would be consistent with the Landlords' evidence that there was none.

10. Similarly, the Tenants mentioned an email where the Landlords asked them to keep the gate shut to make sure their dog can't get out. The Tenants say this too is proof they were being surveilled, arguing how else would the Landlords know the gate was left open?
11. The Landlords testified that they borrowed the "happy places" expression from a turn of phrase used by one of the Tenants in conversation with them. They deny that they listened in to the Tenants' private conversations.
12. The Tenants add that the Landlords had commented about one of their visitors from which they ask me to infer that the Landlords must have been surveilling them unlawfully for otherwise they could have no way of knowing about their visitors. This circumstantial evidence of clandestine surveillance was not presented with sufficient detail to allow the inference that the Tenants invite. Even assuming the Landlords had made a remark about the Tenants' visitors, I cannot find this to be circumstantial evidence in support of any breach of the Act. Given that the Landlords and Tenants lived in the same building, I find it far more probable that the Landlords learned about the visitor in a lawful manner.
13. I find the claims about surreptitious surveillance must be dismissed because there is insufficient evidence to support them. The circumstantial evidence the Tenants point to does not prove on a balance of probabilities that the Landlords had been using surveillance equipment to listen in on the Tenants' conversations.

The Pet Conflict

14. The Tenants say they were enticed into this tenancy under false pretences. They testified that they were given to understand that the Landlords would seldom be home but it turned out they were often home, which was bothersome and created conflict.
15. One such conflict involved the Landlords' dog "Nooki". The Tenants complain that they never got a chance to meet Nooki before entering into the tenancy although they were promised they could. Nooki, it turned out was, a large dog. It was playful and sociable. While the Tenants enjoyed Nooki's company sometimes, they found it too much sometimes. Nooki would jump on the Tenants and sniff their shoes which they found objectionable. On one occasion, Nooki jumped on one of the Tenants making her fall. This made the Tenants uncomfortable and unable to enjoy their back yard. What's worse, the Landlords dismissed the Tenants' concerns and refused to restrain Nooki. Instead they made flippant suggestions that the Tenants should just ignore Nooki.
16. The Landlords have an altogether different account. They testified that the Tenants did in fact have an opportunity to meet Nooki when viewing the rental unit and understood they would be sharing the residential complex with the Landlords, who had a dog. They deny that they were unresponsive to the Tenants' concerns about Nooki's conduct. They had observed the Tenants playing with Nooki and surmised they were happy to do so. When they learned the Tenants did not enjoy playing with Nooki, they built an enclosed area in the backyard where Nooki could be contained so the Tenants could be free to enjoy the backyard without interacting with Nooki.

17. I found the evidence on this subject to be evenly balanced. Therefore, I must find that the Tenants have failed to prove their allegations on a balance of probabilities.

Smoking on the Sidewalk

18. The Tenants also filed a photo showing one of them on the sidewalk. They say the Landlords took this photo to support their (false) allegations that one of them was smoking inside the rental unit. The photo filed does not show the face of the person or anything else sufficiently distinctive to identify the person but the Tenants say it shows the Tenant Megan Wheeler. It does not show what that person is doing although the Tenants say Ms. Wheeler was smoking on the sidewalk. The Landlords do not deny that had cautioned the Tenants about smoking inside the rental unit because one of the Landlords is allergic to smoke. I don't need to make a specific finding because that particular dispute is not before me. For the purposes of this application, it is sufficient for me to observe that photographing an unidentifiable person on a public sidewalk doing nothing in particular is not a breach of the Act.

Unlawful Demand for Rent

19. On the evening of January 31, 2024, the Landlord Ms. Kemp made an unannounced visit to collect the rent that was due on February 1, 2024. The Tenants were shocked by this premature demand and took advice from their realtor who confirmed they had no obligation to pay February's rent until February 1st. Still, they felt compelled to drive to the bank in the middle of the night to get cash. They say the Landlords' demand for rent before it was due was unlawful and harassing.
20. I reject this claim because the Tenants' testimony makes no sense. If they determined they had no obligation to pay, I do not understand why they travelled to their bank to get cash. I also cannot accept that the Tenants made that journey because they testified that they don't believe they actually made a payment on the evening in question. I prefer Ms. Kemp's evidence that she visited the Tenants to ask for the cheque that was due the next day—she did not demand prepayment of rent that was not yet due. I also accept the Landlords' evidence that they did not demand the rent in cash that evening because cash was never exchanged between the parties. I find the Landlords' recollection to be more consistent with the Tenants' testimony that they did not in fact pay cash that evening. I have no reason to doubt the Tenants' testimony that they found this unannounced visit unwelcome and were taken aback by the request but I see nothing improper in it. Tenancy agreements cannot require rent to be paid by post-dated cheque but there is no law preventing a landlord from making the request. The Tenants did not testify that Ms. Kemp's request was forceful or otherwise inappropriate in tone. They were free to decline and ask her to leave. They did not testify that they asked her to leave. I find no breach of the Act has been proven on a balance of probabilities

No Pet Policy

21. The Tenants showed me an email of May 17, 2024 sent to them by the Landlord Mr. Gora. He was relying on a no-pet provision in the tenancy agreement and demanding that the Tenants' remove their dog immediately. The email threatens legal action.

22. The Landlords testified that they included this clause in the lease because they knew Nooki may respond poorly to the presence of another animal in the rental unit.
23. It's true that no-pet clauses in leases are presumptively void. It is also true that the tone of the email is needlessly aggressive. But I find no breach of the Act has been proven on a balance of probabilities. The Landlords were attempting to enforce what they perceived to be their legitimate rights and interests. That they may have been mistaken or taken a non-conciliatory posture does not amount to harassment or substantial interference.

Other Harassing Emails

24. The Tenants found the substance, tone and frequency of the Landlords' other emails to be harassing. The emails were not produced but I was told they contained false allegations of smoking among other unwarranted complaints, some to do with garbage as detailed below. I find this claim has not been proven on a balance of probabilities because there was insufficient cogent evidence presented to substantiate it.

Other Abusive Communication

25. The Tenants also allege that a verbal confrontation between themselves and the Landlord John Gora on February 19, 2024 amounted to harassment and substantial interference. The conversation was apparently about mice. I was told Mr. Gora raised his voice. He denied this conversation occurred. I find I was given conflicting evidence on this subject and must therefore find that the claim has not been proven on a balance of probabilities.

Improper Attempts to Terminate

26. The Tenants allege that on or about February 27, 2024, the Landlords contacted the Tenants' realtor to advise that they wanted the Tenants out of the rental unit. The Tenants were deeply upset and offended, aggravated by the fact that they could do nothing about it—they were at the airport departing on holiday when they received the news.
27. The Landlords deny they called the Tenants' realtor. They and their realtor testified that around that time the Tenants' realtor and the Landlords' realtor were in discussions about terminating the tenancy before term. The Tenants' realtor at some point withdrew from those discussions, relinquishing the task to their legal representative. The discussions ultimately resulted in the parties agreeing to terminate the tenancy by signing an N11 form in April 2024.
28. Based on this evidence, I am prepared to accept that the Tenants' realtor called them on or about February 27, 2024 to discuss this subject and that the Tenants' found the topic unpleasant and the call untimely as they were preparing to go on holiday. However I find the allegation of harassment has not been proven on a balance of probabilities because I am not prepared to accept the Tenants' double hearsay evidence that their realtor told them that the Landlords' realtor had told their realtor that the Landlords wanted the Tenants to leave. I prefer the Landlords' direct testimony and that of their realtor that they never made any such request. At all events, even if the Tenants' evidence was accepted for the truth of its contents, it would be consistent with the fact that the parties were in

discussions about terminating the tenancy and not sufficient to prove harassment, substantial interference or any other breach of the Act on a balance of probabilities.

Garbage

29. The Tenants testified that the Landlords had placed the garbage bins inside a shed and would object to the Tenants using these bins. The Tenants also testified that the Landlords were asked, but refused to provide, instructions on how to deal with their household waste. To avoid conflict, the Tenants took their waste away in their car. The Landlords denied depriving the Tenants the use of garbage bins but confirmed that there was a misunderstanding about how to separate garbage from recycling. They had sent the municipality's rules to the Tenants. It seems the Tenants took umbrage at these communications but they have not filed them or testified that there was anything inappropriate about it in either tone or substance. No breach of the Act has been proven on a balance of probabilities.
30. The Tenants also mentioned that the Landlords may have sorted their garbage from their recycling at some point which they consider to be an invasion of their privacy. Without more, I am not prepared to accept that tenants have a general expectation of privacy in their household waste. Even assuming the Landlords sorted the Tenants' waste, I find no breach of the Act has been proven on a balance of probabilities.

Remedies

31. Having proven the one illegal entry of February 14, 2024, the Tenants are entitled to those remedies in respect of that breach that they can prove on a balance of probabilities. They rely on the Divisional Court's decision in *Wrona v. TCHC*, for the proposition that they should be awarded \$1,000.00 for the illegal entry.¹
32. I do not accept that the decision in *Wrona v. TCHC* stands for the proposition that tenants must be awarded \$1,000.00 for each illegal entry because that's not what the court said. The court awarded the tenant in that case \$1,000.00 for each illegal entry based on its assessment of the facts before it. It did not make any comment suggesting a departure from the general principle that damages are to be assessed based on the circumstances of each case depending on the nature and severity of the breach and its impact on the claimant.
33. About the illegal entry of February 14, 2024, Ms. Kept testified that she entered the rental unit, walked to the fuse panel, turned off the fuse and left. The Tenants did not produce their security videos, and they did not dispute this account in testimony.
34. The Tenants testified that they feel violated and unsafe such that they can no longer bear the thought of living in a basement unit. That they had valuables stored in the rental unit made the illegal entry particularly worrisome to them. They now live in constant fear of surveillance even in public places. While this evidence may sound outlandish and self-serving, I understood the Tenants to be referring to the overall impact of all perceived breaches not just the one illegal entry that they have proven on a balance of probabilities.

¹ *Wrona v. Toronto Community Housing Corporation*, [2007] O.J. No. 423 (Div. Ct.).

Given that the Tenants have proven only one of the various allegations they advanced, I must assess damages for that breach only. As trier of fact, I must make this determination even where the task is made difficult by the quality of the evidence.²

35. Considering the totality of the evidence, I award the Tenants a rent abatement of \$100.00 for that breach.
36. The Tenants' other remedies must be denied because I find they have not proven on a balance of probabilities that the Landlords' breach induced them to vacate the rental unit within the meaning of subsection 31(2) of the Act.
37. The Tenants incurred costs of \$48.00 for filing the application and are entitled to be reimbursed those costs.

It is ordered that:

1. The total amount the Landlords shall pay the Tenants is \$148.00. This amount represents:
 - \$100.00 for an abatement of rent.
 - \$48.00 for the cost of filing the application.
2. The Landlords shall pay the Tenant the full amount owing by February 3, 2026.
3. If the Landlords do not pay the Tenant the full amount owing by February 3, 2026, the Landlord will owe interest. This will be simple interest calculated from February 4, 2026 at 4.00% annually on the balance outstanding.

January 23, 2026
Date Issued

Nersi Makki
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.

² *Meldazy v. Nassar*, 2025 ONCA 590 at para. 53.