



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

**File Number:** LTB-T-080883-24

**In the matter of:** Upper, 5961 Grey Ave  
Niagara Falls ON L2G4B2

**Between:** Timothy O'Connor Tenant

**And**

Maria Barone Landlord

Timothy O'Connor (the 'Tenant') applied for an order determining that Maria Barone (the 'Landlord'):

- 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 Tenant.
- withheld or interfered with their vital services or care services and meals in a care home.

This application was heard by videoconference on January 8, 2026.

The Tenant and the Landlord attended the hearing. The Landlord was supported by her friend, Tony Sacino.

### **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
2. In this application, the Tenant alleged that the Landlord's failure to address issues with the lower unit tenants has substantially interfered with his reasonable enjoyment of the rental unit or residential complex, and that the Landlord has harassed and/or threatened him to get him to vacate. The Tenant made the following assertions:
  - The lower tenants' smoking in the residential complex not addressed by the Landlord;
  - The lower tenants conduct and behaviour toward the Tenant, such as yelling, demanding he move their basketball net not addressed by the Landlord;
  - The lower tenants' dogs, dog feces and garbage in backyard not addressed by the Landlord;

- Hydro/water being turned off or water pressure adjusted (lessened) by the lower unit tenants no addressed by the Landlord.
- Paying for the hydro and gas utilities which includes a light and vent in the common area.
- The Landlord cut down branches in the backyard that were used for shade;
- The Landlord turned off water to the garden;
- The Landlord gave a rent increase; and
- The Landlord fails to respond to the Tenant's calls/complaints/requests;

5. Section 22 of the Act provides 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.

6. Section 23 of the Act provides that:

A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.

7. Harassment is not defined in the Act, however it is generally accepted that harassment is a course of conduct that a person knows, or should know, would be unwelcome by the other person, which is pursued for no legitimate, lawful purpose.
8. The LTB does not address disputes/issues between tenants. The Tenant's allegations must relate to the Landlord's conduct or omission with respect to finding that the Landlord breached section 22 of the Act.
9. In *Hassan v. Niagara Housing Authority*, [2000] O.J. No 5650 ('*Hassan*') the Court held that, *inter alia*, "it is not that the tenant's actions are imputed to the landlord, but, rather, the landlord's legal responsibility to provide the tenant with quiet enjoyment that gives rise to the responsibility on the landlord to take reasonable steps to correct the intrusion of the neighbouring tenant on the tenant's right to quiet enjoyment."
10. This tenancy commenced on October 1, 2018 and the current monthly rent is \$973.00. The Tenant occupies the upper unit in this two unit residential complex (house). The majority of the Tenant's allegations relate to the conduct of the lower unit tenants and he asserts that the Landlord has failed to address/stop this interference.
11. The Tenant stated that the lower tenants moved into the rental unit in the fall/winter of 2023 and immediately within the first month, he knew they were heavy smokers. He stated that he advised the Landlord of the smoke entering his unit and she said she will deal with it. He believes he has complained at least five times in total to the Landlord regarding the smoking in the complex, but also stated that it was pointless to continue to complain because it would be daily which would interrupt his living.

12. The Landlord stated that when the Tenant complained she asked the lower unit tenants to smoke outside and she believes they have complied with this request.
13. There was no evidence before me that the residential complex is a smoke-free premises or that the lower tenants signed a tenancy that provides a "no smoking" policy. The Tenant asserts that his children and he are impacted by the lower unit tenants smoking as the smoke travels through the vents into their unit. As per *Hassan*, it is not the conduct of the lower unit tenants that is imputed on the Landlord, moreover, it is whether the Landlord took reasonable steps to correct the intrusion.
14. In this case, the evidence before me is insufficient to find that the Tenant continued to complain to the Landlord after the initial complaint or that the Landlord did not take reasonable steps. The Landlord stated that she asked the lower tenants to smoke outside and the Tenant basically stated that it was pointless to continue to complain. However, if a tenant does not complain how can a landlord know that an issue is not resolved.
15. With respect to the lower tenants' conduct toward the Tenant, he simply stated that they are always yelling at him and he had to move a basketball net on the property. He then stated that there have been multiple police reports wherein the lower unit tenants blocked his entry. He also stated that he has issues with the lower tenants' dogs, dog feces and garbage in the backyard.
16. The Landlord stated that she had heard of the lower tenants blocking the door once, but she did not understand as the lower tenants and the Tenant have separate entrances, one being on the front and the other being on the side. She also stated that it was the first time hearing about the other things. As for the dogs, she stated that those tenants with the dogs left three years ago.
17. Without specific details such as dates/events in support of the Tenant's allegations and when he reported them to the Landlord, I cannot find that the Landlord substantially interfered with the Tenant's reasonable enjoyment of the premises.
18. Additionally, although the Tenant asserted that the lower tenants are turning off the hydro and/or water or affecting the water pressure, he failed to provide specific details regarding these allegations such as dates/times and when he notified the Landlord. Without these details, I cannot be satisfied how often the issue is occurring and if the Landlord failed to take reasonable steps to stop it. As well, a lapse in the supply of hydro/water to the complex may have been the result of one of the utility companies. The Tenant's evidence before me was simply insufficient to find that the Landlord breached section 22 of the Act with respect to these allegations.
19. The Tenant asserted that he has to pay for hydro and gas utilities which include a light and vent in the common area. The Landlord stated that the light belongs to his unit as it is at his entrance and needed to light the area. She said although there is a door to the basement in that area as well, this door is not used by the lower tenants.
20. Based on the evidence before me, I find it more likely than not that the light is used by the Tenant given it is located in the hallway to his main entry door. Regardless, the Tenant failed to provide any supporting evidence that the cost for the use of this light and/or vent amounts to a significant amount. He did not provide copies of any hydro or gas bills or any

assessment from the utility company about this light or vent and how it relates to his billing. The Tenant also did not provide any supporting evidence with respect to what his portion of the utilities are for the complex.

21. The Tenant asserted that the Landlord is harassing/threatening him to vacate. In support of this, he stated that the Landlord removed branches from the yard that he used for shade, cut off water to the garden, and recently gave him a notice of rent increase. The Landlord agreed that while although the Tenant cuts the grass in the yard, he failed to address these branches which were getting so high that they were pushing on the eavestroughs. She stated that she cut them back and cleaned up the area sometime around the end of September 2024.
22. Based on the evidence before me, I find it more likely than not that the Landlord removed the branches because they were impacting the eavestroughs. If this removal affected areas of shade in the backyard, I was not satisfied that it was intentional. The evidence before me was insufficient to find when the water to the garden was cut off and whether this amounted to harassment. Regarding, the rent increase, the Tenant did not provide any specific details such as the amount or timing of the rent increase in order to make a determination as to whether the increase is unlawful or amounts to harassment. A landlord is entitled to increase the rent every twelve months by the guideline amount at least.
23. The Tenant stated that the Landlord does not respond to his calls/complaints/requests. The Landlord stated that this is not true and that she has answered his calls even at 5:00 a.m. Again, the Tenant failed to provide any specific dates or times when the Landlord failed to answer his calls. He also did not provide any copies of unanswered text messages or emails. Given this, the evidence before me was insufficient to find that the Landlord is not responding to his calls/complaints/requests and that this amounts to harassment or a substantial interference.
24. As per the above findings, I was not satisfied on a balance of probabilities based on the evidence before me that the Landlord breached sections 22 and/or 23 of the Act with respect to the allegations raised in this application.
25. Consequently, the application is dismissed.

**It is ordered that:**

1. The application is dismissed.

**March 31, 2026**  
**Date Issued**

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Lisa Del Vecchio  
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.