



Order under Section 31 Residential Tenancies Act, 2006

File Number: LTB-T-003731-22

In the matter of: 309, 175 ZOO PARK RD
WASAGA BEACH ON L9Z0H9

Between: Melissa Graham Tenant

And

Simcoe County Housing Corporation Landlord

Melissa Graham (the 'Tenant') applied for an order determining that Simcoe County Housing Corporation (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.

This application was heard by videoconference on November 23, 2023, and February 23, 2026.

The Landlord's Agents, Tanya Keller and Kristen Wilson, and the Landlord's Legal Representative, H. Tavorges, and the Tenant attended the hearing.

At the first hearing the Tenant was represented by Nicole Fazzari. At the subsequent hearing the Tenant was self-represented.

Preliminary Issue:

Disclosure of evidence

1. For the following reasons, the Tenant shall not be permitted to rely on the documents she failed to provide to the Board or the Landlord in accordance with the Board's Rule 19.1 for the hearing on February 23, 2026.
2. The Notice of Hearing provides information as to what a party must do should they have evidence they intend to rely on at the hearing. Parties are required to give the opposing party and the Board a complete copy of all evidence at least 7 days before the hearing. In this case, the Tenant was required to provide the Landlord and the Board with a complete copy of his evidence no later than February 16, 2026.

3. While the Tenant uploaded several documents to the Tribunals Ontario Portal ('portal'), she did not provide a copy of them to the Landlord. The Tenant explained that she believed uploading to the portal automatically disclosed the evidence to the other party.
4. I am not satisfied that the Tenant complied with the disclosure requirements as set out in the Notice of Hearing and the Board's Rules of Procedure. The Tenant did not provide a sufficient explanation as to why she was unable to comply with the disclosure requirements. The evidence uploaded was elaborate and required the Landlord to be given adequate time to review and respond. Given this, I believe it would be prejudicial to the Landlord to permit the Tenant to rely on this evidence. It will not be admitted.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenant \$9,310.50 on or before June 30, 2026.

Background to the tenancy:

2. The Tenant moved into a newly built residential complex in June 2020. The residential complex has 99 rental units which house seniors, families with children, physically disabled people as it has accessible units which support independent living with walkers, canes and wheelchairs etc.
3. The Tenant has a host of medical issues which include but are not limited to rheumatoid arthritis, chemical sensitivities, allergies, chronic fatigue and auto immune disease. COVID-19 was exceptionally hard for the Tenant due to her low immunity levels. The Tenant is prescribed a weekly dose of an inhibitor which alters her immune system. This was especially important during COVID because it affected her immunity negatively and made her more susceptible to getting sick. The Tenant has bouts of days when she is bedridden due to her arthritis.
4. The Tenant was homeless in 2018, and her doctor recommended applying to Social Housing and was also in Housing First program for the region due to homelessness. The Tenant's doctor recommended this building. All of the Tenant's medical needs were shared with the Landlord prior to her moving in which is why she chose this non-smoking barrier-free building.
5. The tenancy ended on or around September 30, 2025.

T2 Application

6. The Tenant's T2 application alleges illegal entry, substantial interference, and harassment.
7. The allegations on the T2 have been grouped together as follow:
 - a) Smoking related issues.
 - b) Harassment by other tenants
 - c) Safety issues.

8. The applicable sections of the *Residential Tenancies Act, 2006* (the 'Act') are as follows:

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

9. The definition of harassment in the Ontario Human Rights Code is "engaging in a course of vexatious comment or conduct or conduct that is known or ought reasonably to be known to be unwelcome." The Act does not define harassment; however, the Board has relied on the definition in the Code and other similar definitions.

10. The Tenant's T2 application was filed on January 21, 2022. Some of the incidents date back to 2020. The Act limits the application timeline to not more than one year after the day the alleged conduct giving rise to the application occurred under section 29(2) which means the remedies granted cannot go back farther than January 21, 2021. Some of the incidents from 2020 are only referred to show continuation and do not necessarily initiate a remedy.

Smoke related issues

Tenant's evidence

11. The Tenant testified that since the start of her tenancy in June 2020, tobacco smoke from neighbouring units traveled to her rental unit. The Tenant complained to her Housing First worker as there was no staff on site due to COVID-19. She also reported the issue to the Tenant Service Coordinator, Tanya Keller (TK).
12. Between September 9, 2020 and May 31, 2022, the Tenant's doctors wrote multiple letters to the Landlord documenting the impact the smoke was having on the Tenant's health and requesting that the Landlord take steps to keep residents from smoking in the non-smoking building.
13. The Tenant continued to report issues with smoke to TK and other staff in writing from November 18, 2020 to May 31, 2022. The Landlord rarely responded and when they did, the response was vague. The Landlord also never provided the Tenant with any information as to measures they were undertaking to keep residents from smoking in the non-smoking building.
14. Between December 10, 2020 and June 3, 2022, TK advised the Tenant that she would speak to her supervisor about moving the Tenant to another building. The Tenant tried to mitigate the issue by keeping her windows open when the weather permitted, placing towels under the doors, and purchasing an air filter. Despite her efforts, the issue persisted until she moved to another building in September 2025.

Landlord's evidence

15. TK testified that she was the Tenant Services Coordinator until 2024. TK acknowledged receiving the Tenant's complaints about the smell of smoke. She indicated that neither she nor staff could smell smoke when they attended the rental unit to assess the issue.
16. TK confirmed that the building is a non-smoking building with designated smoking areas outside. She explained that many of the Tenant's complaints occurred during COVID when staff were not present.
17. Kristen Wilson (KW) testified that she became the Tenant Services Coordinator following the departure of TK in 2024. She testified that in May 2024, the Landlord offered the Tenant a Tenant Navigator to assist her with her tenancy issues. In January 2025, the Landlord resealed the Tenant's unit to address her concerns. She stated that the Landlord offered to transfer the Tenant on four separate occasions, but the Tenant denied all offers until September 2025.

Analysis

18. In *Hassan v. Niagara Housing Authority*, [2002] O.J. No. 5650, the Divisional Court affirmed that a landlord has a positive duty to address situations where one tenant substantially interferes with another tenant's enjoyment of the rental unit or residential complex. In that decision, the Court stated:

It is not that the other 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.
19. It flows from *Hassan* that a landlord faced with complaints from one tenant about another must investigate the complaints. If there is merit to the complaints, the landlord must take such reasonable steps as warnings, escalating to eviction proceedings, if the offending behaviour is not corrected.
20. In the current case, whether or not marijuana or tobacco permeated into the Tenant's unit is not particularly important. The Tenant alleges she was disturbed by the smell of smoke in her rental unit and was denied reasonable enjoyment as a result. Accordingly, the issue that must be determined in this case is whether the Landlord acted reasonably in response to the Tenant's complaints to provide the Tenant with reasonable enjoyment of the rental unit.
21. I will first state that I find it proven that tobacco and marijuana smoke permeated into the Tenant's rental unit. The Tenant's account of these disturbances was well documented and sufficiently convincing, particularly as it fit with the undisputed email exchanges from the relevant times and the medical records. Further, it is noteworthy that the Landlords' agents did not deny that residents were smoking in the non-smoking building. TK testified that many of the complaints occurred during COVID when staff were not present.
22. No evidence was led by the Landlord indicating they issued warnings to residents. The extent of the Landlord's investigation into the Tenant's complaints was limited to visits to the rental unit in which they denied smelling smoke. I am not satisfied the Landlord objectively investigated the Tenant's complaints.

23. I am also not convinced the Landlord took reasonable and appropriate steps to correct the issue. The Landlord was aware that the issue continued after the re-sealing of the unit. There is no indication the Landlord provided the Tenant with an air purifier equipped with HEPA or carbon filters to neutralize the smell. I find the Tenant's denial of previous transfers were reasonable given her medical conditions.
24. Based on a totality of the evidence before me, I find the Landlord, in failing to properly investigate and correct the Tenant's complaints of tobacco and marijuana smell, substantially interfered with her reasonable enjoyment of the rental unit.

Harassment and safety concerns

Tenant's evidence

25. The Tenant testified that other tenants in the residential complex created an unsafe living environment by failing to adhere to COVID-19 safety protocols. She alleged that throughout her tenancy, she was harassed and verbally threatened by several tenants. She attributes these encounters to her refusal to allow non-residents or unauthorized guests entry to the building.
26. The incidents described by the Tenant included being verbally accosted when she entered or exited the building with her support dog, being spat on, excessive noise coming from the common areas at odd hours and being cursed at by other tenants. She reported these incidents to the Tenant Services Coordinator who advised her that they could not assist as the incidents occurred in areas without surveillance cameras. The Tenant also reported multiple incidents to the police, who provided her little recourse.

Landlord's evidence

27. It was the evidence of the Landlord that in addition to complaints received by the Tenant, they received complaints from other tenants about the Tenant. Given this, the Landlord arranged for mediation between the Tenant and another tenant. TK testified that they held a round table meeting with the Tenant and suggested she make audio recordings of her interactions with the offending tenants. The Tenant was also encouraged to contact police if she had safety concerns. TK stated that audio and video recordings the Tenant provided the Landlord did not establish harassment or safety concerns.

Analysis

28. As explained above in *Hassan*, the issue that must be determined in this case is whether the Landlord acted reasonably in response to the Tenant's harassment complaints. For the reasons that follow, I believe they did.
29. The Landlord offered mediation, held a round table discussion with the Tenant, and offered the Tenant an opportunity to transfer to another unit. When the issues persisted, the Landlord took steps to terminate the tenancies of some of the offending tenants.

Remedies

1. Ontario LTB case law supports that persistent second-hand smoke and ongoing tenant harassment, combined with a landlord's delayed or ineffective response, constitute substantial interference with reasonable enjoyment and justify compensation.
2. Guideline 6 of the Board's Interpretation Guidelines states that, in determining the amount of an abatement for the violation of a tenant's rights, the Board will consider factors such as a landlord's intention in doing the action complained of by the tenant, whether the landlord was motivated by malice toward the tenant, the extent of the harm suffered as a result of the landlord's actions, whether the tenant contributed to or aggravated the situation, and the frequency or duration of the landlord's actions, including the number of occasions in which the conduct occurred. An abatement is not a punishment for a landlord but is intended to compensate a tenant for a contravention of the tenant's rights. While the Guidelines are not binding upon me, I agree with the approach stated in the Guidelines and have considered the factors outlined above where applicable.
3. I take into consideration that the Tenant is a person with disability who requires extra care and attention who was entitled to accommodation and protection given her disability and also that a major part of this was during COVID-19 when already people were under stress and uncertainty especially a person with compromised immunity.
4. The Tenant has asked for a 25% rent abatement for each issue (Total 50% abatement). I find, based on the lack of evidence to show any reasonable efforts made by Landlord to mitigate the smoking issue, that an abatement of 25% is warranted. For the harassment issue I do find the Landlord took reasonable steps no rent abatement is being granted. The Tenant's monthly rent at the rental unit was \$650.00 for a period between January 2021 to September 2025. his amount reflects a 25% abatement of the Tenant's monthly rent of \$650.00 over the period from January 2021 to September 2025 (25%x 650 x 4 years 9 months). The total amount of abatement granted is \$9,262.50 for all the issues.
5. No other remedies are being granted as the Tenant has vacated the rental unit and other remedies are moot.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$9,310.50. This amount represents:
 - \$9,262.50 for a rent abatement.
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by June 30, 2026.
3. If the Landlord does not pay the Tenant the full amount owing by June 30, 2026, the Landlord will owe interest. This will be simple interest calculated from July 1, 2026, at 4.00% annually on the balance outstanding.
4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

June 19, 2026
Date Issued

Sheena Brar
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.