

Order under Section 31
Residential Tenancies Act, 2006

File Number: TST-76403-16

D.B. (the 'Tenant') applied for an order determining that R.M. (the 'Landlord') or the Landlord's superintendent or the Landlord's agent substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household and withheld or deliberately interfered with the reasonable supply of a vital service, care service, or food that the Landlord is obligated to supply under the tenancy agreement.

This application was heard in Toronto on September 7, 2016.

Only the Tenant attended the hearing.

Determinations:

1. The rental unit is a condominium apartment.
2. In his application the Tenant indicated that the Landlord had interfered with vital services. There are no allegations in the application that would support a finding that the Landlord had interfered with vital services. When this was raised with the Tenant at the hearing, the Tenant requested that this part of his application be withdrawn. I therefore heard no submissions or evidence with respect to the withholding of vital services at the hearing.
3. In his application and at the hearing, the Tenant submitted that his reasonable enjoyment of the rental unit is substantially interfered with by the presence of second hand smoke from a neighbour and that the Landlord has failed to address this issue.
4. This is a case where a tenant is alleging that a landlord is interfering with his reasonable enjoyment by failing to address substantial interference by another person. To be successful in this application, the Tenant must establish that the other person substantially interfered with his reasonable enjoyment of the residential complex or his rental unit by causing second hand smoke to enter the rental unit. The Tenant must also establish that the Landlord failed to take reasonable steps to address the interference with the Tenant's reasonable enjoyment.
5. At the hearing the Tenant testified that when he wakes up, either in the middle of the night or in the morning, he knows that he has been "absorbing" second hand smoke during the night. He testified that he occasionally smells smoke when he wakes up. The Tenant testified that he knows he was absorbing smoke, not because of the smell, but because of the way he feels when he wakes up (because he experiences these effects regardless of whether he smells smoke). The Tenant testified that the second hand smoke causes him headaches, lethargy, weakness, weight loss, and difficulty with formulating thoughts and words. The Tenant testified that he is the survivor of a brain injury and that the second hand smoke exacerbates the symptoms that he experiences from his brain injury.

6. The Tenant submitted no medical evidence that second hand smoke from his neighbour causes the symptoms that the Tenant has described.
7. The Tenant testified that he has sought medical attention for the difficulties that he experiences. The Tenant testified that he has attended at a hospital three times for this purpose: twice he was told that the cause of his symptoms is unknown and once he was told that the symptoms were likely caused by dehydration.
8. The Tenant testified that his neighbour was away for July 2016 and that during this time the Tenant did not experience the symptoms that he described. The Tenant testified that his neighbour returned in August 2016 and his symptoms resumed. The Tenant testified that his neighbour recently moved out of the building and, since then, his symptoms have abated.
9. The Tenant testified that he reported the second hand smoke problem to the Landlord by e-mail and that she responded, within a reasonable time, by saying that the Tenant should notify her whenever the Tenant smells smoke and that she will have the concierge attend at the rental unit to investigate. The Tenant testified that he did send a text to the Landlord once to complain about the smoke smell, the concierge investigated promptly, and the concierge could not smell any smoke. The Tenant testified that he also could not smell smoke when the concierge attended.
10. On the basis of the Tenant's uncontested evidence, I am not satisfied, on a balance of probabilities, that the Tenant has absorbed second hand smoke from a neighbour and that this has caused the symptoms that the Tenant has described. It is not obvious that second hand smoke from another unit in the building would have these effects and the Tenant has submitted no medical evidence to establish that it does. The Tenant's evidence about his symptoms abating when his neighbour is not at home does not, on its own, establish, on a balance of probabilities, that the Tenant's symptoms are caused by second hand smoke. I am therefore not satisfied that anyone has substantially interfered with the Tenant's enjoyment of the rental unit.
11. Even if the Tenant has experienced substantial interference, the Landlord's response to the Tenant's complaint was timely and reasonable. The Landlord quickly put in place a way to investigate the issue and implemented it. The issue was investigated by the concierge, who was unable to verify that there was second hand smoke in the rental unit.
12. For the reasons explained above, the Tenant's application must be dismissed.

It is ordered that:

The Tenant's application is dismissed.

September 28, 2016
Date Issued

Renée Lang
Member, Landlord and Tenant Board

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This order contains all reasons for the determinations and order made. No further reasons will be issued.

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.