

Order under Section 31
Residential Tenancies Act, 2006

File Number: SOT-26923-12

T. D. (the 'Tenant') applied for an order determining that H. J. and T. J. (the 'Landlords') harassed, obstructed, coerced, threatened or interfered with him.

This application was heard in St. Catharines on June 21, 2012.

The Tenant and the Landlords attended the hearing.

Determinations:

1. I am not satisfied that the Landlords harassed or interfered with the Tenant.

It is ordered that:

1. The Tenant's application is dismissed.

Reasons for the order are attached.

June 25, 2012
Date Issued

Freda Shamatutu
Member, Landlord and Tenant Board

Southern-RO
119 King Street West, 6th Floor
Hamilton ON L8P4Y7

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

REASONS

Reasons to Order SOT-26923-12 issued on June 25, 2012 by Freda Shamatutu.

1. The Tenant filed this application alleging that the Landlords have been harassing him and his family over smoking on the residential complex and for sitting on the porch and or on the steps of the residential complex.

Harassment over sitting on the steps and porch of the residential complex:

2. The Tenant claims that on May 19, 2012, the Landlords told him and his family who include his wife and a son who uses a wheelchair, not to sit on the steps of the residential complex.
3. The Landlords admit to having told the Tenant and his family not to sit on the steps of the property because the Tenant and or his family and especially the Tenant's son's wheelchair, blocks other residents and or visitors from exiting and entering the residential complex.
4. The Landlords submitted a picture of the residential complex. A review of the picture shows that the porch is very small and is merely an extension of the steps put there for the purpose of providing access into the residential complex. The porch and steps do not look like they are intended for people to sit on for leisure purposes without blocking entry into and out of the residential complex.

Harassment over smoking in the common areas of the residential complex:

5. The Tenant testified that on May 27, 2012, the Landlords informed him that his family could not smoke on the residential complex.
6. The Landlords admitted having told the Tenant not to smoke on the property but said they did this because the Tenant and or his family smoke on the steps and on the porch of the property and the smoke goes into the Landlords unit and affects the Landlords' son who has asthma and the female Landlord who is a cancer survivor and who used to suffer from tuberculosis.
7. The Landlords testified that they are concerned for their health if they are exposed to cigarette smoke. The Landlords also testified that their doctor has advised them to ensure that their son is not subjected to cigarette smoke as it exacerbates his asthma. The Landlords reside immediately above the porch and steps of the residential complex and like to keep their window open for purposes of providing air circulation in their unit.

8. The Landlord submitted a rental application form that the Tenant had signed with them. The application form states that the residential complex is a smoke free apartment. The Tenant had signed the form and therefore he had effectively agreed to the terms of tenancy for his residency.
9. At the hearing, the Tenant argued that he does not smoke and that his wife and son do not reside with him and only smoke when they come to visit him. The Tenant insisted that the family do not smoke inside the residential complex only on the porch of the complex.

Legal provisions and determinations:

10. A landlord under the *Residential Tenancies Act, 2006* (the 'Act') has an obligation not to substantially interfere with his tenants' reasonable enjoyment of their rental units and or of the residential complex. This obligation extends to all tenants of the residential complex. If the conduct of one tenant interferes with the rights of other tenants the landlord has an obligation to ensure that the tenant's conduct is corrected and if not corrected then the landlords have a right to have the tenancy of the offending tenant terminated.
11. In the application before me the Landlords asked the Tenant and or his family not to sit on the steps and or the porch because they blocked other tenants' ability to enter and exit the residential complex. Asking the Tenant and his family not to block other tenants' free access into and out of the residential complex is not harassment.
12. With regards to the issue of smoking on the property, section 9(2)3 of the *Smoke-Free Ontario Act, 1994*, provides that smoking is not allowed in the common areas of apartment buildings. Common areas include the porch and the steps of the residential complex and or any area within the parameters of the residential complex. The Landlords in the application before me have an obligation to enforce the law by ensuring that tenants of their residential complex do not smoke in the common areas of the residential complex.
13. In addition to the above, the Tenant was made aware in the rental application form that he signed with the Landlords, that the residential complex was a non-smoking complex. By signing the application form and by accepting to rent a unit from the Landlords after being made aware of the conditions pertaining to the complex means that the Tenant had agreed to the non-smoking condition imposed by the Landlords.
14. The Landlords therefore have a right to enforce the non-smoking provisions set out in the rental application form and the Tenant has a corresponding reciprocal obligation to abide by the terms of the agreement he signed with the Landlords.
15. Therefore, I am not satisfied that the Landlords harassed, obstructed, coerced, threatened or interfered with the Tenant and his family.

June 25, 2012
Date Issued

Freda Shamatutu
Member, Landlord and Tenant Board

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