



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

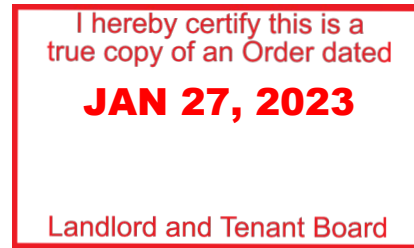
File Number: LTB-T-062288-22

In the matter of: 4201 -341 BAY STREET
TORONTO, ON
M5H 4G5

Between: JAWAD RATHORE
GAME SIX ENTERPRISES

And

ANJU KUMAR



Tenant

Landlord

JAWAD RATHORE and GAME SIX ENTERPRISES (the 'Tenant') applied for an order determining that ANJU KUMAR (the 'Landlord'):

- altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys.

This application was heard by videoconference on January 18, 2023.

The Landlord, the Landlord's Legal Representative Jessica Wu, the Tenant and the Tenant's Legal Representative Shaun Harvey attended the hearing.

Determinations:

1. The Tenant's T2 application seeks an order putting them back into possession of the rental unit and for the return of any items the Landlord removed. In order to obtain a remedy sought in the T2 application, the Tenant has the burden of establishing, on a balance of probabilities, that the Landlord has altered the locking system on the door giving entry to the rental unit without giving him replacement keys in contravention of 24 of the *Residential Tenancies Act, 2006* (the 'Act') which states:

24. A landlord shall not alter the locking system on a door giving entry to a rental unit or residential complex or cause the locking system to be altered during the tenant's occupancy of the rental unit without giving the tenant replacement keys.

2. The Tenant's evidence was that he did not vacate the rental unit nor was there an eviction order enforced against him. The Tenant submitted that his housekeeper had attended the rental unit on the Thursday of the week he was locked out of the unit and

the Tenant had left the rental unit the following morning with dishes from his breakfast still in the sink. On or about October 15, 2022, the Tenant attempted to gain access to the rental unit but was unable to as the Landlord had determined that the Tenant had relinquished the tenancy and abandoned the unit resulting in his access fob being deactivated and the locks changed.

3. The Tenant's evidence was that at no point did he inform the Landlord of his intention to vacate the rental unit.
4. The Landlord testified that the last communication she had with the Tenant was on September 22, 2022 where the Tenant informed the Landlord that he would call her to discuss rent arrears. The Landlord submits that she and a friend took turns sitting in the lobby of the rental unit 24 hours a day, every day, between October 1 and 6, 2022 in an attempt to see the Tenant and speak with him.
5. As the Landlord did not hear back from the Tenant and did not see the Tenant during the time period of when she and her friend were situated in the lobby, she determined that the Tenant had abandoned the unit and changed the locks to the unit on or about October 14, 2022. The Landlord then removed the Tenant's personal property from the rental unit, placed them into storage and subsequently moved herself into the rental unit.
6. The Landlord submitted that she believed the rental unit was abandoned because the Tenant was in rent arrears, she had not heard or seen from him since September 22, 2022 and she had been informed by the RCMP that the Tenant was residing elsewhere. The Landlord's defence to the Tenant's allegations in the T2 application is that the Tenant abandoned the rental unit and that I should refuse to grant the remedies sought by the Tenant based on the Tenant's actions and conduct which are the subject of the Landlord's applications that are pending before the Board and will be addressed at a date to be scheduled by the Board.

Analysis/Law:

7. Subsection 37(1) of the *Act* says a tenancy may be terminated only in accordance with this *Act* but section 39 says:
 39. A landlord shall not recover possession of a rental unit subject to a tenancy unless,
 - (a) the tenant has vacated or abandoned the unit; or
 - (b) an order of the Board evicting the tenant has authorized the possession.
8. The Courts have consistently held that a landlord's reasonable belief that the tenant has abandoned the rental unit, however genuine, is not sufficient authority to recover possession under the *Act*. Pursuant to section 79 of the *Act*, a landlord may apply for an order from the Board for the termination of the tenancy on the basis that the tenant has abandoned the rental unit:

79. If a landlord believes that a tenant has abandoned a rental unit, the landlord may apply to the Board for an order terminating the tenancy.

9. In this case, the Landlord never sought such an order. As described above, subsection 39 of the *Act* states that the Landlord may recover possession of the unit if the Board has issued an order authorizing possession but as the Landlord never obtained such an order, her next lawful route to recover the rental unit would have been a finding that the rental unit was abandoned.
10. In the Divisional Court case of *George V. Apartments v. Cobb*, [2002] O.J. No. 5918 (Ont. Div.Ct.) the terms “vacated” or “abandoned” in subsection 39(a) of the *Act* effectively have the same meaning. “Vacant” implies entire abandonment and a state of non-occupancy for any purpose while “abandonment” means the tenant no longer intends to reside in the rental unit. Abandonment within the context of the *Act* therefore requires both an intention to abandon and clear evidence that this has in fact occurred. (see *Morguard Real Estate Investment Trust v. Pita Pazazz Inc.*, [2005] O.J. No. 2961 at para.31 (Ont. Sup. Ct.)).
11. This avenue to recovery is more precarious for the landlord than an order from the Board and requires clear and unambiguous evidence that the tenant has permanently vacated the rental unit with no intention of returning. As noted in *George V Apartments*:

Abandonment by the tenant is not established until some action is taken by the landlord. When faced with an empty unit, a landlord retakes possession pursuant to s.41(a) at some risk. The tenant may be working or vacationing elsewhere, sometimes for a considerable period. The landlord must be satisfied the tenant has left the unit and obviously has no intention of returning. Nonpayment of rent is certainly a factor to be considered. The safest course for the landlord is to bring an application under s. 78. [now s.79].

12. As was mentioned at the hearing, while s.79 of the *Act* is discretionary, a tenancy may be terminated only in accordance with the *Act*. In other words, absent some action by the landlord, such as obtaining an order under s.79 of the *Act*, the fact of abandonment in and of itself does not terminate a tenancy.
13. In this case, while the Landlord may have genuinely believed the rental unit had been abandoned because the rent was in arrears and she had not received a return phone call from the Tenant as he stated he would on September 22, 2022, the Tenant still had all his belongings and furnishings in the rental unit, the Tenant still had his housekeeper attend the rental unit just a few days prior to being locked out, the kitchen sink had his freshly dirty dishes in it and the Tenant’s motor vehicles were still parked in the garage.
14. In the absence of clear and unambiguous evidence that the Tenant had indeed abandoned the rental unit and that there was no evidence that the Landlord had attempted to notify the Tenant of her intention to enter the rental unit nor had she obtained an order from the Board terminating the tenancy under section 79 of the *Act*, I am satisfied that the Landlord breached section 24 of the *Act* by illegally locking the Tenant out of the rental unit. There is no dispute that the Landlord changed the locks and

deactivated the key fobs of the rental unit and she did so without an order from the Board or the consent of the Tenant.

15. The fact that the tenancy was not terminated by the Landlord in accordance with the *Act* means that the Tenant remains a tenant and has lawful right to possession of the rental unit.
16. The Board has jurisdiction under section 31 of the *Act* and subsection 23(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, Chapter S.22 that if satisfied the rental unit is vacant to order that the Landlord immediately allow the Tenant to recover possession of the rental unit and provide the Tenant keys to the doors to the rental unit and any pass, fobs, access or other codes required for the Tenant to have full and unfettered access to the rental unit.
17. As set out in *Minas v. Adler*, 2022 ONSC, para 66-67:

First, the term “vacant” must be read in [its] entire context, in [its] grammatical and ordinary sense harmoniously with the scheme of the *Act*, the object of the *Act*, and the intention of Parliament. As noted above, one of the purposes of the RTA is “to provide protection for residential tenants from unlawful rent increases and unlawful evictions”. To read “vacant” in a literal or absolute sense, as was submitted by the landlords, would permit landlords to profit from illegally evicting tenants. Indeed, one can easily imagine a situation where, in a tight rental market, a landlord could illegally end a tenancy and then move into the unit. The tenant in this example could be rendered homeless as a result of the landlords illegal actions and the Board would have no ability to give possession of the rental unit back to the blameless tenant. This result runs contrary to the purposes of the RTA which include protecting tenants from unlawful evictions. The Landlord’s suggested interpretation of the term “vacant” in s.31(3) of the RTA cannot, therefore, be accepted. **Rather, the term “vacant” must exclude situations where a landlord moves into a rental unit after having illegally terminated an otherwise legal tenancy** (emphasis added).

18. While it is unfortunate that the Landlord may now find herself having to locate rental accommodations until her pending application is determined, she is in contravention of the *Act* and the Tenant was illegally locked out of the rental unit.
19. This order contains all of the reasons within it and no further reasons will be issued.

It is ordered that:

1. The Landlord shall immediately allow the Tenant to recover possession of the rental unit and provide the Tenant with keys to the doors of the rental unit and the residential complex and any pass, key fob, access or other codes required for the Tenant to have full and unfettered access to the rental unit.

2. If the Landlord does not allow the Tenant to recover possession of the unit, the Tenant may file this order with the Court Enforcement Office (Sheriff) so that the order may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give possession of the unit to the Tenant.
4. The Landlord shall return to the Tenant property that is in the possession or control of the Landlord by February 11, 2023.

January 27, 2023
Date Issued


Heather Chapple
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.

The Part of this order allowing the Tenant to recover possession of the unit and prohibiting the Landlord from re-renting the unit to anyone else expires and cannot be enforced if:

- a) The Tenant does not file this order on or before February 11, 2023 with the Court Enforcement Office (Sheriff) which has territorial jurisdiction where the rental unit is located, or
- b) The Tenant files this order with the Court Enforcement Office (Sheriff) but the order has not been enforced on or before March 13, 2023.