

WARNING

The court hearing this matter directs that the following notice be attached to the file:

A non-publication and non-broadcast order in this proceeding has been issued under subsection 486.4(1) of the *Criminal Code*. This subsection and subsection 486.6(1) of the *Criminal Code*, which is concerned with the consequence of failure to comply with an order made under subsection 486.4(1), read as follows:

486.4 Order restricting publication — sexual offences. — (1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

(i) an offence under section 151, 152, 153, 153.1, 155, 159, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 210, 211, 212, 212, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or

(ii) any offence under this Act, as it read at any time before the day on which this subparagraph comes into force, if the conduct alleged involves a violation of the complainant's sexual integrity and that conduct would be an offence referred to in subparagraph (i) if it occurred on or after that day; or

(b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph (a).

(2) — **MANDATORY ORDER ON APPLICATION** — In proceedings in respect of the offences referred to in paragraph (1)(a) or (b), the presiding judge or justice shall

(a) at the first reasonable opportunity, inform any witness under the age of eighteen years and the complainant of the right to make an application for the order; and

(b) on application made by the complainant, the prosecutor or any such witness, make the order.

486.6 OFFENCE — (1) Every person who fails to comply with an order made under subsection 486.4(1), (2) or (3) or 486.5(1) or (2) is guilty of an offence punishable on summary conviction.

ONTARIO COURT OF JUSTICE

DATE: 20230619
COURT FILE No.: BRAMPTON 22-1669

B E T W E E N :

HIS MAJESTY THE KING

Crown

— AND —

████████████████████

Defendant

Before Justice K.L. McLeod
Heard on April 11, 12, 13th, 2023
Oral Judgment delivered June 19th, 2023
Written Reasons delivered June 20th, 2023

Ms. A. Persad-Fordcounsel for the Crown
Mr. G. Tomlinsoncounsel for the Defendant

K.L. McLeod J.:

[1] Mr. ██████ is charged with sexual assault. Mr. ██████ is a superintendent in an apartment building; the complainant, Ms. B.A., is a tenant. She alleges that on one occasion Mr. ██████ came to her apartment, ostensibly to check her smoke detector, and told her that he had been watching her. He grabbed her, rubbed his hands up and down her body, including her hair, and kissed her.

[2] Mr. ██████ denies this allegation.

[3] The issue in this trial is whether the Crown has proven Mr. ██████'s guilt of this alleged offence beyond a reasonable doubt: what that means is that I must be sure that Mr. ██████ is guilty before I convict him. In order to determine that, I must examine the credibility and reliability of each of the witnesses called in this trial. This is not a contest as to whose evidence I prefer, but each witness' evidence must be scrutinized for the honesty and accuracy of the details of what occurred. It is not a case that I have to believe or disbelieve all of a witness' testimony to determine whether it is credible and

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reliable. I can accept all, parts or nothing of a witness' testimony. Ultimately, however, if I believe Mr. [REDACTED] that he never touched the complainant, I must acquit him. If having evaluated all of the evidence, I am not sure whether Mr. [REDACTED] assaulted the complainant, I must acquit. It is only if I accept the evidence of the complainant: she was the only witness called by the Crown, and reject the evidence called by the Defence: that of Mr. [REDACTED], his colleague and co-superintendent and the Manager of the apartment building, as it relates to the context of this alleged act that I can convict Mr. [REDACTED] of the offence of sexual assault.

[4] The Crown, Ms. Persad-Ford, argues that *R. v. JJRD*, [2006] O.J. No. 4749 is applicable here; that is, that I should reject Mr. [REDACTED]'s evidence on the basis that I am able to come to a reasoned acceptance of the truth of the complainant's evidence. That is that she was so credible and reliable that I must conclude that the Crown has met its onus beyond a reasonable doubt. The Crown also, in the alternative, submits that I must reject the defence evidence because it is both incredible and unreliable.

[5] On the other hand, Mr. Tomlinson argues that I must acquit Mr. [REDACTED] because his testimony was both credible and reliable and buttressed, in describing the context of his work and duties in the building, by his witnesses.

[6] I intend to commence this judgment by describing the background of each of the witnesses in order to set the context.

Background of Ms. B.A.

[7] She signed a one year lease to rent her first apartment effective from September of 2021. She was to pay a monthly rent of \$1450. She took possession of the apartment in August and was billed a pro-rated rent for August.

[8] She was 19 at the time and apparently working in a bar/nightclub and worked evening shifts from Thursday through the weekend, in the late afternoons and evenings, but says that her work was event-based. She no longer works there and says she is struggling with work but is now in school.

Background of Mr. [REDACTED]

[9] Mr. [REDACTED] is from Syria. He came to Toronto with his family, his wife and three children. Upon arrival in Canada, the family lived in a hotel and then moved to the building in which he now resides and works. He and his wife were hired as a team as superintendents in the building in 2019. His role in the building is to make repairs where needed. His wife cleans the public areas of the building and is responsible, along with the wife of the other male superintendent, for the delivery of notices from the building management to the tenants.

[10] Mr. [REDACTED] explained that the tenants will drop off work orders/requests for repairs at the management office which the male superintendent on shift will collect at 9 a.m. These apparently usually number between 10-15 requests and they are the superintendent's responsibility to attend to. They work up until 5 p.m. and then one person remains on call and if they receive a telephone request for urgent assistance,

Mr. ██████ explained, the on duty superintendent, would call the manager and get approval to enter the unit seeking assistance. The day shift ends at 10 p.m. at which time a security guard arrives until 5 or 6 a.m.

[11] In terms of a uniform, Mr. ██████ and his colleague, Mr. G ██████, who also testified, explained that when they are on duty they must wear a uniform which identifies them as working for the management of the building. The clothing was entered as an exhibit.

S ██████

[12] S ██████ works for the property management company from an office in the apartment building in which Mr. ██████ works. She has been employed by the company since 2002. She testified as to the system by which the superintendents are alerted to maintenance issues within the apartments. Tenants would be required to fill out a work order; it had to be signed by the tenant with a permission to the superintendents to undertake the work as required. The only times superintendents were able to enter apartments other than through the auspices of a work order was if there was an emergency or with permission of the tenant.

[13] Ms. ██████ also testified as to the procedure by which annual fire/smoke detectors in each of the units were inspected. She was shown a “Notice to Tenants” dated November 12th, which was provided to each apartment notifying the occupants of smoke alarm inspections to take place during the November 15-19, 2021 period. She said that management is required to give a minimum 24-hour notice to each tenant to allow for the tenant to either be home for the inspection or to provide permission to enter for the purpose of inspection. That notice that was given to tenants is dated November 12, 2021, which was a Friday.

[14] With respect to who delivered these notices, Ms. ██████ says it is the role of the superintendents, usually the women, who deliver them and because of their importance they are pushed under the door of the apartments. She was queried by the Crown about how she could be positive that each tenant was served with the notice to enter on November 12th, 2021. She responded that she had signed the notice, left all documents out for the superintendents to deliver on that date: the notices were gone from the office and she knew, given her experience. She would have heard from the tenants if they had not received sufficient notice.

G ██████

[15] Mr. G ██████ is the second male superintendent in the building. He has worked at that position for 12 years. Mr. ██████ testified about the uniform that superintendents were mandated to wear at all times. The uniform, which includes a jacket and two different t-shirts, displays the company logo.

[16] He also testified as to the process by which the smoke detectors were checked and changed or repaired if necessary. With the assistance of notations he had made on a work order on the date he accompanied Mr. ██████ on the annual maintenance of the

smoke detectors, he explained his recollection of the changing of Ms. B.A.'s smoke detector.

M [REDACTED]

[17] At this juncture, although he was never called as a witness, M [REDACTED] features large in this story. Ms. B.A. described that after the alleged sexual assault, she planned to have a male presence in her apartment. She said she knew one of her neighbours, M [REDACTED], who lived on the 11th floor, who would stay at her apartment. She denied they were in a relationship, but said that she told Mr. [REDACTED] they were. Mr. [REDACTED] denied being told that.

[18] Mr. [REDACTED] described knowing who M [REDACTED] was because he caught him twice smoking in the stairwell which was not allowed. Mr. [REDACTED] said that the second time he caught M [REDACTED], he was a bit more forceful with his warning that if it happened again, the police would be called. Mr. [REDACTED] explained he used to be a smoker, so he knows the smell of cigarettes. He said what he smelt was not cigarettes and was a bad smell, although he was unaware of the substance. Mr. [REDACTED] testified that he did not know M [REDACTED]'s name until the office called the police as tenants had complained their packages left outside their doors were going missing. He had found empty parcels in the stairwell.

[19] Ms. [REDACTED] testified about M [REDACTED]. She understood he was illegally living in Unit [REDACTED]. She had spoken to the leaseholder who had improperly rented the apartment out. She said there were complaints from tenants who had not received packages which were apparently delivered, and M [REDACTED] was apparently seen on video surveillance taking parcels from the mailroom. She also explained that she had seen him on video walking with something under his jacket and had found packaging in the stairwell.

[20] Ms. [REDACTED] called the police on December 28th, 2021. She testified that she wanted the police to tell him not to remain in the building, but that she knew even after that her staff brought to her attention that he was in the building. She understood that M [REDACTED] and Ms. B.A. were in a relationship and told the police of that. She said she had viewed video surveillance of them together acting as one would expect two people in a relationship would behave.

The Evidence

[21] I will now turn to the evidence of Ms. B.A as to her interactions with Mr. [REDACTED]. She testified that there were approximately 10 such occasions but was only able to specify details from certain of them. I will also contrast her descriptions of those meetings with those of Mr. [REDACTED] and his colleagues from the building.

First Meeting

[22] Ms. B.A. said she met Mr. ██████ in the lobby of the building in October of 2021; she described it as a friendly meeting. She recalled he introduced himself as “██████”, and told her he was the superintendent. He inquired as to when she moved in and asked what unit she was in. She did not mention asking for maintenance help.

[23] Mr. ██████ differs in his description on 2 bases: first, that the meeting happened in August and second, that he would have introduced himself as the superintendent, not by the name “██████”. He described how he was working with his partner that day and getting something out of storage. According to Mr. ██████, there was the following exchange:

Ms. B.A. asked: Are you the super, He said: yes, I am. She explained she had something wrong with her toilet; that the bowl was full and the water would not drain. He said he considered a toilet to be an emergency as the units only have one toilet and therefore did not require a work order to repair. He asked Ms. ██████ in the office for permission to attend to the problem without a formal work order and proceeded. He went to her apartment and fixed the toilet.

[24] In cross-examination Mr. ██████ explained that he had not known when the lady had moved in as he had not made arrangements for the elevator to be put in service to assist her in the move, which is how he usually knew who was moving in. Thus, he introduced himself.

[25] In terms of the month of this occurrence, Mr. ██████ was cross-examined about his unwavering belief that this occurred in August. It was suggested by Ms. Persad-Ford that this insistence by Mr. ██████, without a note of the occurrence, was an indicia of his incredibility. However, given the evidence that Ms. B.A. had in fact taken possession of the apartment in the middle of August, apparently to move some possessions to the suite, and the fact that Mr. ██████ testified to just seeing boxes in the apartment, it is quite possible that Mr. ██████ is correct, that this meeting occurred in August.

[26] Ms. B.A. did testify that at one time she had had problems in her washroom, that Mr. ██████ repaired. She initially provided the following details:

- It was in the beginning of December after the alleged sexual assault took place.
- Her friend M██████████ was sleeping in the bedroom.
- Mr. ██████, when he finished repairing the toilet, leant into her for a hug, but she said “no”.

[27] She was asked whether she was scared, given the alleged assault, when Mr. ██████ came in to fix the toilet. Ms. B.A. responded that after the alleged assault she planned to have someone in the apartment whenever the superintendent had to attend, thus she had asked M██████████ to be there. While she could not recall how the

superintendent had been alerted as to the problem; whether by a formal notice or someone speaking to the office, she recalled something being wrong with the toilet lever.

[28] However, Ms. B.A. was cross-examined about her statement to the police and agreed that she told the police that in fact the toilet issue had taken place and she had spoken to Mr. [REDACTED] the first time she met him in the lobby, just as Mr. [REDACTED] has testified.

[29] Thus, that meeting would have been well before the alleged sexual assault and therefore there was no reason to be concerned about Mr. [REDACTED] being there. Furthermore, it was well before she had met M [REDACTED]: she has testified after the alleged assault, that she had just met M [REDACTED] because he was a neighbour in the building. Thus, her testimony about M [REDACTED] being in the bedroom sleeping in her apartment, and Mr. [REDACTED] apparently leaning in for a hug is at best unreliable.

Second Meeting

[30] This is the occurrence of the alleged sexual assault. In terms of the date, Ms. B.A. said this:

- It was on a Thursday or Friday because those were the days she worked.
- It was after Halloween, in early November.
- It was 2-3 days before the date of the smoke alarm inspection.

[31] Ms. B.A. was shown a calendar and a document providing notice to tenants dated November 12 indicating that smoke alarm inspections would take place on Monday, November 15th. She was also shown a 2021 calendar showing that November 12th was a Friday and November 15th a Monday. She disputed the calendar asking if it was correct indicating it was "not correct in her mind". She never explained why she could dispute a calendar beyond that.

[32] Ms. B.A. also disputed receiving the notice on the 12th November, rather she indicated it was on the 15th.

[33] —She said that it was around 3 p.m. She was in the apartment with her dog. There was a knock at the door; it was Mr [REDACTED]. He said he had to check the smoke detector. She said she put the dog in the bedroom and went to the living room. He grabbed her, was whispering in her ear: "you have such a nice body". He was "like eating my face" using his tongue. Her arms were limp by her side. He was touching her all over, her hair, breasts, thighs, bottom, waist, moving his hands up and down her body about 20 times.

[34] Ms. B.A. said she did not call for help, reasoning that nobody would hear her and the door was locked. She described how she knew he had locked the door when she was putting the dog in her room as she had not actually seen him doing it. She said she only realized it was locked, when he abruptly left, and she heard him unlocking the door.

[35] She described herself as “disassociating” during this assault.

[36] She said she recalls saying something to him about the cost of the rent in the building.

[37] In terms of what she was wearing she said: jeans and a long sleeve shirt and that Mr. [REDACTED] was wearing a white undershirt with no sleeves.

[38] Ms. B.A. was asked if she told anyone about what happened. She said after it happened, she got ready for work, went to work and told a co-worker whom she named as J [REDACTED]. When asked in cross-examination to describe what she told “J [REDACTED]” she responded that she gave her a brief overview of what happened because she was not comfortable in telling people and thus only said she had been touched in a sexual manner.

[39] Other than J [REDACTED], she said she also subsequently told her supervisor at work, N [REDACTED]. She testified that she never described the true nature of the assault, nor did either of these people call the police

[40] Ms. B.A. described calling a friend “who was like a sister” to her who “allowed her to vent”. This was “S [REDACTED]”. She did not tell her what had happened, just that she felt uncomfortable. When Ms. B.A. reported this assault to the police, she did not provide any of these people’s names or their contact information. When asked at trial about “S [REDACTED]”, she said that at the time of testifying they were not on speaking terms.

[41] Additionally, apparently a week after this alleged assault, Ms. B.A. said she opened up about the situation to friends and family. None of these people were named in court or testified.

[42] In cross-examination on this event, Ms. B.A agreed she was not able to see the door being locked from her vantage point. She said she surmised that he had locked the door because she heard him unlocking the door when he left. The problem with that stated assumption is that she had already stated that she did not scream during the assault because she knew her door was locked. She could not have known it was locked at that time.

[43] In terms of the force used by Mr. [REDACTED] she said it was a 10 - being the highest, but said there were no injuries, bruises or scrapes.

[44] In terms of the touching on her breast area, she indicated it was over her clothing. It was put to her that she had told the police that she had been touched under her shirt; her response: “when you are caressing someone clothes are going to move”.

[45] However, she did agree there was a significant difference between being caressed over and under the clothing.

[46] At this juncture, I would posit that what was surprising was not that she had given an inconsistent statement, because memories can change, but the fact that there was such a casual explanation both in her delivery and her explanation for the change in her description especially since she conceded it was a substantial inconsistency.

[47] Mr. ██████ denies ever visiting her on a ruse or sexually assaulting her. He denies ever wearing an undershirt, rather he was specific about his uniform and the rules relating to its wearing. This evidence was corroborated by his colleague.

Third Meeting: the smoke alarm testing day – November 15th, 2021

[48] Ms. B.A. described on the day she received notice, she received a knock on the door. She answered the door. It was Mr. ██████ who told her he was going to check the smoke detectors. She described how she let him in, he walked into the living room, paced around, saw her neighbour M█████ there and left.

[49] Ms. B.A. was able to identify a video of her former apartment. She agreed the smoke alarm was right inside the front entrance door. She also agreed that if a person was in the living room, they would not be able to see the front entrance door.

[50] It was put to her that: 1: she did not open the door to admit the superintendent, rather it was M█████ who went to the door. She responded "incorrect"; and 2: there were in fact both superintendents present, one who was at the door with a cart with smoke alarms and Mr. ██████. She said that was incorrect. It also was put to her that she would not know who was outside the door as she would not have been able to see from the living room who was at the door. She denied that.

[51] Mr. ██████ testified that the smoke alarm replacements/repairs occurred once a year. Because he is the taller of the two superintendents and can reach the smoke alarm without the necessity of a ladder, his colleague was the provider of the replacements parts, and Mr. ██████ was the installer.

[52] In terms of who knocked on which door, Mr. ██████ said that there was no pattern to it, except he recalled in terms of that line of apartments, those which were numbered 11, were in the corner, thus he knew that Mr. ██████ knocked on the door because he had the cart to his right and was pushing it. Mr. ██████ would then put his foot in the door to hold it open, to allow Mr. ██████ to reach and perform the needed repairs.

[53] Mr. ██████ also testified that it was the young man, M█████, who opened the door to Ms. B.A.'s apartment. He said he was surprised to see him, as he knew M█████ lived on the 11th floor.

[54] Mr. ██████ did not recall whether or not he saw Ms. B.A. because he just focussed on the smoke alarm in the ceiling by the door.

[55] Mr. ██████ testified he was shown a work order with respect to the detectors that required new parts or needed to be replaced. He indicated that on it was his writing showing that in Ms. B.A.'s apartment, the smoke detector had to be replaced. He recalled knocking on the door and it was answered by a young man who he described

as skinny and the same height as him. He said the man moved away and Mr. █████ changed the alarm, which took a matter of seconds. Mr. █████ testified that he knew the young man to be living in apartment █████, not in the apartment with Ms. B.A., but he also had heard that this man was Ms. B.A.'s boyfriend.

[56] In terms of credibility and reliability, the Crown argues that Mr. █████ and Mr. █████ should not be believed on the details of this job, because there would be no reason to remember who opened the door of the myriad of apartments they visited or as to who knocked on the door. There does appear, however, to be markers as to why they would remember. Firstly, the presence of M█████, who subsequent to this had become quite notorious in the building and secondly, the fact that this apartment was in the corner, thus the placing of the proximity of the cart and Mr. █████ being the one to knock on the door, because of the corner suite, would have been distinguishable.

The Fourth Meeting

[57] This occurred on December 30th. Ms. B.A. testified as to the following:

-she had a problem with draft coming in from her balcony door.

-Mr. █████ appeared at around noon or 1 p.m. He came with duct tape; she queried its efficacy for the task and he left and came back with a glue gun. She said she stood by and watched him.

[58] With respect to how Mr. █████ knew of the need for maintenance in that apartment: Ms. B.A. testified:

1. M█████ was not there when Mr. █████ came into the apartment, as they were not talking at that time.

2. M█████ had told Ms. B.A. not to sign any work orders in accordance with the repair policy. M█████ had called to ask for a repair to the balcony door.

3. M█████ had "left" before Mr. █████ came to repair the door.

4. Mr. █████ asked her to make out a work order after he repaired the door, she felt pressured to do it. She also initially said she was forced to sign the date of December 28 but then said she just picked the date randomly.

5. She identified her writing on the work order.

[59] Mr. █████ indicated that his colleague was on vacation, so he was responding to all the work orders. He recalled going to the office to get the work orders for the day: Ms. B.A.'s work order was one of them. He then went to the apartment, saw the problem, leaving again to get the right tape (he described it as sticky tape) and thereafter doing the repair. He identified the work authorization and denied ever forcing Ms. B.A. to sign it in front of him. He completed the work and provided a written description of what he had done on the work order.

[60] With respect to other evidence respecting this work authorization, there was the general policy outlined by Ms. ██████ that tenants that have maintenance issues have to fill out a work order, that has to be signed as it authorizes permission to enter. The grounds for entry into an apartment without this permission would be in the case of an emergency such as a toilet issue. She also identified this particular work order, as it was found on December 28th in the office.

[61] With respect to other meetings with Mr. ██████; Ms. B.A. was at best vague. She mentioned a laundry room incident which took place after the smoke inspection. She said she was doing laundry, that he said: "I finish work at 5 p.m., do you want to go out? You can call the number if you need anything. We can plan something." She said she never called the number. She also testified that there were other conversations in which he would say that he was always available and that she could call the superintendents' number.

The Complaint to the Police and the Issue of its Timing

[62] I will now turn to Ms. B.A.'s version of her complaint to the police about Mr. ██████. She went to the police on December 30th; she says after the repair of her door, because, she said, signing the work order and backdating it would give Mr. ██████ permission to enter her apartment at anytime and was concerned.

[63] When asked why she did not make the complaint earlier, her response was that this was her first apartment, her lease was a year long, and she did not want to leave as she did not know what the repercussions were with her contractual duty under the lease. She also indicated she did not want to take any action until she was 100 percent sure she was going to leave. She felt that if she reported to the police, she knew she would have problems with the property management and staff, and she wanted to be fully informed before she made the decision.

[64] December 28th was also the date on which the police were called by Ms. ██████ as a result of M ██████'s alleged aberrant behavior, reported by Mr. ██████ and others. Ms. B.A. denied knowing that M ██████ had been ordered out of the property on December 28th. However, in denying that she had ever filled out the work order in advance, rather than being forced to make it out on December 30th, she proffered that ██████, with whom she was not speaking at the time of Mr. ██████ attending to the balcony door, had called and made the request for maintenance work.

[65] I do not accept Ms. B.A.'s evidence as to the making of this work order, for the following reasons

- 1) the policy of the building to only respond to completed work orders in writing, unless there was an emergency: such as a toilet.
- 2) ██████ had been ordered out of the building on December 28th. The Work Order was signed December 28th. It is unlikely therefore that he could have made a maintenance call on December 30th, especially since Ms. B.A. testified that they were not speaking at the time.

[66] With respect to Ms. B.A.'s evidence about her concern about her contractual duty which delayed her complaint, I will now turn to the history of Ms. B.A.'s rent payment, or lack thereof from the first month of her lease. She had signed a contract for one year, agreeing to pay rent on the first of each calendar month.

[67] A ledger representing Ms. B.A.'s history of paying rent was introduced. Ms. B.A. agreed it showed the extent of her history of non-payment.

[68] In September 2021, she did not pay her rent. She received a warning notice of termination of her lease on September 15th, 2021, that she must pay her rent by 29th of September. She did not pay.

[69] On October 1st, 2021, she did not pay her rent for October. Thus, there was a balance outstanding of \$2700. She paid \$1450 on October 5th.

[70] On November 1st her rent was still outstanding, thus on November 11th she was served with yet another notice of termination. She finally paid the rent on November 29th.

[71] On December 1st her rent was not paid, and again another notice of termination was served on December 15th.

[72] Ms. B.A. did not pay her rent in January or February, 2022: her justification was that she was planning to leave. The reason for her decision, she said, was that on January 4th, she received a letter from building management that should she have any issues, she was to go to the office and speak to the women there. She was to have no contact with Mr. [REDACTED] who was arrested and charged on December 30th.

[73] Ms. B.A. said she felt that until that time she had had a good relationship with management (despite her continued non-payment or late payment of rent and the receipt of the notices of termination of her lease). She called the relationship with management "rocky" after she made the complaint about Mr. [REDACTED] to the police.

[74] Ms. [REDACTED] testified that the police warned her there should be no contact between Ms. B.A. and Mr. [REDACTED], who continues, to this day, to have his job in the building, thus the letter was sent. The letter sent to Ms. B.A. was filed as an exhibit. It was not in any way disrespectful. Thus, Ms. B.A.'s indication that this letter to her suggested there was to be a "rocky" relationship is incomprehensible.

[75] Ms. [REDACTED] indicated that when they have tenants who are unable to pay their rent, they work with them to find solutions. She indicated that the only direct contact her staff had with Ms. B.A. was when she lost her keys to the apartment at the very beginning of her lease. This directly contrasts with Ms. B.A.'s evidence indicating that she had a good relationship with Management. Furthermore, when Ms. B.A. was asked about the notices of termination, she indicated she had received countless of these letters, she said "they don't just kick you out". She appeared remarkably nonchalant about these formal notices. She also protested that she did not understand the gravity of the notices to terminate at the time. I have reviewed the notices and, frankly, I am

not sure how a notice which says in shaded type, for emphasis, “This is a legal notice that could lead to you being evicted from your home”, could be misunderstood.

[76] Ms. B.A. also admitted she had stopped working in December and was not working in January. With respect to her non-payment of rent, she said she did not know how to leave the apartment and break her contract, so just stopped paying. Her rationale for not paying the rent, because she wanted to leave because of the alleged rocky relationship does not explain why she never actually paid the rent on time. Ms. B.A.’s attention to her contractual obligations was at least wanting.

[77] Ms. B.A said she physically left the apartment in February, although she did not let the Management office know, she never handed the keys in to anyone and did not return until March, when she came back to collect her possessions. In fact, it appears she even used Canada Post for the return of the keys on March 11, 2022.

[78] This chronic history of non-payment/late payment, of course, contrasts directly with Ms. B.A.’s testimony that she did not talk to the police about Mr. █████ before the end of December because she was concerned about how it would interfere with her obligations under a one-year lease. Her contractual duties were also to pay her rent on the 1st of each month, a duty which she never complied with, and totally ignored all the notices to terminate. She had long worked out a way of not honouring the contract; it was simply not to pay rent.

[79] Ms. B.A. also agrees that when she made the complaint to the police, she never informed them of her rent issues, or that a notice to terminate was effective the day before she made the complaint.

[80] Finally, with respect to her outstanding rent; an order was made under an application by the Property Management Company to the Landlord and Tenant Board, that Ms. B.A. pay the Landlord outstanding rent and costs of \$2434.71. Ms. B.A. was asked in cross-examination if she had paid what she owed, she indicated she did not, that her lawyer paid the rent. The speed of this response to the question was as surprising as indeed her allegation that her lawyer paid her outstanding debt! By notice dated August 29th, 2022, Ms. B.A. now appears to be suing the Management Company.

[81] The Crown has argued that Mr. █████’s evidence should be disbelieved, further that I should not have a reasonable doubt about its veracity. She points to Mr. █████’s certainty that he first met the complainant in August; it appears that is certainly possible given the state of her apartment showing she had not yet moved in.

[82] The Crown says that both Mr. █████ and Mr. █████ cannot be sure as to who knocked on the door to alert the occupants of Ms. B.A.’s apartment on November 15th. As indicated, there was a reason proffered by the placement of the apartment in the building and the fact that they replaced or repaired smoke alarms on each floor of this building and to each apartment, one above the other, makes this memory perfectly credible.

[83] Furthermore, they had reason to remember who answered the door on this apartment, because they knew M. [REDACTED] did not live there. They knew their tenants by their apartment numbers; thus they knew that M. [REDACTED] did not belong in that apartment.

[84] Furthermore, the Crown argues that Mr. [REDACTED] should not be believed because: 1: he remembered all of the details of his dealings with Ms. B.A. However, he did say that when he replaced her smoke alarm he could not recall if he saw her as his whole focus was looking up to replace the alarm situated just inside the front door of the apartment.

[85] Mr. [REDACTED] was cross-examined about his feelings about Ms. B.A. His response was that he was governed by the rules of management as to his interaction with her. He said that he dealt with all the tenants and everyone in a friendly human way.

[86] He was asked: "Were you attracted to her?" He said "no".

[87] The very next question was: "You knew she was young?" He answered: "I am a father of a daughter". He did, however, agree she looked young, but that he was aware of the sanctity of his marriage. He said he did not care if she looked young, he deals with all the tenants in the building in the same way and they were all ages.

[88] What I am being asked to accept is that because his answers to this were "evasive" there should be a wholesale disbelief of his testimony. I do not accept that description of his answers. This is a man who came from Syria in 2016. He lived in this apartment building with his family for some years, learning English, applied for a job in the building. He obviously is such a diligent worker that, despite this allegation, management did not remove him from his job. He talked about his uniform, he brought it to court, he brought the smoke alarm to show the simplicity of the installation and why he could do it so quickly. He described how he first met Ms. B.A. in this way:

Her name is not my business. My business is the number of her apartment. What I care for is the number, what's the unit what's the problem. As for the people, I don't care, its not my business, if someone is single, divorced.

[89] Ms. Persad-Ford also encourages me to reject the evidence of Mr. [REDACTED], which corroborates to a certain extent the November 15th meeting. Frankly her argument that *R. v. JJRD (supra)* governs this case requires a disbelief of this evidence. Ms. Persad-Ford urges me to wholeheartedly accept the evidence of the complainant and to ignore any possibility of doubt about the veracity of Mr. [REDACTED]'s evidence and those of his supporting witnesses. That is not possible.

[90] It is not possible because the evidence of Ms. B.A. is not worthy of belief.

[91] Her evidence about the first meeting changed between her original statement to the police and her testimony. She had pegged that maintenance issue much further into her "tenancy" and her testimony contained details about her need for M. [REDACTED]

to be present, assuming this was after she met him, but this was clearly before she had properly moved in.

[92] A blank calendar was put to her to try to discern the day of her alleged sexual assault; her first reaction was to check the veracity of the calendar which simply showed dates.

[93] She maintained she never received a notice about the need for repair of her smoke alarm, however, the overwhelming credible evidence from Ms. ██████ indicates that this would have been delivered to her apartment, whether she read the notice is only known to her.

[94] The Crown argues that the evidence about the history of dealings between Mr. ██████ and Ms. B.A, particularly with respect to what occurred on November 15th is all a "red herring" except for the details of the occurrence on the day of the sexual assault. I disagree. For this submission, Ms. Persad-Ford proffers the decision of the Ontario Court of Appeal, *R. v. L.M.*, 2019 ONCA 945, at para. 43, where the Court said this:

At the third stage of *W.D.*, the Trial Judge must determine whether, on the whole of the accepted evidence, the Crown has proven the elements of the offences beyond a reasonable doubt, not the details of what happened.

[95] The context of this decision is entirely different from the case at bar. In *L.M.*, despite the defendant's statement which was admitted into evidence by the Trial Judge and portions of which were judged as a truthful confession of a sexual crime, the reasons why the trial judge still had a reasonable doubt about the elements of the sexual offence, were not explained.

[96] The case at bar must be taken in its context; it is not an issue of whether the complainant's evidence, if accepted, would make out the offence; the issue is Ms. B.A.'s credibility and reliability as to that evidence. Ms. B.A.'s evidence must be considered in light of all of the evidence; it cannot be considered in isolation from any of the other evidence.

[97] The Crown argues that the details proffered by Ms. B.A. about the alleged assault are fulsome in the detail. She argues that an alleged inconsistency between whether she was touched inside or outside of her clothing is not material.

[98] The fact that Ms. B.A. did not report this alleged assault for 6 weeks is not a matter that I can consider adverse to her credibility: it needs no explanation. However, when, as in this case, the complainant provides a rationale for her non-reporting, it **can** be scrutinized in terms of an assessment of credibility and reliability. Her rationale for not reporting was that she did not want it to affect her contractual duties under the lease.

[99] The problem with that, as stated earlier, is that she had been in breach of her contractual duties since shortly after the commencement of her lease, the most fundamental of them all of which she was fully aware; that is to pay her rent. She did

not seem to care about any of her repeated non-payment and receipt of eviction notices. Thus, her rationale for this non-reporting simply is incredible.

[100] Frankly, there were many areas of Ms. B.A.'s evidence that defy logic. To repeat just a few:

- she questioned the veracity of a blank calendar of dates,
- her explanation of how she knew Mr. ██████ had locked the door in her apartment on the day of his unexpected visit is not credible,
- the evidence as to who answered the door on the smoke alarm day, which was corroborated by both superintendents, was obviously incredible. It would have meant nothing for her to admit that it was M ██████ who had answered the door since she had testified that she had him there to "protect her". What it would have done, however, is to provide evidence that she knew of the impending service as provided by the notice which she denied receiving earlier.

[101] Corroboration of any such allegation as the one in this case is not required in law. However, in any sexual assault case, evidence is often called of episodes of disclosure of that alleged assault to friends and family of the alleged victim. While this complainant alleges she told people at work, her "sister" like friend, she provided none of their contact numbers to the police when rendering her complaint. Indeed, even with the person who she said she was closest to she said she was no longer in contact with. Again, this is not required, but this absence coupled with so many other issues in this case with respect to her credibility and reliability do not in any way provide assistance to the Crown in the proof of its case.

[102] While Ms. B.A. stated that Mr. ██████ had been in her apartment at least 10 times, interestingly enough the only episodes of interaction, with the exception of the unwarranted alleged visit on November 12th or thereabouts, are the only ones she provided any evidence of; the meetings which Mr. ██████ also recalls.

[103] Finally, the fact that the date on which Ms. B.A. went to the police – December 30th – is coincidental with two occurrences. It is two days after her "friend" M ██████ was asked to vacate the building for unwarranted behaviour which included Mr. ██████'s finding of his activities in the stairwell, together with the end of the month pressures of not paying rent, while denied by the complainant. This cannot be ignored. Frankly, I find it quite likely that this allegation of sexual assault was one that Ms. B.A. made with many other goals other than reporting the truth.

[104] Mr. ██████ is no doubt a hard-working professional employee. He is supported by management of great experience and there is nothing in his testimony from which I can infer any untruthfulness, I wish I could say the same for the Crown's case.

[105] The charge will be dismissed.

Released Orally: June 19, 2023

Released in Writing: June 20, 2023



Signed: Justice K.L. McLeod