



**Order under Section 16.1 of the
Statutory Powers Procedure Act
and the Residential Tenancies Act, 2006**

Citation: Heward v Evolution Property Management, 2024 ONLTB 10772

Date: 2024-02-06

File Number: LTB-T-090044-23-IN2

In the matter of: 2, 202 King Street West
Brockville ON K6V3R5

Between: Cody Heward

And

Evolution Property Management
2503681 Ontario Limited

I hereby certify this is a
true copy of an Order dated
Feb 6, 2024
Landlord and Tenant Board

Tenant

Landlord

INTERIM ORDER

Cody Heward (the 'Tenant') applied for an order determining that Evolution Property Management and 2503681 Ontario Limited (the 'Landlord'):

- entered the rental unit illegally.
- altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys.
- 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.
- withheld or interfered with their vital services or care services and meals in a care home.

This application was heard by videoconference on January 31, 2024.

The Landlord's Legal Representative, M. Beaupre, the Landlord's Agent, A. Simpson, the Tenant's Legal Representative, F. Dobri, and the Tenant attended the hearing.

Determinations:

Adjournment Request - denied

1. At the outset of the hearing, the Landlord's Legal Representative requested an adjournment as she was just made aware of this hearing two days prior. She also submitted that the Tenant's evidence package including two large videos were only dropped off at the Landlord's office two days ago. She further submitted that she requires summons for two witnesses, namely the Fire Inspector and the By-Law Enforcement Officer.

2. The Tenant's Legal Representative opposed an adjournment and submitted that any adjournment would be highly prejudicial to the Tenant given the nature of the allegations. He also submitted the following: in November 2023, the Landlord was put on notice that an application would be filed, Interim Order LTB-T-090044-23 was issued and emailed to the Landlord on December 28, 2023, the Notice of Hearing package was emailed to the Landlord on January 3, 2024, and he has telephoned the Landlord on four separate occasions, leaving voicemails and received no response. He further submitted that section 10 of the *Statutory Powers Procedure Act, 1990* (the 'SPPA') states only that a party may be represented by a representative.
3. The Landlord's Legal Representative's request for adjournment was denied. I was satisfied that the Landlord had received sufficient notice of this hearing. If the Landlord wished to be represented at this hearing, it was their responsibility to notify their Legal Representative in a timely manner. As well, the Tenant's evidence was served in accordance with Interim Order LTB-T-090044-23 issued on December 28, 2023. Further, given that the Tenant is alleging an illegal lockout any adjournment would be extremely prejudicial to the Tenant.
4. This application was scheduled to be heard on an expedited basis due to the Tenant's allegation of an illegal lockout. Consequently, this issue was the primary focus of this hearing.

Illegal Lockout

5. Section 24 of the *Residential Tenancies Act, 2006* (the 'Act') states:

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.

6. Based on the evidence before me, I find that the Landlord altered the locking system on a door giving entry to the residential complex without giving the Tenant replacement keys. Consequently, the Landlord shall immediately allow the Tenant to recover possession of the rental unit.
7. The Tenant testified that he has lived at the rental unit for about three years. He also testified that he has a debilitating social anxiety disorder, suffers from depression and has a substance abuse problem. He further testified that he has a mental health worker who assists him and was present when he initially viewed the rental unit.
8. The Tenant also testified that he receives ODSP and his rent is paid directly to the Landlord. He testified that in May 2022 he had received an eviction notice from the Landlord and told his worker to stop his rental payments. However, he testified that about four months later the Landlord came to his door and asked for the direct payment to be reinstated so he gave them his worker's number and contacted his worker and gave her his Landlord's number.
9. The Tenant testified that on November 6, 2023 he was at his rental unit when the Landlord's Agent knocked on this door. This was not disputed by the Landlord's Agent.

The Tenant testified that he video taped this encounter and submitted a copy of this video into evidence (DOC#2677594).

10. The Tenant's Legal Representative submitted that the purpose of the video is mostly for the audio portion and a copy of the transcript was also submitted into evidence (DOC#2672412 page 13).
11. During the encounter and as shown in the transcript, the Landlord's Agent asked the Tenant "Is there anyone else living up here Cody?" to which the Tenant replied "No, just me."
12. The Tenant testified that on November 7, 2023, the Landlord turned off the water at the residential complex and there was no power, so he grabbed a bag and went to his sister's place. He also testified that he was in Kingston for about four days. He testified that he contacted By-Law and made an appointment with them to check the rental unit. He further testified that he met the By-Law Officer at the residential complex on November 13, 2023 and discovered the main door to the residential complex boarded shut.
13. The Tenant testified that he video taped this encounter on November 13, 2023 and submitted a copy of this video into evidence (DOC#2677624).
14. Reviewing the video footage confirmed the Tenant and a By-Law Officer at the main door to the residential complex and it was boarded shut. The Landlord's Agent and another gentleman appear and confirm that the Tenant's room is empty. The Tenant is heard saying that all his belongings has been tossed.
15. The Tenant is heard asking them "you guys are saying that I haven't lived here at all?" The Landlord's Agent responded "yeah." The Tenant is then heard asking "since when, so I wasn't here last week, you weren't here last week?" The Landlord's Agent responded he "will have to go back in the records, Cody." The Tenant is heard asking the Landlord's Agent directly if he was there last week talking to him through the door, because he refused to open it, and the Landlord's Agent responded, "I can't remember."
16. Under cross-examination the Tenant confirmed that he might have given verbal notice to vacate for October 12, 2023, however when asked if he left on October 13, 2023, the Tenant testified "no."
17. The Landlord's Agent testified that he began working with the Landlord company in 2018 and was property manager until 2022, then he was switched over to a construction company that they own. He testified that he was there for the safety of the building because they are currently doing a demolition of the building in compliance with the City.
18. The Landlord's Agent testified that he was not involved in any conversations with the Tenant in October 2023. He testified that he was told by the property managers that there was verbal confirmation as of October 12, 2023 that the building should be empty. He testified that since this date he has been on the exterior setting up at the back of the building for the demolition and that the residential complex is now going through demolition

and is unsafe. He testified that the entire back section is torn off to do renovations to the second and third floors which were heavily damaged.

19. The Landlord's Agent also testified that he was at the residential complex on November 6, 2023 conducting a security check of the building as there have been a lot of break-ins and people using the rooms to shoot up drugs. He testified that to his knowledge no one was supposed to be living in the building at that time. He testified that he did call out the Tenant's name but was not really sure who he was talking to because the person refused to open the door. He testified that they have a lot of squatters in the building and it was not uncommon for him to know the people who are there. He also testified that he was the one who signed the lease with the Tenant when he worked in property management.
20. The Landlord's further testified that he went to the building with the Landlord's team on November 13, 2023 to do a security check and found the building empty. He testified that he was told on that date to board up the building which he did. He testified that By-Law attended on November 14, 2023, the next day and that the Fire Prevention Chief, Matt Teal, was also present on that date. The Landlord's Agent further testified that he threw out needles, rotting food and garbage from the Tenant's room and there was nothing else in the room.
21. The evidence before me was insufficient to find that this tenancy lawfully terminated or that the Tenant vacated the rental unit on his own volition. The Tenant maintains that he has continued his tenancy and was only away from the rental unit when the entrance door was boarded shut. Whether or not rent was paid for the period of August to November 2023 is not relevant unless the Landlord has enforced an order for eviction based on non-payment of rent. The Landlord did not produce any order for eviction, notice of termination, or agreement to terminate in regard to this unit.
22. The Landlord's Agent was not directly involved in any dealings with the Tenant regarding his tenancy since 2022. The Landlord's Agent testified that he was simply conducting a security check of the building when he encountered the Tenant on November 6, 2023, and reported this encounter to the property managers. Therefore, I was satisfied that the Landlord was aware that the Tenant was still residing in his unit as of November 6, 2023.
23. There was no dispute that the main door to the residential complex was boarded shut on November 13, 2023. The Landlord's Agent testified that he was directed to do so by the property managers for the Landlord.
24. Given this, I am satisfied that the Landlord illegally locked out the Tenant on November 13, 2023 when the main door to the residential complex was boarded shut. The Tenant has not been able to gain access to the residential complex or his rental unit since this date. The rental unit remains vacant. The Landlord will be ordered to allow the Tenant to move back into the rental unit.

Vital Services

25. There was no dispute that there is no hydro, the water is turned off, the fire escape has been removed, and the entrance doors are boarded shut at the residential complex. The

Landlord's Agent stated that this was necessary due to the demolition. The Tenant's Legal Representative submitted that the Landlord has control over these issues.

26. Subsection 21(1) of the Act states:

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, withhold the reasonable supply of any vital service, care service or food that it is the landlord's obligation to supply under the tenancy agreement or deliberately interfere with the reasonable supply of any vital service, care service or food.

27. Given the above, I find that the Landlord has interfered with the Tenant's vital services of electricity and water at the residential complex. Based on the evidence before me I was satisfied that the Landlord has control over these vital services since they are responsible for the demolition. Consequently, the Landlord shall ensure that these vital services are returned upon the Tenant's repossession of the unit.

Remaining Issues in Application


28. There was insufficient time left in the hearing block to address the remaining issues in this application. Therefore, those issues are adjourned to be heard on the next available date before me.

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.
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 ensure the vital services of electricity and water are reinstated in the rental unit and/or residential complex upon the Tenant's repossession.
5. The remaining issues raised in this application are adjourned to a date to be scheduled by the LTB.
6. As soon as possible and no later than **February 29, 2024**, the parties are directed to give each other and the LTB a copy of any evidence that they intend to rely upon at the next hearing of the remaining issues in this application. This includes any documents, receipts, photographs, recordings or like things.

7. The parties should upload their evidence to the Tribunals Ontario Portal at www.tribunalsontario.ca/en/tribunals-ontario-portal/. To add your evidence into the portal, log into Tribunals Ontario Portal, choose the file number and select 'Documents, Evidence, and Requests,' and pick 'Submission' in the dropdown menu. If you cannot use the portal, you can send your evidence to the LTB **BY E-MAIL**. The LTB's e-mail address is ltb.evidence@ontario.ca.
8. The parties may also consent in writing to exchange of documents using the online TOP portal.
9. Pursuant to Rule 19.7 a party who fails to comply with an order for disclosure may not be permitted to rely on evidence that is not properly disclosed.
10. The Tenant shall notify the Board and the Landlord in writing forthwith if the next hearing is no longer necessary and the Tenant wishes to withdraw or abandon the remaining issues in this application. The Board's email address is LTB@ontario.ca.

February 6, 2024
Date Issued



Lisa Del Vecchio
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 21, 2024 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 22, 2024.