

Order under Sections 30, 31, 57 and 69  
Residential Tenancies Act, 2006

File Number: SOL-53182-14  
SOT-53526-14  
SOT-54540-14

In the matter of: 10, 4753 BUCKLEY AVE  
NIAGARA FALLS ON L2E4A5

Between:

Dualpower Electrical Contracting Inc

I hereby certify this is a true copy of an Order

(G. Stockham)

Landlord

and

Dated 20/05/2015

Eric Wils

Landlord and Tenant Board

Tenant

Dualpower Electrical Contracting Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Eric Wils (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Tenant applied for an order determining that the Landlord gave a notice of termination in bad faith, harassed, obstructed, coerced, threatened or interfered with the Tenant, entered the rental unit illegally, substantially interfered with the reasonable enjoyment of the rental unit, 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, and failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards.

The applications were heard in St. Catharines on April 22, 2015. The Landlord representative, Eric Martens (who I will refer to as "the Landlord" in these reasons), and the Tenant and his representative, Christopher Woodall, attended the hearing.

**Determinations and Reasons:**

1. There were multiple applications brought by each of the parties against each other. I will address each of the applications separately.

**The L1 Application**

2. The Landlord filed an L1 application to terminate the tenancy for non-payment of rent.
3. The reason for this application is that the Tenant began paying \$630.38 for rent in September of 2014. He did so based on an N1 Notice of Rent Increase that he received from the Landlord, which he believes reduced the rent to \$630.38.
4. The rent had previously been \$750.00, with a prompt payment discount of \$60.00 that allowed the Tenant to pay only \$690.00 if he paid the rent on time.

5. In January of 2014, the Landlord served the Tenant with the above-noted N1 Notice of Rent Increase, dated January 6, 2014. It purported to increase the rent to \$685.19 as of September 1, 2014. A notation stated that the prompt payment discount would entitle the Tenant to pay \$630.38 if paid on the first day of the month.
6. Realizing that the N1 notice erroneously reduced the rent, the Landlord served a second one, dated January 20, 2014, which correctly increased the rent to \$756.00 per month, as of September 1, 2014, with a notation allowing the Tenant to pay \$695.52 based on the prompt payment discount.
7. The Tenant's position is that he should be able to take advantage of the Landlord's error, and that he should be bound by the January 6 N1 notice. He further submits that the January 20 N1 notice is invalid, as there cannot be two rent increases in one year.
8. The Tenant's position is based on multiple misapprehensions of the law and has no merit.
9. First, the January 6 N1 notice is invalid. Had the Landlord actually intended to reduce the rent, this was not the notice to effect that purpose. Consequently, it is void.
10. Second, the January 20 N1 notice is valid. It sets out a rent increase in accord with the annual guideline. It gave significantly more notice than is required by the Act. As the earlier notice was a nullity, the January 20 N1 notice is valid.
11. Third, the Tenant misapprehends the law with respect to rent increases. While it is true that the Act prohibits more than one rent increase per year, this is not a case of two rent increases. It is a case of two notices, one of which replaced an invalid one.
12. The Tenant claimed that the January 20 N1 notice was backdated. This was expressly denied by the Landlord. Given the rather disingenuous position taken by the Tenant, I found him utterly lacking in credibility, and conclude that the notice was valid.
13. The lawful monthly rent is \$756.00, as of September 1, 2014. The prompt payment discount is a matter between the parties.
14. The Landlord collected a rent deposit of \$690.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit is owing to the Tenant for the period from August 23, 2013 to October 8, 2014.
15. The Tenant requested time to pay the rent arrears that have accrued since September of 2014. I am prepared to give him only a short delay. While I have considered the financial circumstances of the Tenant, I am also mindful of the fact that he has had the extended benefit of a self-imposed rent reduction that was based on his rather dishonest interpretation of a clear error on the Landlord's part.
16. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until June 15, 2015, pursuant to subsection 83(1)(b) of the Act.

### **No L2 Application**

17. The Landlord sought to raise allegations based on an N5 termination notice. However, as no L2 application had been served or filed, I had no jurisdiction to hear them.

### **The T5 Application**

18. At the hearing, the Tenant withdrew his T5 application, acknowledging that it was the wrong application to file under the stated circumstances.

### **The T2 Application**

19. The Tenant's T2 application raised allegations under multiple grounds. For sake of clarity, I will address them separately.

### **Illegal Entry**

20. The Tenant testified that the Landlord entered his rental unit without proper notice on one occasion in October of 2013.
21. As the application was filed in November of 2014, more than one year after the alleged illegal entry, this claim is barred by section 29(2) of the Act.

### **Harassment**

22. The Tenant claimed that the Landlord harassed him in the summer of 2014. He offered virtually no detail of the harassment in his testimony.
23. The Tenant also claimed that the Landlord blocked his vehicle, uttered a profanity at him and recorded him with his smartphone camera on February 11, 2015. He called the police after the Landlord allegedly followed him onto the road after making way for his vehicle. No charges resulted.
24. The February 11 incident was not in the application. Even if it were, the Tenant's evidence disclosed no pattern of behaviour that would be considered harassment for the purposes of this application. There is no merit to this claim.

### **Interference with Vital Services**

25. The Tenant claimed that the heat was insufficient during the winter months. Little more detail beyond that was provided. The Tenant's testimony showed no recollection, and virtually no detail. He simply read off a list of dates, with no details of the temperatures, of having informed the Landlord. This claim must also be dismissed.

### **The T6 Application**

26. The main thrust of the Tenant's claims related to maintenance.

27. The first maintenance issue was that of a kitchen faucet leak. The Tenant claimed that he complained to the Landlord's then-superintendent, Pierre Lefevre ("PL"), and that the Landlord refused to fix it. The Tenant claimed that PL fixed it on his own initiative, "as a friend," four days later. He then paid PL "for his troubles" and invoiced the Landlord.
28. PL testified that he informed the Landlord of the faucet issue. He recalled that the Landlord told him not to fix it until instructed to. However, he did so "as a friend."
29. The second maintenance issue was that of a toilet. This was an issue that has recently arisen and is not in the application. The Landlord undertook to inspect it after the hearing, consenting to an order to do so by May 5, 2015.
30. The third maintenance issue was one of snow plowing. The Tenant alleged that the Landlord has inadequately plowed the parking lot during the winter. PL testified that the Landlord's efforts were slip shod, and that the City has been called as a result.
31. While he cross-examined both the Tenant and PL, the Landlord chose not to call any evidence in response. The Tenant's representative submitted that it would be a denial of natural justice to deny him the right to cross-examine the Landlord.
32. As the respondent, the Landlord is not required to call any evidence. As he did not offer any testimony in chief, there was no basis for cross-examination.
33. In any event, there was no need for the Landlord to call any evidence. As with the T2 application, the Tenant's evidence in support of the T6 application failed to meet his burden of proof.
34. The fundamental failing in the Tenant's case is that he failed to prove that the maintenance concerns were communicated to the Landlord. In cross-examination, he acknowledged that he did not avail himself of the online maintenance request process relied on by the Landlord.
35. Further, much of his communication was with PL, who was then the Landlord's superintendent, but no longer performs that function after a bitter parting. The Tenant even accused PL of harassment at one point. However, PL's evidence did not satisfy me that he properly communicated the maintenance concerns to the Landlord in any detail.
36. It was incumbent on the Tenant to prove that the Landlord was properly made aware of the maintenance complaints. He failed to do so. The T6 application must be dismissed.

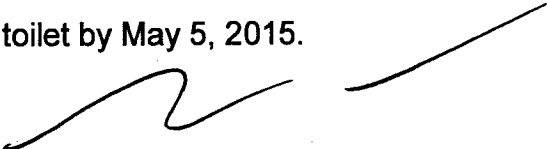
### **Conclusions**

37. The L1 application will be granted, as the Tenant owes rent arrears, based on a monthly rent of \$756.00.
38. The Tenant's applications must be dismissed. However, as the Landlord consented to an order requiring that he inspect the rental unit toilet, it will be ordered.

**For the above reasons, it is ordered that:**

1. Unless the Tenant voids the order as set out below, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before June 15, 2015.
2. The Tenant shall pay to the Landlord \$906.21\*, which represents the amount of rent owing and compensation up to May 25, 2015, less the rent deposit and interest the Landlord owes on the rent deposit.
3. The Tenant shall also pay to the Landlord \$24.85 per day for compensation for the use of the unit starting May 26, 2015 to the date the Tenant moves out of the unit.
4. The Tenant shall also pay to the Landlord \$170.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing\* on or before June 15, 2015, the Tenant will start to owe interest. This will be simple interest calculated from June 16, 2015 at 2.00% annually on the balance outstanding.
6. If the unit is not vacated on or before June 15, 2015, then starting June 16, 2015, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord, on or after June 16, 2015.
8. If the Tenant wishes to void this order and continue the tenancy, the Tenant must pay to the Landlord or to the Board in trust:
  - i) \$1,930.94 if the payment is made on or before May 31, 2015, or
  - ii) \$2,686.94 if the payment is made on or before June 15, 2015\*\*.If the Tenant does not make full payment in accordance with this paragraph and by the appropriate deadline, then the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. The Tenant may make a motion to the Board under subsection 74(11) of the Act to set aside this order if they pay the amount required under that subsection on or after June 16, 2015 but before the Sheriff gives vacant possession to the Landlord. The Tenant is only entitled to make this motion once during the period of the tenancy agreement with the Landlord.
10. The Tenant's applications are dismissed.
11. The Landlord shall inspect the rental unit toilet by May 5, 2015.

**May 25, 2015**  
**Date Issued**

  
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Michael Soo  
Member, Landlord and Tenant Board

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

No further reasons will be offered for this order. If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on December 16, 2015 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

- \* Refer to section A on the attached Summary of Calculations.
- \*\* Refer to section B on the attached Summary of Calculations.

**Schedule 1**

**SUMMARY OF CALCULATIONS**

**File Numbers: SOL-53182-14  
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**A. Amount the Tenant must pay if the tenancy is terminated:**

<b>Reasons for amount owing</b>	<b>Period</b>	<b>Amount</b>
Arrears: (up to the termination date in the Notice of Termination)	September 1, 2014 to October 8, 2014	-\$305.90
Less the amount the Tenant paid to the Landlord		-\$3,782.32
Plus compensation: (from the day after the termination date in the Notice to the date of the order)	October 9, 2014 to May 25, 2015	\$5,690.65
Less the rent deposit:		-\$690.00
Less the interest owing on the rent deposit:	August 23, 2013 to October 8, 2014	-\$6.22
Amount owing to the Landlord on the order date:(total of previous boxes)		<b>\$906.21</b>
Additional costs the Tenant must pay to the Landlord:		\$170.00
Plus daily compensation owing for each day of occupation starting May 26, 2015:		\$24.85 (per day)
<b>Total the Tenant must pay the Landlord if the tenancy is terminated:</b>		<b>\$1,076.21, + \$24.85 per day starting May 26, 2015</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy:****1. If the payment is made on or before May 31, 2015:**

<b>Reasons for amount owing</b>	<b>Period</b>	<b>Amount</b>
Arrears:	September 1, 2014 to May 31, 2015	\$1,760.94
Additional costs the Tenant must pay to the Landlord:		\$170.00
<b>Total the Tenant must pay to continue the tenancy:</b>	<b>On or before May 31, 2015</b>	<b>\$1,930.94</b>

**2. If the payment is made after May 31, 2015 but on or before June 15, 2015:**

<b>Reasons for amount owing</b>	<b>Period</b>	<b>Amount</b>
Arrears:	September 1, 2014 to June 30, 2015	\$2,516.94
Additional costs the Tenant must pay to the Landlord:		\$170.00
<b>Total the Tenant must pay to continue the tenancy:</b>	<b>On or before June 15, 2015</b>	<b>\$2,686.94</b>