

Order under Section 30 and 69  
**Residential Tenancies Act, 2006**

**File Number:** SOL-15948-11  
SOT-15352-11

**In the matter of:** 7, 2251 MOUNTAINSIDE DRIVE  
BURLINGTON ON L7P1B6

**Between:** Amarest Investments Inc Landlord

and

Shannon Anderson  
Nora Anderson

I hereby certify this is a true copy of an Order  
Chompson  
Dated 20/07/2011  
Landlord and Tenant Board

Tenants

Amarest Investments Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Shannon Anderson and Nora Anderson (the 'Tenants') because they have substantially interfered with the reasonable enjoyment of the Landlord or another tenant. The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

The Landlord also brought an application because the Tenants had not paid all the rent they are supposed to pay.

The Tenants brought an application about maintenance and also brought an application about tenants' rights.

All of the applications were heard in Burlington, in the presence of the parties, on July 15, 2011.

**Determinations:**

1. The Tenants have not paid all the rent they were required to pay.
2. The rent for this unit as of April 1, 2011 is \$919.59.
3. The Landlord interfered with the reasonable enjoyment of the tenancy by failing to address the parking controversy experienced by the Tenants.
4. The Landlord failed to prove that the Tenants substantially interfered with the enjoyment of the tenancy of the other tenants.
5. The Landlord has already addressed the maintenance issues raised by the Tenants. I will order some minimal items be addressed.

6. There will be no order for costs.

**It is ordered that:**

1. Starting August 1, 2011 and following each month thereafter until the rent is legally raised by the Landlord, the Tenants shall pay \$919.59 which is the legal rent.
2. The legal rent since April 1, 2011 is deemed to be \$919.59 for the purposes of further guideline increases.
3. On or before September 1, 2011 the Landlord shall communicate with her tenants and assign each tenant a designated spot to park their vehicles.
4. The Landlord shall pay the Tenants \$50.00 to compensate them for the disruption caused by the parking situation and \$100.00 to compensate them for the lack of repair to the bedroom ceiling. This amount may be deducted from rent owing for August 2011.
5. The Landlord's L2 application is dismissed.
6. The Landlord shall on or before August 31, 2011 install a new light fixture in the kitchen and paint the ceiling in the bedroom that was recently repaired. If the Landlord fails to carry out these repairs then the Tenants may hire the work done and deduct the cost, as proved by receipts, from their October 2011 rent.

**July 20, 2011**  
**Date Issued**

  
Elizabeth Beckett  
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

**In the matter of:** 7, 2251 MOUNTAIN SIDE DRIVE  
BURLINGTON ON L7P1B6

**Between:** Amarest Investments Inc Landlord

**and**

Shannon Anderson Tenants  
Nora Anderson

### ***What is the rent?***

The Landlord has given two notices of rent increases which the Tenants dispute. The Tenants believe that guideline increases do not apply to the portion of the rent ascribed to parking charges. This is incorrect. The definition of rent in the Residential Tenancies Act, 2006 includes 'any amount of consideration to be paid ... for the right to occupy a rental unit and for any services and facilities and any privilege, accommodation or thing the landlord provides for the tenant in respect of the occupancy of the rental unit, whether or not a separate charge is made ...' The amount the Tenants pay for parking is fixed and is paid along with the rent each month. Parking is a facility provided by the Landlord for which the Landlord charges a fee. I find that parking is part of the rent paid for this unit and therefore is subject to guideline increases.

At the hearing the amount charged for rent was reviewed. This unit has been the subject of two rent increases since the new owner took over and has also been the subject of rent decreases because of municipal tax adjustments. The Landlord calculated that the rent should be \$919.59. I find that this calculation is accurate and correct.

The Landlord was more interested in establishing this rent than actually collecting these arrears. There has been some legitimate confusion about this rent amount and the Landlord should have come to the Board as soon as this confusion arose to clarify this amount. For this reason I will not order the arrears but shall require the Tenants to pay \$919.59 going forward and deem that this has been the legal rent since April 1, 2011 for the purposes of further guideline increases.

### ***Substantial Interference with Reasonable Enjoyment***

#### ***Parking***

Both the Landlord and the Tenants filed applications with the Board claiming interference with reasonable enjoyment. One of the key issues in the tenancy is parking. The Tenants believed that they have the right to park in a certain spot in the parking lot. When a new tenant moved in and

began to park in their spot they responded by asking the person to not park there and then began to leave notes on the new tenant's car. The new tenant was told by the Landlord that she could park in that spot. The Landlord was alerted to this issue and at first took no action. She believed that the tenants should 'work it out between themselves.' This decision led to more discord among the tenants. Eventually the Landlord did step in and assigned parking spaces but she did not give the Tenants to this application the spot that they had used previously; that spot she allotted to the new tenant.

This tenancy was established with a written lease with the former Landlord. In the lease the Tenants were assigned a particular parking spot. The evidence at the hearing was that despite the specificity of the lease in fact this clause was never really enforced between the parties. I find that this clause has been altered by accepted practice of the parties prior to this Landlord's ownership and therefore is not binding on her.

The parking lot has sufficient spaces for all the cars in the building. The Tenant's evidence was that there is informal honouring of people's preferences. The issue with the new tenant arose because the Landlord said she could park in a spot that traditionally had been used by the Tenants to this application.

In response to the parking debacle the Landlord arbitrarily assigned certain spots giving the new tenant the prize spot near the door and relegating the Tenants to a spot near the re-cycling bins. The Tenants were angry and also said that this spot was used by a different tenant who preferred it.

Despite what the Tenants believe, in fact the parking lot belongs to the Landlord and she has the right and obligation to manage that part of her building complex. The Landlord has done a poor job of this mandate and it has lead to hard feelings between her tenants. At the same time the Tenants have failed to acknowledge the Landlord's right to manage her parking lot.

I find that the Landlord has the right to assign parking spaces. The Landlord shall communicate with her tenants and assign each tenant a designated spot.

I will award the Tenants \$50.00 to compensate them for the disruption caused by this situation. I will dismiss the Landlord's L2 filed as a result of this situation.

### ***Harassment***

The Tenants believe that they are being harassed by the Landlord while at the same time the Landlord believes that the Tenants are being disruptive to the building by engaging in petty acts of defiance. The Tenant left a bag of garbage at the back door of the building and forgot to dispose of it properly. The Tenants invited other tenants to their apartment to discuss general issues with the building and feel that the Landlord is angry at them for this and therefore treating them differently than other tenants.

A Landlord has the right to manage their business. Some practices may lead to good relations between the Landlord and Tenant and others lead to time consuming attempts to placate disgruntled tenants. Unless a Landlord is acting illegally there is no obligation to treat all tenants the same. A Landlord's obligation is to maintain the units in compliance with the standards set by the local by-laws and the Residential Tenancies Act, 2006. If this obligation is met the Tenants

have no legal basis to complain because someone else got a new door or a better kitchen or has a more positive interpersonal relationship with the Landlord.

By the same token a Landlord may not in any way interfere with the tenant's right to form an association to address common issues or to organize social events amongst themselves.

Although there are hard feelings between these two parties I find that the conduct does not reach the level of 'substantial' interference and therefore will dismiss the Landlord's L2 application. The Tenants' proved some portions of their harassment applications and a token compensation will be awarded pertaining to the parking issue.

As discussed at the hearing this tenancy is at a crucial stage. It can either go forward with the shared intention to assume good intentions between the parties or it can go forward with a continued intention to treat the relationship as toxic. If the Tenants intend to continue this tenancy they must do so with the understanding that a Landlord has the right to make business decisions regarding her property. The Landlord must realize that Tenants have the right to respectful, professional dealings and compliance with the various laws of this highly regulated business of providing residential tenancies.

### ***Maintenance***

The Tenants brought an application concerning maintenance. Neither the Health Department nor the Building Department has made any orders against this property but there have been some historic maintenance issues. Some of the issues raised by the Tenants have now been addressed by the Landlord. The kitchen ceiling issue was addressed on June 13<sup>th</sup> although the Tenants continue to complain about the light fixture. In order to take a step towards normalizing this tenancy I will order the Landlord to install a new fixture in the kitchen.

The Tenant stated that there was a leak in her bedroom ceiling for about two years. The Landlord acknowledged that there was trouble with the roof that took some time to identify and then repair. The matter has now been resolved and the Tenant acknowledged that there have been no recent leaks. The ceiling has been repaired but continues to need some cosmetic painting. This will be ordered.

I find that although the situation with the bedroom ceiling continued for some time the Landlord was attempting to respond to the issue.

I will order the Landlord to pay the Tenants \$100.00 in compensation for the months the ceiling was leaked and was not repaired. This amount would be higher but I accept that the Landlord was attempting to address the issue.

The Tenants complained about the lack of lighting in the hallway but did not prove that the lighting provided by the Landlord was below the requirement of the by-law.

**July 20, 2011**  
**Date Issued**

  
Elizabeth Beckett  
Member, Landlord and Tenant Board