



**Order under Section 88.1  
Residential Tenancies Act, 2006**

**Citation:** 21 Balmoral Avenue South GP Inc v King, 2024 ONLTB 9518

**Date:** 2024-02-06

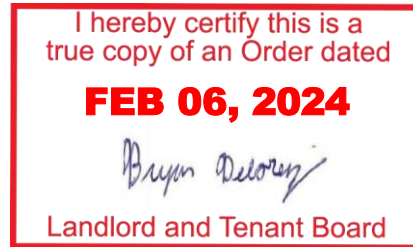
**File Number:** LTB-L-038094-22-DN

**In the matter of:** 302, 21 BALMORAL AVE S  
HAMILTON ON L8M3J7

**Between:** 21 Balmoral Avenue South GP Inc

**And**

Leigh King



Landlord

Tenant

21 Balmoral Avenue South GP Inc (the 'Landlord') applied for an order requiring Leigh King (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

As a result of order LTB-L-038094-22-RV-IN2 this matter was ordered to be reheard by the Board De Novo. The De Novo hearing was heard by videoconference on December 5, 2023.

The Tenant attended the hearing. The Landlord was represented at the hearing by Rachel Gibbons.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the claim for compensation in the application. Therefore, The Tenant shall pay the Landlord \$3,257.00
2. The Tenant was in possession of the rental unit on the date the application was filed.

*Substantial Interference*

3. The Tenant has constructed an enclosure on their balcony with wood, windows and plastic. A photograph of this enclosure was entered into evidence. The Landlord alleges that the Tenant's refusal to remove this enclosure substantially interferes with the Landlord's lawful rights privileges and interests and seeks the reasonable out-of-pocket expenses that are the result of the Tenant's conduct.
4. The Landlord alleges that they were required to do maintenance work on all the balconies in the rental property because of the Landlord's mortgage financing commitment and an order from the City of Hamilton that the enclosure is contrary to subsection 8(1) of the *Building Code Act, 1992* and that the Landlord must remove the enclosure.

5. The Tenant argued that the enclosure was initially erected with permission from previous building management and that its removal was contingent upon repairs to the balcony door and the installation of a screen door.

#### *Dave Ellis*

6. Dave Ellis, representing the Landlord's property management company, testifies about the balcony enclosure issue at 21 Balmoral Ave, South. The enclosure, made of wood and screening, was objected to by the property owners due to upcoming balcony repairs and violations of bylaws and fire codes. DE recounts serving a notice to the tenant on July 21, 2021, to remove the enclosure, which went unheeded. Further communication revealed that the tenant had not removed the enclosure due to needing repairs on the balcony door, which were addressed by the management company in January 2022. Despite the repairs, the enclosure remained until the end of January 2022. DE also mentioned initiating a complaint to the municipality, leading to an order to comply, which was also ignored by the Tenant.

#### *Howard Dixon*

7. Howard Dixon, the asset manager for the landlord, discusses his responsibilities for the building at 21 Balmoral Ave, South, a four-story apartment building in Hamilton. He outlines the landlord's acquisition of the property on May 11, 2021, and the subsequent mortgage financing commitment from First National. This commitment included a special condition necessitating the repair of balcony railings, identified as an immediate repair need by an engineer's report. The mortgage lender held back \$10,000 of the mortgage advance to ensure these repairs were completed, with a deadline set for November 30, 2021.
8. HD described the challenge of completing these repairs due to two balcony enclosures obstructing the work, particularly the substantial enclosure in apartment 302. Efforts to have the enclosures removed included outreach by Hamlin Property Management to the tenants and involvement of the Hamilton Fire Department, resulting in an order to comply. Despite these efforts, the enclosure at apartment 302, belonging to Tenant remained, leading to a delay in the repair work.
9. Due to the delay, the landlord was unable to meet the mortgage lender's deadline for the railing repairs, necessitating negotiations for an extension. This extension came with additional costs, including a monthly administration fee. HD detailed the financial impact of the delay, including an increase in construction costs due to inflation and the need to obtain a revised quote from Basking Ridge Construction Associates. The revised quote showed an escalation in costs from \$13,915 to \$15,824.
10. An engineering firm was engaged to certify the completed work, and a summary of out-of-pocket costs was prepared by HD. These costs included the \$10,000 holdback, interest on these funds, the escalation in painting costs, filing fees, and the cost of the engineering letter required for the mortgage extension.

#### *The Tenant's Position*

11. The Tenant stated he had contacted the property management company, shortly after receiving the notice to remove the balcony enclosure, to explain he had no issue with taking it down. He explained that the enclosure was initially erected as a smoking area for his wife and had been permitted by the superintendents under previous building ownership.
12. The Tenant detailed a problem with his balcony door, which had been removed during mold abatement work in his and neighboring apartments. He claimed that despite his efforts, he could not secure a replacement door or repairs for his existing door, which would not stay closed due to a faulty latch. This issue, compounded by the lack of a screen door, left him reluctant to remove the enclosure due to concerns about pests entering his apartment.
13. He acknowledged that the enclosure had been in place since around 2009 or 2010, with initial permission from the building's superintendents at that time. The Tenant also mentioned his attempts to resolve the issue outside of the hearing and suggested that the costs associated with the delay in balcony repairs should be shared among all tenants with enclosures, not solely attributed to him.
14. During cross-examination, the Tenant confirmed that he had not submitted a written request for the door repairs and had not removed the enclosure until January 2022, despite receiving a notice from the landlord and an order to comply. He clarified that he did have a balcony door but lacked a screen door, which was a part of his reluctance to remove the enclosure.

## Analysis

15. The evidence presented confirmed that the Tenant received adequate notice and a subsequent legal order to remove the balcony enclosure. The Tenant's failure to act on these notices within the stipulated time frame directly impeded the Landlord's ability to undertake necessary balcony repairs.
16. I accept HD's testimony that only two balconies, including King's, had problematic enclosures that significantly impeded the balcony repair work. He distinguished between minor, easily removable trellises on other balconies and the more substantial constructions like the Tenant's.
17. The evidence indicated a lack of timely and effective communication from the Tenant regarding the reasons for retaining the enclosure. The Board notes that DEwho was responsible for issuing the notice and order to comply, testified to having received no communication from the Tenant disputing the order or explaining the delay in compliance.
18. While the Tenant raised concerns about other balconies with similar enclosures, the Board's decision is based solely on the evidence related to the specific dispute between the Landlord and Tenant in question. The Board finds that the Landlord acted within their rights to seek compliance and subsequently recover costs directly related to the Tenant's non-compliance.
19. HD testified that because the Landlord was unable to comply with the maintenance obligations imposed by their lender the lender required them to get a report from a structural engineer that the balconies did not pose an immediate safety risk and that the

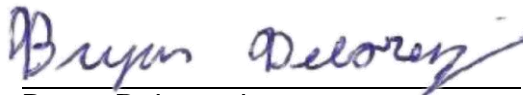
work could be delayed. This report cost \$1,017.00 and would not have been required had the Tenant complied with removing the balcony exposure.

20. The Landlord also seeks interest in the amount of \$840.00 on the \$10,000 that was held back by their mortgage lender because of the Landlord's failure to do the required maintenance work as a direct result of the Tenant's failure to remove their balcony enclosure.
21. The Landlord also seeks the \$1,400.00 in escalating costs that was charged to them between when they received the initial quote for the balcony repair work and when they were able to do the work. Copies of those quotes by Basking Ridge Construction Associates Inc were introduced into evidence.
22. I find all of the Landlord's out-of-pocket expenses to be reasonable and that they were incurred as a result of the Tenant's substantial interference. As such, the Tenant shall pay the Landlord 3,257.00 to the Landlord.
23. The Landlord incurred costs of \$186 for filing the application and is entitled to reimbursement of those costs.

**It is ordered that:**

1. The Tenant shall pay to the Landlord \$3,257.00, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the substantial interference.
2. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application. 3. The total amount the Tenant owes the Landlord is \$3,443.00.
3. If the Tenant does not pay the Landlord the full amount owing on or before March 31, 2024, the Tenant will start to owe interest. This will be simple interest calculated from April 1, 2024, at 7.00% annually on the balance outstanding.

**February 6, 2024**  
**Date Issued**

  
 Bryan Delorenzi  
 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.

