Order under Section 31
Residential Tenancies Act, 2006

Citation: Roberts v EQB LTD, 2024 ONLTB 20262
Date: 2024-03-18 **File Number:** LTB-T-029799-23-AM

In the matter of: 305B, 721 Earlscourt Drive
Sarnia Ontario N7S1V1

Tenant

Between: Matthew Roberts

And

Landlords

EQUITY BUILDERS LTD
Ash Singh

EQB LTD — Landlord's Agent

AMENDED ORDER

The amendment also clarifies that that Equity Builders Ltd. shall pay the fine. The amendments are in bold.

Matthew Roberts (the 'Tenant') applied for an order determining that, EQUITY BUILDERS LTD and Ash Singh (the 'Landlord') and EQB LTD (the 'Landlord's Agent'):

- 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.
- did not give the Tenant 72 hours to remove their property from the rental unit or from some place close to the rental unit after the Sheriff evicted the Tenant.

This application was heard by videoconference over several days of hearing ending October 20, 2023. Following this, the parties provided written submissions.

The Landlord Legal Representatives Timothy Duggan and Natasha Mizzi and the Landlord Ash Singh participated in the hearings.

The Tenant's Legal Representatives Andrew Bolter and Melissa Bradley and the Tenants participated in the hearings.
When the capitalized word "Landlord" is used in this order, it refers to all persons or companies identified as a Landlord at the top of the order. When the capitalized word "Tenant" is used in this order, it refers to all persons identified as a Tenant at the top of the order.

Prior Orders:

1. The Board issued an interim order on May 8, 2023. (the restoration order) In that order the Board determined that some Tenants had been illegally locked out by their Landlord. The Board ordered the Tenants be put back into possession.

2. On July 17, 2023, the Divisional Court issued its endorsement regarding an appeal of the Board's interim restoration order. The Divisional Court quashed the appeal and directed the parties to the Board to reschedule the hearings.

3. The Board also issued an interim order on May 8, 2023, directing the Landlord to preserve the tenancies and property of the Tenant's. (the preservation order) In that order the Board was not satisfied that the Tenant's were locked out illegally by the Landlord.

4. On July 20, 2023, the parties appeared before the Board, where oral directions were provided to confirm dates for disclosure and hearings.

5. On March 11, 2024, the Board issued an Interim Order that set out the findings of the Board following the conclusion of the hearings and on review of all submissions by the parties.

6. The prior orders are incorporated into this order by reference. They should be read in conjunction with this order that will set out remedies and final orders for this application related to 721 Earlscourt Drive, Sarnia, building B as a result of a fire that occurred February 19-20, 2023.

Determinations:

1. The March 11, 2024, Interim order confirmed the May 8, 2023 (restoration) order that the Tenants had been illegally locked out of their rental order.

2. The March 11, 2024, Interim order confirmed the second May 8, 2023 (preservation) order that the Landlord had and continues to have lawful authority in accordance with the Order to restrict access to units set out in that Order.

3. The March 11, 2024, Interim order found that the Landlord substantially interfered with the reasonable enjoyment of the rental units or residential complex by the Tenants or by members of their households.

4. The March 11, 2024, Interim order also found that the Landlord obstructed, coerced, threatened or interfered with the Tenants.

5. The Tenant testified that they have lived in the rental unit since January 2022. They also stated that they have shared custody of a son.

6. The Tenant testified that he was able to enter the unit on February 20, 2023 to grab some clothing and stuff. They stated that they did not see any damage, but there was a smell of smoke.

7. The Tenant testified that they stayed with their Aunt who is much older with his son. They stated that their Aunt is very kind to let them stay with her, but it was difficult to share a space with an older person and a 4-year-old. They had to share a room. Because his toys and other items are still at their home, they cannot play like they were able to before. The Tenant testified that their son asked multiple times why we cannot go home. They stated that it breaks their heart to miss out on time they have with their son and not enjoy the same silly and loud playful times they had at home.

8. The Tenant testified that the March rent that had been paid to the Landlord had been returned on May 3, 2023, just before the May 5, 2023 hearing. They stated that the Landlord had demanded that the Landlord be named as a beneficiary on the Tenant insurance policy before the March rent would be returned.

9. The Tenant testified that the Landlord was denying access and that they had no updates or timelines on when tenants might be able to return to their units. That they had just outright been denied access each time they requested it.

10. The Tenant testified that they had tenant insurance, that it had been provided to the Landlord, and that access was still denied till April 2023 when they were able to enter the unit and grab some more personal items.

11. The Tenant testified that they were required to sign a letter stating that their unit was damaged and needed to be repaired in order to access the unit. They stated that they advised the Landlord that it was being signed under protest.

12. The Tenant testified that when they entered their unit, it was completely untouched and undamaged. They noticed that the refrigerator was missing, and that a photo that had been on the refrigerator had been torn and left on the floor. The Tenant had produced a video during that visit to show the condition of the unit.

13. The Tenant testified that after they were returned possession by the Sheriff that the refrigerator was still missing. They stated that they had to help Chopper move a used

refrigerator from another empty unit so that they could have one in their unit. That it was dirty, and empty and needed to be cleaned.

14. The Tenant testified that the photo was of them as a young child with their grandma who had passed away. They stated that it was incredibly insensitive of the landlord and their agents to damage something that is very valuable to them and irreplaceable.

15. The Tenant testified that the landlord is being abusive to them. They have lied, and also refused to give details and times about when they could return home, they completely left them in the dark. they had to go through the Sheriff twice just too finally be returned home on July 27, 2023, through the enforcement process. The landlord doesn't seem to care who or how much he hurts people.

16. The Tenant testified that this ordeal was extremely stressful for them and their son. The stated that everyday when they would pick-up their son at his mother's that they could not go home; that it was hard living with family and a small child and to maintain some normalcy, a normal life. They stated that their son would cry because they could not go home, sleep in their own bed, and play with their toys; or have movie nights in the living room.

Remedies

17. The Tenant did not claim a rent abatement in their will say statement. This had been added in closing submissions. Because the Landlord was not aware of this potential claim and was not afforded an opportunity to cross-examine the Tenant on it, I am declining to award this.

18. The Tenant did not claim lost wages in their will say statement. They did testify to this and were cross-examined on it. However, the testimony was very general in nature, did not set out how much or how an amount had been calculated. These details only came out in the closing submissions. Therefore, I am also declining to award this.

Out of pocket expenses

19. The Tenant requested reimbursement for out-of-pocket expenses. The Tenant claimed expenses to replace personal care items, totalling $100.00. The Landlord must pay the Tenant this amount.

20. During testimony, the Tenant indicated they were seeking reasonable expenses of $500.00 for out of pocket expenses that included groceries and lost wages. I was not satisfied that the increased amount was warranted under the circumstances.

21. The Landlord submitted that if the Tenant did not produce receipts that no amount should be awarded. They further submitted that had the Tenants taken out tenant insurance they would have been compensated under a tenant insurance policy.

22. I do not agree with the position of the Landlord. Tenants should not be expected to have receipts for every little thing, and the amounts are minor, and would likely not have been reimbursed under a tenant insurance policy as there would most likely be a deductible.

23. The Landlord also submitted that the Tenant failed to mitigate their losses by making a claim against their tenant insurance policy. I disagree, the amount claimed is nominal, and it is most likely that any deductible would have precluded any reimbursement to the Tenant.

General Damages

24. The Tenant is seeking compensation for the illegal eviction equivalent to the daily rent rate for each day that the Landlord refused access from February 27, 2023, to July 27, 2023, 150 days totalling $5,509.50.

25. In their closing submissions the Tenant requested an additional $10,000.00 in general damages. These amounts were not included in the will say statement and the Landlord was not aware of them and did not have an opportunity to cross examine the Tenant on this claim. Therefore, I am declining to award this.

26. The Divisional Court in *Mejia* v. *Cargini*, 2007 CanLII 2801 (ON SCDC), affirms that the Board may award damages under the "any other order" remedy clauses in the Act. This is compensatory damages following the principle of attempting to put the Tenant in the same position they would have been in had there been no breaches of the Tenancy. The Divisional Court awarded $4,000.00 general damages for interference with reasonable enjoyment.

27. The Landlord submitted that if the compensation for the illegal lockout is ordered it would amount to "double-recovery" as the Tenant was not required to pay rent.

28. The Tenant produced a will say statement that had been adopted under oath and the Landlord was able to cross-examine the Tenant.

29. The Tenant will say statement and testimony indicates that the Tennant is seeking general damages, that the amounts and reasons are set out.

30. I am satisfied that the Landlord had effectively been on notice via the will say statement and testimony that the Tenant was seeking general damages as described, even if not exactly framed as such in the application.

31. General damages as explained above does not constitute 'double-recovery' as submitted; it is to make it right for the Tenant. The amount claimed and how arrived at were clearly known and the Landlord was able to cross-examine the Tenant on this.

32. The Board has previously found in cases of harassment and illegal lockouts that an amount for the illegal lockout is appropriate under general damages. See for example HOT-02167-17 (Re), 2019 CanLII 86881 (ON LTB), the LTB reasoned that:

    …it seems to me that the quantum of general damages normally awarded to compensate a tenant for an illegal lockout is $2,500.00. That sum takes into account the inherent indignity of having one's home taken away; the time, effort, frustration, and stress of having to arrange food and accommodations while also seeking legal assistance; and the inconvenience and displacement of being without a home.

33. The Landlord through his actions of locking out the Tenant and then denying access is in my view an outrageous breach of the tenancy. Taking this into account I am satisfied, in all the circumstances that general damages in the amount of $5,509.50 are appropriate. The Tenant was forced to endure sustained and ongoing harassment and coercion from the Landlord to try and convince the Tenant to move out. The Tenant was able to live with family and had to adjust their shared custody arrangements due to the lockout. The Tenant had to assist the Landlord to replace their refrigerator that the Landlord had removed. These are in my view extraordinary circumstances that warrant the amount ordered.

    Costs

34. The Tenant requested that their disbursement costs totaling $700.00 be ordered. The Tenant testified that they were not seeking legal fees, only disbursements, This is broken down as follows:

    a. Application fee: $53.00;
    b. Locksmith costs: 108.75; and
    c. Other disbursements totalling $538.25.

35. The Board's Interpretative Guideline 3, entitled Costs provides that the Board may order costs.

    > In most cases, the only costs allowed will be the application fee. Where appropriate, this cost will be ordered regardless of whether or not the applicant seeks such a remedy.
    >
    > Other Costs. A party who wants to claim costs in addition to the application fee should be prepared to speak to the matter and to provide support for the claim. The other party will also be allowed to make submissions on the issue.

36. The Landlord was aware that the Tenant was seeking these costs as they were set out in the will say statement and confirmed in oral testimony. The Landlord had the opportunity to cross-examine the Tenant. The Landlord did not make submissions on costs.

37. I am satisfied that the application fee and disbursements should be ordered. The Tenants were represented by a Community Legal Clinic, funded by Legal Aid Ontario, and as such I have no reason to doubt the veracity of this amount.

Administrative Fine

38. The Tenants have sought an order that the maximum fine administrative fine against the Landlord be ordered.

39. Section 207(1) of the Act establishes that the Board has authority to award payment to any given person, of up to $35,000.00. This amount is independent of any award to the Tenant.

> **207** (1) The Board may, where it otherwise has the jurisdiction, order the payment to any given person of an amount of money up to the greater of $10,000 and the monetary jurisdiction of the Small Claims Court. 2006

40. Section 31(1)(d) of the Act provide that a Tenant may request that the Landlord pay a fine of up to $35,000.00 the current jurisdiction of the Small Claims Court.

> **31** (1) If the Board determines that a landlord, a superintendent, or an agent of a landlord has done one or more of the activities set out in paragraphs 2 to 6 of subsection 29 (1), the Board may,
>
> (d) order that the landlord pay to the Board an administrative fine not exceeding the greater of $10,000 and the monetary jurisdiction of the Small Claims Court;

41. Under section 196 of the Act, where the Board receives information that an applicant owes money to the Board as a result of failing to pay any fine, fee or costs, the Board may, pursuant to its Rules:

> refuse to allow an application to be filed where such information is received on or before the day the application is submitted,
>
> stay or discontinue a proceeding where such information is received after the application has been filed but before a hearing is held,
>
> or delay issuing an order or discontinue the application where such information is received after a hearing of the application has begun.

42. While it is not binding upon me, the Board's Guideline 16 outlines relevant considerations in determining the appropriateness of an administrative fine:

> An administrative fine is a remedy to be used by the Board to encourage compliance with the Residential Tenancies Act, 2006 (the "RTA"), and to deter landlords from

engaging in similar activity in the future. This remedy is not normally imposed unless a landlord has shown a blatant disregard for the RTA and other remedies will not provide adequate deterrence and compliance. Administrative fines and rent abatements serve different purposes. Unlike a fine, a rent abatement is intended to compensate a tenant for a contravention of a tenant's rights or a breach of the landlord's obligations. **File Numbers:** LTB-T-074597-22 (formerly SOT-15435-20) LTB-T-074685-22 (formerly SOT-16695-20)

43. In effect, I should consider the nature and severity of the breach, the effect of the breach on the tenant, and any other relevant factors, such the conduct of the Landlord.

44. Deterrence for egregious conduct, beyond whatever deterrent effect simple damages might provide, is an over-riding factor.

45. In my view this is an appropriate case in which to impose the maximum administrative fine in the amount of $35,000.00. The Landlord not only blatantly disregarded the Act but also disregarded an order putting the Tenant back in possession. The Landlord's behaviour demonstrates a contempt for the Board and for the Act where they engaged in 'self-help' that must be addressed. I believe there are no other remedies that would provide adequate deterrence and compliance in these circumstances.

46. The Tenant is a father of a young son with a shared custody agreement. They are completing their schooling and apprenticeship during the time he was illegally locked out. They had to live with an older Aunt with his son during the illegal lock out. The Tenant submitted that the entire process has been extremely hard on him and his son. They were illegally locked out of their home for 150 days.

47. The Landlord was not able to provide a lawful authority for locking out the tenant once the City of Sarnia declared it safe for the Tenant to return. Occupancy was granted by the City of Sarnia because they deemed it safe. The Landlord did not appeal that order.

48. The Landlord did not voluntarily put the Tenants' back in possession; putting them to the further delay of requiring them to have the Sheriff enforce the Orders. The Landlord, then changed the locks, as noted so that the Landlord would have a "master key" for all units. This too is an egregious act because the Landlord did not follow the proper way to address the issue of the key which is for the Landlord to file an application against the Tenant. It was undisputed that the Landlord was given a copy of the key because they chose not to be available to return the Tenant into possession and provide keys to the Tenant.

49. The Board notes that the Landlord had been found previously to have illegally locked out Tenants after a fire in CET-10108-11, 2011 CanLII 13385 (ON LTB), that was confirmed at the Divisional Court, and at the Ontario Court of Appeal. A small fine of $500.00 had been awarded in that order "to deter the Landlord from contravening the Act in the future." That application involved a single rental unit.

50. The illegal lockout in this instance where the City of Sarnia permitted Tenants' to return, involves 14 applications before the Board. A further application was withdrawn; and another abandoned.

51. I note also that the endorsement issued the Divisional Court July 17, 2023, where the Landlord had obtained an automatic stay by appealing the Interim Order issued on May 8, 2023.

> Para 23
> Lawful termination of a tenancy under s. 50 requires a minimum of 120 days' notice to the tenant with such notice containing a right of first refusal to occupy the premises after the repairs or renovations are completed. I note that, in this case, neither of these tenant safeguards were respected by the Landlord before locking out the Tenants.
>
> Para 24
> It is contrary to the spirit and intent of the legislative scheme governing residential tenancies provided for under the RTA, to grant the Landlord an appeal and therefore an automatic stay of the Order. To do so would deny the Tenants their presumptive right to occupy their units in circumstances where the Landlord has failed and/or refused to comply with the provisions of the RTA and has resorted to "self-help". I find that the automatic stay under s. 25 of the SP PA was never intended to be used by a landlord to subvert the presumptive right of a tenant to occupy their rented home.
>
> Para 25
> By virtue of the Order being interlocutory in effect, I find the Landlord had no right to appeal from the Order. Notwithstanding the Landlord's claim it was denied the opportunity to make full answer and response to the Tenants' applications, Mr. Singh has yet to place his direct evidence before the court despite the passage of more than two months since the Order was made. I find the Landlord's conduct is subversive of the processes enacted under the RTA for the protection of tenants, and brings the administration of justice into disrepute. I further find the Landlord's appeal of the Order is an abuse of process and was intended to delay proceedings before the Board and delay the Tenants' return to their residential units.
>
> Para 32
> I find that, in the circumstances of this case having regard to the findings made and, in particular, my finding that the appeal was tactical and intended to delay these proceedings, the Tenants are entitled to their substantial indemnity costs of the motion in the amount claimed.

52. The Landlord ought to have known that locking out Tenants without lawful authority would carry consequences, as it had in the past with this particular Landlord, Ash Singh. The

Landlord was found to have abused his appeal rights to the Divisional Court with the intent to delay the Tenants return, and even then, compelled them to have the Sheriff enforce the restoration order.

53. The Landlord's actions not only constitute a breach of the May 8, 2023, order and that of the Divisional Court their actions constitute an egregious disregard of the Board's authority and of the Act. One of the explicitly stated purposes of the Act is to prevent unlawful evictions. In this case, despite being aware of a Board order putting the Tenant back in possession of the unit, the Landlord refused to voluntarily cooperate and once possession was restored, proceeded to change the locks to the unit. Essentially the Landlord locked out the Tenant not only in the absence of legal authorization but in spite of the Tenant's explicit legal authorization to possess the rental unit. This behaviour must be discouraged in the strongest terms.

54. I also note that Co-operators confirmed that the Landlord was compensated for lost rental income while the Landlord had illegally locked out the Tenants. In my view the Landlord should not be "rewarded" for their egregious conduct; however, that remains between the Landlord and their insurer.

55. A prior fine does not appear to have been a sufficient deterrent and suggests a substantial fine may be appropriate in these circumstances.

56. The Tenants submitted that the Landlord is a "large corporate landlord" whose primary business is residential tenancies. As such, it is likely they may find themselves back in front of the Board and that therefore the maximum fine is appropriate to deter any future similar conduct of this Landlord.

57. The Landlord submitted an administrative fine is not warranted; that there was no blatant disregard for the RTA, rather the Landlord was only concerned with the safety and wellbeing of its tenants.

> The Landlord made the difficult decision of restricting the ability of the tenants of the Residential Complex to access or return to their respective units, until the repair and remediation work had been completed. This difficult decision was made in the interests of the safety and well-being of the tenants, as the Landlord's professionals had advised it that there was a risk to the tenants' safety and well-being if they returned to the Residential Complex before all work had been completed and before the appropriate professionals confirmed that the Residential Complex was fit for occupancy.

58. In my view, it was not unreasonable for the Landlord to be concerned about the Tenant's welfare, regarding the presence of asbestos or air quality. However, I also note that in part, this concern was also informed by a concern that if the Tenants returned that the Landlord may be liable for any impacts on the tenants' health that might arise if they returned. That

concern is not a lawful authority to lock out the Tenants. The Landlord ought to have requested an order from a competent authority to restrict access or appealed the City of Sarnia order if they disagreed with it. The Landlord did neither of these things.

It is ordered that:

1. The total amount the Landlord / Landlord's Agent / Superintendent shall pay the Tenant is $6,309.50. This amount represents:

    - $100.00 for out of pocket expenses.
    - $700.00 for the cost of filing the application, locksmith fees and other disbursements.
    - $5,509.50 for General Damages.

2. The Landlord shall pay the Tenant the full amount owing by March 25, 2024.

3. If the Landlord does not pay the Tenant the full amount owing by March 25, 2024, the Landlord will owe interest. This will be simple interest calculated from March 26, 2024, at 7.00% annually on the balance outstanding.

4. The Landlord **Equity Builders Ltd.**, shall pay to the Landlord and Tenant Board an administrative fine in the amount of $35,000.00 by March 25, 2024.

March 13, 2024
Original Date Issued

March 18, 2024
Amended Date Issued

Robert Patchett
Vice-Chair, 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.

Payment of the fine must be made to the LTB by the deadline set out above. The fine can be paid by certified cheque, bank draft or money order made payable to the Minister of Finance. If paying in person, the debt can also be paid by cash, credit card.