



Order under Section 31 Residential Tenancies Act, 2006

Citation: MacDuff v EQB, 2024 ONLTB 20615

Date: 2024-03-18

File Number: LTB-T-028151-23

In the matter of: 106B, 721 EARLSCOURT DR
SARNIA ON N7S1V1

Tenant

Between: Daciana MacDuff

And

Landlords

EQUITY BUILDERS LTD
JOANNE SMOUT
TARANG SHAH
Ash Singh

EQB
Terri Hall

Superintendent

Daciana MacDuff (the 'Tenant') applied for an order determining that JOANNE SMOUT, TARANG SHAH, SARNIA, EQUITY BUILDERS LTD and Ash Singh (the 'Landlord') and EQB and Terri Hall (the 'Superintendent'):

- 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.

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 the name in this application is the name they go by, which is not the same as their "dead name".
6. The Tenant testified that they have lived in the rental unit since March 2022. They stated that they receive ODSP benefits because of a medical disability. ODSP pays rent direct to the Landlord.

7. The Tenant testified that they were afforded 10 minutes escorted access after the fire by Sarnia Fire services to gather personal items.
8. They testified that the Landlord had denied access after the City had lifted the order to permit them to return. They also stated that the Landlord advised that they need proof of tenant insurance before they would be permitted to return.
9. They testified that the Landlord had been paid direct by ODSP rent for March, and that the Landlord had indicated that once they had proof of insurance, they would refund March rent.
10. The Tenant testified that they had requested access to the unit under the Ontario Human Rights Code in order to retrieve personal belongings and cultural items used to perform ceremonies; and that the Landlord still refused, stating no insurance no access. They had also hoped to retrieve their art supplies for their art trade business.
11. The Tenant testified that on March 31, 2023, the Landlord sent another letter, indicating the Landlord was going to make arrangements for tenants to access their belongings but stated they would not have access without insurance. The Landlord was communicating with their community support worker telling them that the unit was completely damaged and that the Tenant had to sign a tenant access letter. The letter stated that the unit required full renovation due to the fire and that they could sign an N11 to end my tenancy. The letter said the Tenant had to move all of their stuff out of the unit and sign the letter. The Tenant didn't sign the letter because they didn't agree with what was in the letter, they had no place to go, no place to store their things, and there was no reason why the Landlord was keeping them out of their unit.
12. The Tenant testified that on May 1, 2023, the Landlord emailed them, advising that if they did not have all their stuff out of the unit by May 5, 2023, the Landlord would remove all of their items and they would be forced to pay the costs. These costs would be put on the tenant ledger, and billed prior to moving back in. The Tenant stated that they requested accommodations under the Ontario Human Rights Code, to make arrangements to remove their contents on their own. They stated that the Landlord refused this request.
13. Since the fire, the Tenant relied on different charity organizations for funding to stay in hotels. They had to stay at Willey's Hotel, which was a dive hotel. They stated that there was violence, drug use, police interventions at all hours of the day and night while staying there. When the funding ran out after 3 months, they were forced to look for accommodations in the shelters. The shelters in Sarnia were unable to accommodate them as an Indigenous two-spirited Woman and they did not feel safe staying in the men's shelter. They found an organization in London Ontario that housed Indigenous Women experiencing violence. They agreed to let them stay there, until they could find secure housing. Because they had to move to London, all of the ODSP had to be transferred to London. Because of this they suffered financially, losing the portable housing benefits they were receiving in Sarnia.

14. They testified that while at Willey's Hotel, that they only had a bar fridge for food and medications. They stated that they had to purchase fresh food daily. They stated that they were high risk of collapse due to medical conditions and that having to go a kilometre or further to purchase food or to dine out, put them in danger.
15. The Tenant testified that July 27, 2023, they were unable to attend to receive possession; that CLSS attended on my behalf. They stated that when they returned to the unit that there was no fridge for their insulin. They stated that the water was not working. The fuzebox in the kitchen was inoperable and that the stove did not work and was still not working by the time they testified at the hearing. They were advised to go online and submit a maintenance request. They testified that there was no damage in the unit that could be seen when they returned. They stated that they could not see any dust, soot, or smell any odour or other chemicals in the building or their unit.
16. The Tenant testified that they had to arrange to have the mail box key replaced because their key did not work. They had been required to go offsite to retrieve mail, and that after they returned, they discovered that their mail was still being rerouted.
17. The Tenant testified that the lack of a working stove had an impact on their medical conditions because it was difficult to prepare healthy foods to manage their medical conditions.
18. The Tenant testified that the Landlord has completely mistreated them as a tenant. They felt the Landlord had aggressively attempted to scare them off. At no time did the landlord accommodate them, but instead continued to harass them about insurance and obstructed access to their home. The Landlord did not care about what was happening to them while they were illegally locked out. Finally, when they were was able to return to the unit, it remained undamaged by the fire. There had been no repairs, or anything suggested by the Landlord carried out. To make it worse the landlord knew they were coming back because of the Sheriffs enforcement, and still didn't have the unit ready for them to return by replacing the refrigerator and turning on the water, and making other necessary repairs.
19. The Tenant testified that since returning the Landlord has refused the Tenants rent payments. They feel that Landlord continues to make it difficult for them to remain in their home and wants them out. They have received an N13 notice, since moving back but does not understand why the Landlord wishes to carry out the repairs indicated because their unit is not damaged.
20. The Tenant also testified that they felt de-humanized by the Landlord for not using their preferred name or gender, that it was a lack of respect or consideration on their part. They stated that the Landlord has still not offered any accommodations under the Ontario Human Rights Code.

Remedies

Out of pocket expenses

21. The Tenant requested reimbursement for out-of-pocket expenses. The Tenant claimed expenses to replace clothing, bedding, and Cogeco, totalling \$2,924.07. The Landlord must pay the Tenant this amount.
22. 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.
23. 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.
24. The Tenant testified that they had to replace clothing, personal items, and cultural items important to them to perform cultural ceremonies. The landlord refused all requests for access even when framed as an accommodation under the Ontario Human Rights Code.

General Damages

25. 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 \$5,535.00.
26. The Tenant also claimed \$5,000.00 for harassment they faced from the Landlord for attempting to secure their rights. They testified that the Landlord repeatedly in emails “misgendered” and used their “deadname” instead of preferred name or gender identity. The Landlord simply continued to misname them.
27. The Tenant also claimed \$5,000.00 for coercion the Landlord used in attempting to constructively terminate the tenancy agreement. They testified that the offers to terminate the lease felt like coercion, that they did not understand the legality of it, and would not accept the offer under those conditions. They also testified that they felt signing over the insurance policy was a form of coercion. They stated that they had been denied accommodations to try to arrange to remove their contents, but that that had been refused.
28. The Tenant testified at all material times that while they attempting to enforce their rights the Landlord made them feel mistreated, harassed and threatened, and the Landlord was aggressively attempting to terminate their tenancy.
29. 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.

30. 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.
31. The application did check remedy 11, for any other remedy on their application, specifying monetary compensation for breach of contract and pain and suffering.
32. The Tenant produced a will say statement that had been adopted under oath and the Landlord was able to cross-examine the Tenant.
33. The Tenant will say statement and testimony indicates that the Tenant is seeking general damages, that the amounts and reasons are set out.
34. I am satisfied that the Landlord had effectively been on notice via the application, the will say statement and testimony that the Tenant was seeking general damages as described.
35. 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.
36. 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.
37. 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 \$14,596.24 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 left with couch-surfing with friends and family due to the lockout and felt lost not being in their own home. These are in my view extraordinary circumstances that warrant the amount ordered.
38. The failure on the part of the Landlord to accommodate the Tenant when requested, and the failure to ensure a working stove and refrigerator in the unit when the Tenant was restored possession are in my view aggravating factors to support the award as requested.

Rent Abatement

39. The Tenant is seeking an abatement of rent for the month of February that he was not able to occupy his rental unit for 8 days in the amount of \$162.80.

40. The Tenant also asked that the rent for March and April be returned. They have confirmed in their closing submissions that this has not yet been paid to the Tenant. Therefore, \$1,044.00 shall be ordered.
41. The Tenant had been illegally locked out and could not occupy his rental unit as intended. Therefore, this amount shall be ordered. The Landlord submitted that the Tenant did not have an obligation to pay rent during this time.
42. The City of Sarnia amended their Order to permit the Tenants to return on February 27, 2023. Therefore, it is appropriate to order that the Landlord compensate the Tenants for the 2 days they were illegally locked out in February 2023, in the amount of \$40.70.

Costs

43. 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: 108.76; and
 - c. Other disbursements totalling \$538.22.

44. 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.

45. 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.
46. 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

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

48. 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

49. 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;

50. 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.

51. 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)

52. 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.

53. Deterrence for egregious conduct, beyond whatever deterrent effect simple damages might provide, is an over-riding factor.
54. 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.
55. The Tenant submitted that they are a two spirit indigenous person and had great difficulty finding shelter in Sarnia. The Tenant states they were not allowed to stay at the women's shelter. The Tenant suffers with diabetes and is insulin dependant. They must have access to a refrigerator at all times for her insulin. They spent nights in shelters and motels. They were able to secure shelter in London Ontario at a shelter for high risk indigenous women. This resulted in the loss of a housing benefit in Sarnia. They were illegally locked out for 150 days.
56. 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.
57. 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.
58. 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.
59. 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.

60. 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.

61. 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.

62. 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.
63. 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.
64. A prior fine does not appear to have been a sufficient deterrent and suggests a substantial fine may be appropriate in these circumstances.
65. 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.
66. 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 well-being 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.

67. 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.

68. The Tenant had made requests for accommodations under the Ontario Human Rights Code that the Landlord refused. The Landlord also make things difficult for this Tenant by not ensuring there was a working refrigerator and stove in the rental unit, once the Tenant was restored possession. This shows a lack of respect for a Landlord's obligations under the Ontario Human Rights Code. The refusal, and lack of accommodation are in my view aggravating factors that warrant the maximum fine permissible.

It is ordered that:

1. The total amount the Landlord / Landlord's Agent / Superintendent shall pay the Tenant is \$20,243.77. This amount represents:
 - \$1,084.70 for a rent abatement.
 - \$2,924.07 for out of pocket expenses.
 - \$700.00 for the cost of filing the application, locksmith fees and other disbursements.
 - \$15,535.00 for General Damages.
2. The Landlord shall pay the Tenant the full amount owing by March 29, 2024.
3. If the Landlord does not pay the Tenant the full amount owing by March 29, 2024, the Landlord will owe interest. This will be simple interest calculated from March 30, 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 29, 2024.

March 18, 2024

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.