



## **Order under Section 31 Residential Tenancies Act, 2006**

**Citation:** Isles v Melnyk, 2024 ONLTB 23491

**Date:** 2024-03-26

**File Number:** LTB-T-006659-23

**In the matter of:** Apt 1-1, 596 RUNNYMEDE RD  
TORONTO ON M6S2Z7

Tenant

**Between:** Andrew Isles

**And**

Walter Melnyk

Landlord

Andrew Isles (the 'Tenant') applied for an order determining that Walter Melnyk (the 'Landlord'):

- entered the rental unit illegally.
- 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.
- withheld or interfered with their vital services or care services and meals in a care home.

This application was heard by videoconference on March 25, 2024.

The Tenant's Representative, Maria Sturino, The Tenant, the Landlord's Representative, André Marin, and the Tenant attended the hearing.

### **Determinations:**

#### **Preliminary Issue #1- Amended Application**

1. The Tenant sought to amend the application to seek only the remedy of returning the possession of the rental unit to the Tenant. At the hearing, the Tenant stated that they may exercise their right to seek damages from the Landlord at Superior Court where they can seek damages beyond the \$35,000.00 jurisdictional limit pursuant to section 207(2) of the *Residential Tenancies Act, 2006* (the 'Act').

2. I find that the proposed amendment, served to both the Board and the Landlord on November 9, 2023, does not prejudice the Landlord. Therefore, the Tenant's amended application seeking only for a restoration of possession of the rental unit to the Tenant is granted.

Preliminary Issue #2- Landlord Request to Adjourn

3. The Landlord sought to have the matter adjourned because his legal counsel had only been retained as of two weeks prior to the hearing.
4. The Landlord's Representative stated that the Landlord had been represented by another legal representative, however the parties could no longer work together, and that representative was no longer being retained by the Landlord.
5. Pursuant to section 10 of the *Statutory Powers Procedure Act*, (the 'SPPA'), a party may have a legal representative at the hearing. Although section 10 of the SPPA allows a party to retain legal counsel, it does not make it mandatory that a party be represented by counsel.
6. The Landlord's request for an adjournment is denied. The Landlord admitted to having counsel prior to retaining the services of Mr. Marin. Mr. Marin was retained two weeks prior to this hearing, which, considering the issues, is sufficient time to review the evidence being presented at this hearing. Furthermore, this is an application that was originally scheduled to be heard April 12, 2023. The Landlord has had sufficient time to prepare for this hearing.
7. Furthermore, the only claim being made at this hearing is that the Landlord has illegally locked the Tenant out of their rental unit. The prejudice to the Tenant far outweighs the prejudice to the Landlord if the adjournment was granted.
8. Therefore, this matter will proceed hearing evidence only on the illegal lockout.

Illegal Lockout

9. The parties agree that a fire occurred at the rental unit on November 23, 2022.
10. The parties agree that the Tenant was locked out of his rental unit on November 24, 2022.
11. At the hearing. The Landlord admitted to not having an order from the Landlord Tenant Board or any other court of competent jurisdiction to terminate the tenancy.
12. The Landlord testified that the fire department ordered the rental unit remain uninhabited due to fire damage. The Tenant testified that when he inquired to the fire department regarding the status of the rental unit, he was told no such order exists.
13. The Landlord testified that there are four rental units in total in the rental complex. The Landlord testified that he is currently living in the Tenant's rental unit and that none of the

other three rental units in the rental complex are occupied. The Landlord testified that he refuses to rent to any other tenants.

14. Based on the Landlord's testimony, where he freely admitted to living in the rental unit, I am more persuaded by the Tenant's testimony that the fire department has not made an order for the rental unit to not be inhabited and am satisfied that the rental unit does not have a tenant.
15. Since the Tenant has amended the application to only seek the remedy of restoration of the rental unit, I find it reasonable, under the circumstances, to grant this remedy.
16. Based on the evidence before me, I am satisfied that the Landlord illegally lockout the Tenant. Therefore, the Board shall order that the Landlord shall restore possession of the rental unit to the Tenant.

**It is ordered that:**

1. The Landlord shall allow the Tenant to recover possession of the rental unit on or before March 27, 2024.
2. The Landlord shall not re-rent the unit and prohibited from disposing of the Tenant's possessions.
3. The Landlord shall forthwith provide a replacement key to the Tenant and shall not take any measures to lock out the Tenant or compel the Tenant to vacate in the absence of a valid order from the LTB.
4. If the replacement key is not provided to the Tenant on or before March 27, 2024, the Tenant shall have 30 days from the date of this order to file this order with the Court Enforcement Office (Sheriff) so that this order can be enforced, and the Tenant may recover possession of the rental unit.
5. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give possession of the unit to the Tenant on an expedited basis on or after March 28, 2024.
6. The total amount the Landlord shall pay the Tenant is \$48.00 for the cost of filing this application.
7. The Landlord shall pay the Tenant the full amount owing by April 6, 2024.
8. If the Landlord does not pay the Tenant the full amount owing by April 6, 2024, the Landlord will owe interest. This will be simple interest calculated from April 7, 2024, at 7.00% annually on the balance outstanding.

**March 26, 2024**

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**Date Issued**

Robert Brown  
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.

The part of this order allowing the Tenant to recover possession of the unit and prohibiting the Landlord from re-renting the unit to anyone else expires and cannot be enforced if:

- a. The Tenant does not file this order within 30 days with the Court Enforcement Office (Sheriff) which has territorial jurisdiction where the rental unit is located, or
- b. The Tenant files this order with the Court Enforcement Office (Sheriff) but the order has not been enforced on or before August 26, 2024.