



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

**Citation:** Stefaniuk v Cityhousing Hamilton, 2024 ONLTB 9281

**Date:** 2024-02-08

**File Number:** LTB-T-021058-22

**In the matter of:** 604, 185 JACKSON STREET EAST HAMILTON  
ONTARIO L8N4H5

Tenant

**Between:** Nicole Stefaniuk

**And**

Landlord

Cityhousing Hamilton

Nicole Stefaniuk (the 'Tenant') applied for an order determining that Cityhousing Hamilton (the 'Landlord'):

- entered the rental unit illegally.

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.

This application was heard on January 26, 2024.

The Tenant, the Tenant's witness, M. Cheetham, the Tenant's support, J. Watson, the Landlord's legal representative, V. Molatchenko, and the Landlord's legal representative's student, J. Halili, attended the hearing.

**Preliminary Issues**

*Amend Application*

1. The Landlord requested that 'Melissa Shields,' who was named as a respondent to the application, be removed. The Tenant consented to the amendment. Pursuant to Rule 15.4 of the Board's Rules of Procedure, I granted the amendment request.

2. The Tenant asked to raise other alleged illegal entries not plead in the application. However, the Tenant did not file an amended application and the Landlord's legal representative did receive an amended application.
3. I find it would be unfair to consider these additional issues as the Landlord did not receive advance notice. As such, pursuant to Rule 15.3 of the Board's Rules of Procedure, the amendment request to consider other illegal entries is denied.

*Statute Barred Issues*

4. The Landlord submitted that the Board does not have jurisdiction to hear the issues in the Tenant application regarding an alleged illegal entry discovered on August 31, 2020 and balcony netting disrepair discovered on January 30, 2020 and resolved September 13, 2020. The Landlord submitted that these issues took place more than one year before the Tenant filed her application on November 22, 2021.
5. Pursuant to section 29(2) of the *Residential Tenancies Act, 2006* (the 'Act'), no application may be made under subsection (1) more than one year after the day the alleged conduct giving rise to the application occurred. I considered the suspension of limitation periods and the *Emergency Management and Civil Protection Act, 1990* which suspended limitation periods where they were set to expire between March 16, 2020 and September 14, 2020.
6. Based on the foregoing, I find that I cannot consider the alleged illegal entry from August 2020 and the balcony disrepair. These events took place more than a year before the Tenant filed her application on November 22, 2021. The suspension of limitation periods did not apply. As such, the Board does not have jurisdiction to hear these issues.

**Determinations:**

7. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenant compensation.
8. The Tenant resides on the sixth floor of a multi-tenant residential complex.
9. The only issue remaining in the Tenant's application is regarding an alleged illegal entry that took place some time between August 6, 2021 and August 8, 2021. The Tenant testified that on or about August 6, 2021, she went to stay with her sister for the weekend. When she returned a few days later, on or about August 8, 2021, she discovered that her rental unit door was open, and her lights were left on. The Tenant called the police, and they created a report. The Tenant confirmed nothing was missing from her unit.
10. She believes it was the Landlord who had entered the unit because the door to her unit was not broken and only the Landlord and their agents have a copy of her keys. The Tenant never

received a notice to enter or a telephone call pursuant to a mediated agreement that they entered in 2019 / early 2020.

11. M. Cheetham testified that he is a tenant of another one of Cityhousing Hamilton's residential complexes. He stated that he had experiences with illegal entries from the Landlord.
12. The Landlord's position was that the Tenant has not established that the Landlord entered the unit illegally. The Tenant did not have any surveillance footage showing it was the Landlord who entered her unit or a copy of the Police Incident Report. The Tenant was gone for 48 hrs and it is possible the 24 hr notice was provided during that period. Moreover, it is also possible that the Tenant accidentally left the unit door unlocked and the lights on. Submitted into evidence was a copy of the mediated agreement referenced by the Tenant whereby the parties agreed that the Landlord would tape a 24hr notice to the Tenant's door and call her to advise of their entry. If there was a breach, the Tenant had an obligation to re-open the application, which she did not.
13. The Tenant replied that it was not possible for her to have left the door unlocked or the lights on. She always confirms that the door is locked by pulling on the door handle and because she pays for utilities at the unit, she would not have left the light on.

### **Illegal entry**

14. On a balance of probabilities, I find that the Landlord illegally entered the Tenant's unit. I am satisfied that the Landlord entered the Tenant's unit between August 6 and August 8, 2021. I base this on the Tenant's credible testimony about her practice when she leaves the unit, that the door was not broken, and that it is only the Landlord's agents that have a copy of her unit key. While the Landlord submits that it is possible a 24 hr notice to enter was served within the 48 hrs while the Tenant was away, I find this unlikely given that the parties entered an agreement that the Landlord would tape a notice to the door and none was received. As such, I find that the Landlord illegally entered the rental unit.

### **Substantial interference**

15. I also find that the August 6-8, 2021 incident substantially interfered with the Tenant's reasonable enjoyment. While nothing was missing from the Tenant's unit after the illegal entry, the Landlord's failure to lock the Tenant's door afterwards disturbed the Tenant's privacy rights as anyone could have entered and exited the Tenant's unit while she was away. Therefore, I find that the Landlord substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.

### Remedies

16. The Tenant's application sought remedies for the alleged illegal entry in August 2020 and the balcony netting disrepair. This order does not consider remedies for these issues because they are statute barred.
17. The Tenant's application also sought a remedy for pain and suffering from the August 6-8, 2021 illegal entry.
18. The Landlord submits that the Tenant should be entitled to an amount equal to one day of daily compensation for the illegal entry pursuant to Board Order TNT-92678-17. Other Board decisions are not binding on me. While other Board decisions may be persuasive, in my view, an illegal entry can have a significant impact on tenants that lasts well beyond the moment in time when the illegal entry occurs. As such, it is inappropriate to calculate a remedy solely based on the rent paid for the few minutes, hours or days during which the illegal entry occurs.
19. An examination of the caselaw shows that the Board has moved towards adopting a consistent approach to general damages in illegal entry cases. The normal quantum of general damages awarded for an illegal entry is, in my view, \$1,000.00 per entry. Having considered the above circumstances, I find the Tenant is entitled to \$100.00 in damages for this incident. It appears that the illegal entry had a very small impact on the Tenant as she was not home when it occurred, and nothing was missing as a result of the Landlord leaving the door open. Nevertheless, I find that the quantum of \$100.00 is appropriate because the Tenant is entitled to privacy which was unfortunately infringed from this incident.
20. The Tenant also requested that the Landlord notify the Tenant of any entries by the 24 hr notice to enter being taped to her unit door and phone call. The Tenant also requested that the Landlord be fined if they do not adhere to these conditions.
21. As the Tenant had not amended her application to include these requested remedies, the request is denied.

**It is ordered that:**

1. The total amount the Landlord shall pay the Tenant is \$100.00. This amount represents:
  - \$100.00 for general damages.
2. The Landlord shall pay the Tenant the full amount owing by February 19, 2024.
3. If the Landlord does not pay the Tenant the full amount owing by February 19, 2024, the Landlord will owe interest. This will be simple interest calculated from February 20, 2024 at 7.00% annually on the balance outstanding.

**February 8, 2024**

**Date Issued**

15 Grosvenor Street, Ground Floor  
Toronto ON M7A 2G6

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Camille Tancioco

Member, Landlord and Tenant Board

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.