



## **Order under Section 69 Residential Tenancies Act, 2006**

**Citation:** Lamirande v Gray, 2024 ONLTB 10310

**Date:** 2024-02-09

**File Number:** LTB-L-054730-23

LTB-T-084893-23

**In the matter of:** UPPER UNIT, 174 HILL STREET WAHNAPITAE  
ON P0M3C0

**Between:** Bernadette Lamirande Landlords  
Allen Lamirande

**And**

Trevor Gray Tenant

Bernadette Lamirande and Allen Lamirande (the 'Landlords') applied for an order to terminate the tenancy and evict Trevor Gray (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 application).

This application was heard by videoconference on December 1, 2023.

Trevor Gray (the 'Tenant') applied for an order determining that Bernadette Lamirande and Allen Lamirande (the 'Landlords'):

- altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys (T2 application).

The Landlords Bernadette Lamirande and the Tenant attended the hearing. The Landlords' Legal Representative R. Quenneville and the Tenant's Legal Representative Z. St. Pierre were also present.

### **Determinations:**

1. In the Interim order issued on November 14, 2023, I order that the Tenant be restored to possession of the rental unit since the Landlords had illegally locked the Tenant out. The

parties agreed that the Tenant was given possession of the rental unit on November 15, 2023. However, as of the hearing date, the Tenant has chosen not to move back into the rental unit. The Tenant was advised that the rent will start to accrue from the date the possession was given back to the Tenant.

*L1 Application- Non payment of rent arrears*

2. The Landlords served the Tenant with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
3. As of the hearing date, the Tenant was in possession of the rental unit.
4. The lawful rent is \$850.00. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$27.95. This amount is calculated as follows:  $\$850.00 \times 12$ , divided by 365 days.
6. The Tenant has not made any payments since the application was filed.
7. The rent arrears owing to February 29, 2024 are \$6,807.97. This calculation does not include the rent between August 16, 2023 till November 15, 2023 when the Tenant was not in possession of the rental unit. The Tenant did not contest the amount of rent arrears claimed in the L1 application.
8. The Tenant testified that she originally fell into arrears when her partner, who was the original Tenant of the rental unit, moved out on August 27, 2021 and took all the rent money with her. The Tenant and the Landlord agreed to a \$100.00 payment plan which was adhered to till January 2022 when the Tenant had to sign a \$6,000.00 legal retainer relating to a criminal charge against her.
9. The Tenant also testified that CAS got involved so the Tenant had to arrange another place for her wife since she was expecting a baby. The Tenant also had to hire a lawyer for \$1,500.00 per month. The Tenant was working throughout and was getting a baby bonus too which got taken away in April 2023 when she fell into arrears again. The Tenant is willing to get into a payment plan to pay off the arrears. The Tenant is not sure if she would like to continue with the tenancy because she believes that the Landlord will force her out eventually.
10. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. The Landlords collected a rent deposit of \$800.00 from the Tenant and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.

12. Interest on the rent deposit, in the amount of \$71.68 is owing to the Tenant for the period from June 1, 2018 to December 1, 2023.

*T2 application- Illegal Lockout*

13. As explained below and in the Interim order issued on November 14, 2023, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must:
- Pay to the Tenant \$1,118.00 which represents compensation in the amount of \$1,070.00 and the \$48.00 cost the Tenant incurred for filing the application.
  - Pay to the Board an administrative fine of \$1,000.00.
  - Not collect rent with respect to this tenancy from the period August 16, 2023 to November 15, 2023.

*Tenant's testimony*

14. The illegal lockout was addressed in the interim order dated November 14, 2023. The Tenant testified to the series of events leading up to August 16, 2023 when she was locked out of the rental unit.
15. The Tenant testified that she went back to the rental unit twice once alone and once with a friend, after she was given possession but has not had the courage to take her few possessions left inside since she is scared that the Landlord may again lock her out. She believes that the Landlords are entering the rental unit when she is not there. The Tenant has not slept at the rental unit since repossession.
16. As a result of the lockout, the Tenant says that she had nowhere to go and so she slept in the car, a homeless forest with tents, or visited shelters. She talked about the hardships she has faced due to the Landlord's actions. She also testified that in winters it is difficult to stay in the car and shelters also fill up quickly. She also stated that getting a spot in the shelters is difficult and staying at the same spot in the car also attracts attention. She cooks on bonfires and sometimes has to use the bushes as a washroom. It is a scary situation. The shelters are not safe either and things get stolen, and people get beaten up all the time. There is a stigma attached to homelessness and everyone at work is aware of her situation, so she finds that her job is affected too. She has not been able to work overtime as before, and she is often late which is being forgiven for now but for how long?
17. She also testified to her health issues. Since she is taking estrogen, it makes her skin super dry and being in the cold outside makes her condition worse. She has bruises all over her body now. She cannot afford to buy food outside and has no place to cook so she has lost 20 lbs. Her mental health is also deteriorating due to her current state of living as an uncivilized person. She feels like a piece of garbage how the Landlord treated her.

18. The Tenant has considered getting a roommate or another job to support her expenses and pay rent. She cannot find another rental unit which is less expensive, and landlords ask for first and last month's rent deposit which she doesn't have. Also being transgender, no one wants to share a room with her. She also stated that she knew she was being evicted so she would carry all her basic important belongings with her everyday to work.
19. At the last hearing the Tenant had asked to be put back into possession and did not express any concerns for safety. I do not find that the Tenant has proven on a balance of probabilities that the Landlord has breached the Act since the keys were returned to her or proven that the Landlord will likely lock her out again.
20. The Tenant also testified that all of her possessions were not returned back to her by the Landlords and she gave a list of items which were not returned to her including a mattress, box-spring, cutlery, kitchen utensils, adult toys, non-perishable food, clothing, vacuum cleaner, tools in a tool box, bath mat, bedding, all her books, oil lantern, weed whacker and her cat was also lost. She testified that she does not believe the Landlords were aware of the cat she.
21. The Tenant also testified that she has not been able to get custody of her daughter due to homelessness and it has impacted her family. Due to her criminal charges, she cannot even see her daughter but if she had a stable home she could have applied for it.
22. After the illegal lock-out on August 16, 2023, the Tenant did not contact the Landlord directly to ask for keys. She did not complain to the police or anyone else either, out of choice, but did file this application on October 31, 2023.

*Landlord's testimony:*

23. The Landlord testified that on August 17, 2023, the Landlord contacted the Tenant at her workplace and left her a message that they will be entering the rental unit with the Fire Marshall at 2 p.m.. She left a message for the Tenant to call her back. The Tenant never contacted her. The Tenant also has the Landlord's number on the N4 notice served to her and she knows where the Landlords reside. The Tenant also has the Landlord's email address but there has been no contact from the Tenant or their legal representative for the last 106 days.
24. The residential complex is a two-unit duplex. The Landlord has owned the place for twenty years now. She testified that they changed the locks because while working at the residential complex the Landlord was approached by a person from hydro company who stated he was there to disconnect the hydro service due to non-payment. The Landlord knew that the smoke detector in the rental unit was hardwired to a hydro connection and since the tenant downstairs has children, the Landlords did not want to take a chance with

their safety so she contacted the Fire Marshall for direction. The Fire Marshall told her that they would accompany the Landlord to the rental unit. The Tenant had changed locks and did not provide a key to the Landlords, so they had to break the lock and change it. She made sure the Tenant was informed by calling her workplace, because they did not have the Tenant's direct number, before they even touched the door of the rental unit. The Landlords also got the hydro reconnected at their own expense.

25. The rental unit was empty for a while after August 16, 2023, and they did not hear from the Tenant at all. On or around August 29, 2023, the Landlords went back to the rental unit to install battery operated smoke and carbon monoxide alarm and to check if everything was working properly, and they would come back with bites. That is when they realised the rental unit was infested with fleas. They called an exterminator and he recommended that they throw away all the infested material as it may infest the lower unit as well. The Landlords threw the mattress and the bedding covered with fleas along with a pile of clothes near the bed. The Landlord and an employee removed the rest of the stuff which could be restored and threw away what could not be salvaged on or around September 13, 2023. Once they received the Board order to reinstate the Tenant, they returned the stuff back to the rental unit.
26. The Landlords are not sure if the Tenant has been back to the rental unit since November 15, 2023. The key was left on the kitchen counter for the Tenant, and it is still there as of November 22, 2023, as per the declaration by Philip Lamirande the Landlords' employee. The Landlord stated that the whole situation has not only been financially taxing but also caused her health issues. Her husband who had hip-replacement surgery and the Landlord was out of town, but they still arranged for the Tenant's stuff to be returned and the key given back immediately, after the Board order. Her husband who has had three surgeries is also not recovering well due to the undue stress.
27. The Landlord submitted a copy of the unpaid Hydro bill in the amount of \$2,378.42, an invoice for the exterminator dated September 13, 2023, declaration from the other Landlord and an employee of the Landlord about the state of the rental unit and things that were thrown out or kept. There was also an invoice date August 29, 2023 for the purchase of a smoke detector from RONA. The Landlords also tendered a list of items they had to throw out and what was kept and brought back.
28. The Landlord stated that she has been a Landlord for 30 years and knows her rights and responsibilities as a Landlord. She was advised by the fire department that she does not have to give a 24-hours notice for the reasons noted above and the fire Prevention officer Phil Daveau who attended the unit gave the 2 p.m. time when he would meet the Landlords at the rental unit the same day when they entered the rental unit and changed the locks. The Landlords did their best by contacting the Tenant before going in and the locks were changed by the Tenant first, so they had to replace it. The Landlord also

inquired from the tenant downstairs if they saw any activity with the Tenant, but they said that the Tenant never came back.

29. When the Tenant did not reach out to them for 80 days, they deemed that the Tenant had abandoned the rental unit. The Landlords were not advised by their previous representative to reach out to the Tenant again. She also testified that they never advertised the rental unit again but were approached by someone if they had a unit available, so they re-rented it again at the same rent for December 1, 2023.
30. The Landlord's Legal Representative raised issue with the amended T2 being served on the Landlord just two days before the hearing and it was neither signed nor dated. The Landlord submitted that the Tenant's amended T2 should be dismissed.

### *Analysis*

31. I do find after careful consideration of all facts that the Landlord altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys.
32. Section 37 of the *Residential Tenancies Act, 2006* (the 'Act') states that a tenancy may only be terminated in accordance with the Act. The Act provides that a tenancy may be terminated by notice, by agreement, or by order of the Board.
33. Section 39 of the Act states that a landlord shall not recover possession of a rental unit subject to a tenancy unless,
  - a) The tenant has vacated or abandoned the unit; or
  - b) An order of the Board evicting the tenant has authorized the possession.
34. There is no evidence before me that the Tenant had abandoned or vacated the unit nor that there was an order for the Board evicting the Tenant. The only claim that was made for abandonment was by the Landlord that the Tenant did not come back and ask for keys, so they deemed it was abandoned. The Landlord never served the Tenant any forms or application or file one with the Board to declare the unit abandoned.
35. The actions of both parties have been questionable throughout the period from August 16, 2023 till November 15, 2023. Neither party attempted to reach out to the other to address the serious issues with this tenancy after the one feeble attempt made by the Landlord. However, even after testifying to the hardships of being homeless, the Tenant has chosen not move back into the property even after seeking and obtaining a repossession order from the Board.

36. There is no doubt that the Landlord changed the locks of the rental unit and did not provide keys to the Tenant on August 16, 2023, but the Tenant also did not attempt to ask for keys once since she got to know that the lock was changed. Neither party tried to mitigate their losses. The only step taken by the Tenant was to file an application with the Board on October 31, 2023, a month and a half after the lockout.
37. I do accept that there was an emergency situation on August 13, 2023 which justified entry into the unit without a notice of entry. The Landlord became aware of the smoke detectors not working in the complex due to hydro being disconnected. I also find that the Landlord was able to prove on a balance of probabilities that the Tenant's unit had fleas, which the Tenant acknowledged, which establishes a need to discard some of the Tenant's belongings like mattress, box spring and clothes which would retain the fleas. This is a relevant a consideration with respect to the appropriate remedy.

### *Remedies*

38. The Tenant testified that the original claim for compensation for property damaged or disposed of by the Landlord was considerably reduced after the Tenant went back into the rental unit and found some of the stuff was put back by the Landlords.
39. The Landlord provided concrete evidence that they got rid of some of the Tenant's belongings due to fleas and it was as per the recommendations of the professional.
40. The Tenant also did not provide receipts for the amounts she's claiming and her testimony and the amounts on the application are different. Most of the things that the Tenant claimed are missing are the items that the Landlord disposed of including the mattress, the clothes, the box spring, two adult toys.
41. I am willing to grant the Tenant compensation for items that are missing which did not need to be disposed of like cutlery \$50.00, kitchen utensils \$50.00, non-perishable food items \$200.00, vacuum cleaner \$150.00, tools \$500.00, cast iron pan \$60.00, weed whacker \$60.00 and oil lantern \$20.00. The total sum awarded to the Tenant is \$1,070.00.
42. The Tenant also claimed that the Landlord must allow her to move back into the rental unit and the Landlord to return all my property that they possess. However as of the date of the hearing that issue had been corrected and so the remedy requested is now moot. The Tenant was previously restored to possession as per Order LTB-L-054730-23 & LTB-T-084893-23 -IN issued November 14, 2023. The Tenant was given the keys to the rental unit on or around November 15, 2023.
43. In the amended T2 filed on November 27, 2023, the Tenant also asked for rent abatement for the days she was not in possession and also general damages for pain and suffering. I do not find that amendment was made in accordance with the Board's Rules of Procedure

19.7 and the directions given in the LTB-L-054730-23 & LTB-T-084893-23-IN interim order to disclose all material by November 24, 2023. Therefore, the remedy for general damages cannot be granted. The request for a rent abatement is moot since the Tenant did not pay rent for the duration she was not in possession.

#### Administrative fine

44. The Tenant request that the Board issue a fine to the Landlord in the highest amount. For the following reasons, I find that an administrative fine in the amount of \$1,000.00 is appropriate in the circumstances.
45. Guideline 16 outlines that an administrative fine is a remedy to be used by the Board to encourage compliance with the Act 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.
46. Guideline 16 also provides the Board with factors to consider with respect to quantum of the fine, the are:
- The nature and severity of the breach
  - The effect of the breach on the tenant
  - Any other relevant factors
47. The Landlord's actions in this case do show a clear disregard for the Act and the breach is severe. I say this because the purpose of this Act is to provide protection for residential tenants from unlawful evictions and so in keeping with the spirit of the legislation the Board has a large interest to deter landlord's in engaging in this behaviour in the future. The effect of breach on this Tenant was quite horrible. As already mentioned, she was a particularly vulnerable person, who faced homelessness, who was embarrassed and humiliated as a result of the Landlord's actions.
48. Another relevant factor is that landlords are seasoned landlords and receive the assistance of legal representatives when before the Board- they ought to know their responsibilities and obligations as a landlord. *Section 83 considerations*
49. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.



- 50. The Tenant stated that she is willing to accept a payment plan to pay off the rent arrears. The amount the Tenant suggested was \$100.00 per month. Based on the quantum of rent arrears I find that a payment plan of \$100.00 would be prejudicial to the Landlord as well.
- 51. Based on a two-year term, I am willing to grant the Tenant a payment plan of \$250.00 per month to preserve her tenancy. However, if the Tenant does not wish to continue this tenancy, she can provide the Landlord a written notice of termination or the parties can agree on a termination date, in writing.

**It is ordered that:**

- 1. The Tenant shall pay to the Landlord \$5,875.97 for arrears of rent up to February 29, 2023 and costs less the amounts awarded to the Tenant.
- 2. The Tenant shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:
  - a) On or before March 20, 2024 \$250.00
  - b) On or before April 20, 2024 \$250.00
  - c) On or before May 20, 2024 \$250.00
  - d) On or before June 20, 2024 \$250.00
  - e) On or before July 20, 2024 \$250.00
  - f) On or before August 20, 2024 \$250.00
  - g) On or before September 20, 2024 \$250.00
  - h) On or before October 20, 2024 \$250.00
  - i) On or before November 20, 2024 \$250.00
  - j) On or before December 20, 2024 \$250.00
  - k) On or before January 20, 2025 \$250.00
  - l) On or before February 20, 2025 \$250.00
  - m) On or before March 20, 2025 \$250.00
  - n) On or before April 20, 2025 \$250.00
  - o) On or before May 20, 2025 \$250.00
  - p) On or before June 20, 2025 \$250.00
  - q) On or before July 20, 2025 \$250.00
  - r) On or before August 20, 2025 \$250.00
  - s) On or before September 20, 2025 \$250.00
  - t) On or before October 20, 2025 \$250.00
  - u) On or before November 20, 2025 \$250.00
  - v) On or before December 20, 2025 \$250.00

- w) On or before January 20, 2026 \$250.00
- x) On or before February 20, 2026 \$125.97

3. The Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period March 1, 2024 to February 1, 2026, or until the arrears are paid in full, whichever date is earliest.
4. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after February 29, 2024.
5. The Landlord shall pay to the Landlord and Tenant Board an administrative fine in the amount of \$1,000.00 by February 20, 2024.

**February 9, 2024**

**Date Issued**

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Sheena Brar

Member, Landlords 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 or debit card.