Order under Section 31
Residential Tenancies Act, 2006

Citation: Havill v Equity Builders Ltd, 2024 ONLTB 19914
Date: 2024-03-18
File Number: LTB-T-028148-23

In the matter of: 105B, 721 Earlscourt Drive
Sarnia Ontario N7S1V1

Tenants

Between: Jonathan Havill
Michelle Pitman

And

Landlords

Equity Builders Ltd.
JOANNE SMOUT
TARANG SHAH SARNIA
Ash Singh

AMENDED ORDER

This order is amended for consistency to include the Landlord "Equity Builders Ltd." as named in the Interim Orders issued by the Board in relation to this file. The amendment also clarifies that that Equity Builders Ltd. Shall pay the fine. The amendments are in bold.

Jonathan Havill, Michelle Pitman (the 'Tenant') applied for an order determining that Equity Builders Ltd., JOANNE SMOUT, TARANG SHAH, SARNIA and Ash Singh (the 'Landlords'):

- 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 Tenants testified that they had lived in the rental unit since April 2015.

6. They testified that on the day of the fire, once the fire department had the fire out, they waited a while before they were allowed to go in and grab some things. The testified that "Chopper" another tenant from building A, had let them into their unit to grab food and a few things.

7. They testified that they initially stayed with Micelle Pitman parents. Their parents lived in a rent geared to income housing unit and their parents let them stay in breach of the rules; they risked being evicted.

8. Jonathan Havill testified that he stayed at his partner's parents for about 10 days, before leaving; and having couch-surfed until a friend let them stay together with them.

9. Micell Pitman testified that it was pretty tight living with her parents; that it was bad enough that she was there.

10. They testified that eventually, another of their friends had let them stay together with them.

11. They testified that the Landlord had advised them that their unit was damaged by the fire that it needed to be completely renovated. They testified that the Landlord had previously fully renovated the unit and then raised their rent.

12. They testified that in April 2023 there were permitted about 30 minutes to access the unit. They testified that the unit was not damaged at all, and they could not retrieve all of their things.

13. They testified that on July 27, 2023 when the Sheriff enforced the order to return, they found that the unit it was still the same, no damages, no renovation and their remaining contents were still there.

14. They testified that they had paid rent for March 2023, and that it was not returned. That it had been applied to August 2023 rent.

15. They testified that it had been really hard living apart, that they had been together a long time, and were best friends.

16. Jonathan Havill testified that he was couch surfing and it was not comfortable. That when their friend let them stay, it was not ideal but that at least they were together.

17. The testified that being apart was extremely stressful. That they had been living out of bags, going from place to place, until a friend took them in. They testified that they had depleted their savings as a result. Jonathan Havill testified that he was couch surfing and never able to spend 2 nights in a row at the same place.

18. Micell Pitman testified that this was one of the worst things they have had to deal with.

19. They testified it was difficult to function without their home and that the landlord had done this to them for no reason because their unit was not even close to the fire.

Remedies

General Damages

20. The Tenants are 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 $5,364.00.

21. The Tenants also claimed $5,000.00 for harassment they faced from the Landlord for attempting to secure their rights. Micell Pitman testified that the insurance requirements were an example of harassment. They felt that once proof of insurance was provided that should have been enough, but the Landlord kept saying it was not good enough.

22. Jonathan Havill testified that the harassment came from not knowing when could return, the emails they received from the Landlord and that this is not the first time they have been effectively run over by this Landlord and his business. The Tenant testified that the $2,000.00 offer was like a “spit in the face”.

23. The Tenants also claimed $5,000.00 for coercion the Landlord used in attempting to constructively terminate the tenancy agreement. Micelle Pitman testified that the Landlord was not flexible about access, basically “tough if it did not work”, there was no attempt at accommodation.

24. Jonathan Havill testified that the issue of insurance coverage and having to name the Landlord was coercive. That once they provided proof, it still was not good enough and even then they still waited over a month to get access to the unit. They also testified that they were required to sign the Landlord documents, to accept the Landlord’s version of events rather than a simple clear liability form, in order to gain access to the unit.

25. 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.

26. The Landlord submits that the Tenants did not indicate in their application that they were seeking any other order specifying general damages. The application had not been amended to add that remedy, and therefore it should be denied.

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 application did not check remedy 11, for any other remedy on their application.
29. The Tenants produced will say statements that had been adopted under oath and the Landlord was able to cross-examine the Tenant.

30. The Tenants will say statements and testimony indicates that the Tennant is seeking general damages, that the amounts and reasons are set out.

31. 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 an amendment to the application.

32. 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.

33. 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.

34. The Landlord through his actions of locking out the Tenants and then denying access is in my view an outrageous breach of the tenancy. Taking this into account and noting that the additional stress of the family members, I am satisfied, in all the circumstances that general damages in the amount of $15,364.00 are appropriate. The Tenants were forced to endure sustained and ongoing harassment and coercion from the Landlord to try and convince the Tenant to move out. The Tenants was left with couch-surfing with friends and family due to the lockout and had to live apart until they found a friend that took them in until they were restored possession of their rental unit. These are in my view extraordinary circumstances that warrant the amount ordered.

    Costs

35. The Tenants 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: 108.78; and
    c. Other disbursements totalling $538.22.

36. 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.

37. 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.

38. 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

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

40. 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

41. 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;

42. 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.

43. 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)

44. 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.

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

46. 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.

47. The Tenants submitted that they have lived common law together for years. Following the fire the couple was forced to sleep apart from each other. The two separately "couch surfed." Until a friend offered the couple to stay with him. Ms. Pitman states she had more

family connections in Sarnia but her partner did not. She states that there were nights she could not go to sleep until she knew that Mr. Havill had found a place to stay. The Tenants stated that their lives were completely turned upside down awaiting the return to their home. They were illegally locked out of their home for 150 days.

48. 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.

49. 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.

50. 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.

51. 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.

52. 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.

53. 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.

54. 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.

55. 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.

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

57. 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.

58. 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.

59. 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 $16,064.00. This amount represents:

   - $700.00 for the cost of filing the application, locksmith fees and other disbursements.
   - $15,364.00 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.