2024 ONLTB 18046 (CanLII)

Order under Section 31
Residential Tenancies Act, 2006

Citation: O'Grady v EQB Ltd Property Management, 2024 ONLTB 18046
Date: 2024-03-18 **File Number:** LTB-T-029829-23-AM

In the matter of: 314B, 721 Earlscourt Drive
Sarnia Ontario N7S1V1

Tenant

Between: Shawn O'Grady

And

Landlords

Equity Builders Ltd.
EQB Ltd Property Management
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.

Shawn O'Grady (the 'Tenant') applied for an order determining that EQB Ltd Property Management, 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 Tarang Shah 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.

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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. Shawn O'Grady has resided at 721 Earls Court for 3 years. He pays low rent of $961.40. He works full time as cook at a local restaurant. He lives with his dog and snake. He was getting worried about his pet snake. He testified the landlord did not let him into his unit until March 8th to get his snake.

6. The Tenant testified that he was able to stay with his parent's while he was illegally locket out. He stated that it was frustrating not having access to his personal possessions.

7. He testified that he didn't get back into his unit again until the Sheriff enforced. When he entered it was how he left it there and were no damages and no repairs. He testified that while he stayed at his parents it was very stressful. He testified that he worked in a stressful work environment in the restaurant kitchen and having no routine and no social life caused him a lot of stress. He testified that he had no privacy and zero down time.

8. He testified he lost everything in his freezer and that his freezer had not been cleaned out.

9. He testified that he did not deserve to be treated the way the landlord treated him under the tenancy agreement. He testified that the whole thing was stressful and traumatic.

Remedies

General Damages

10. 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 $4,961.20.

11. The Tenant is also seeking $10,000.00 in general damages.

12. 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.

13. The Landlord submits that the Tenant 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.

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14. 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.

15. The application did not check remedy 11, for any other remedy on their application.

16. The Tenant produced a will say statement that had been adopted under oath and the Landlord was able to cross-examine the Tenant.
17. The Tenant will say statement and testimony indicates that the Tennant is seeking general damages $4,961.20.

18. The amount was increased by the Tenant in their closing submissions.

19. I am satisfied that the Landlord had effectively been on notice via the will say statement that the Tenant was seeking general damages as described, even if not exactly framed as an amendment to the application.

20. 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.

21. 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.

22. The Landlord through his actions of locking out the Tenant and then delayed permitting the retrieval of his pet, is in my view an outrageous breach of the tenancy. Taking this into account and noting that the Tenant did secure alternative accommodations he did not have access to his possessions the amount of $4,961.20 as requested is warranted. These are in my view extraordinary circumstances that warrant the amount ordered.

23. I also note that the Board could not award a remedy not claimed, and therefore given that the Landlord only learned of the $10,000.00 amount claimed through closing submissions, I am disinclined to order that amount.

Rent Abatement

24. 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 $252.80.

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25. 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.

26. 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 $63.20.

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Costs

27. 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.

28. 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.

29. 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.

30. 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 amounts.

Administrative Fine

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

32. 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

33. 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;

34. 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.

35. 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)

36. 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.

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

38. 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.

39. The Tenant submitted that he was illegally locked out of the rental unit for 150 days.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.
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> Para 24

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> 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.

45. 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.

46. 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.

47. 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

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should not be “rewarded” for their egregious conduct; however, that remains between the Landlord and their insurer.

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

49. 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.

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50. 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.

51. 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 $5,724.40. This amount represents:

    - $63.20 for a rent abatement.
    - $700.00 for the cost of filing the application, locksmith fees and other disbursements.
    - $4,961.20 for General Damages.

2. The Landlord shall pay the Tenant the full amount owing by March 18, 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.

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