



**Order under Section 88.1  
Residential Tenancies Act, 2006**

**Citation:** 21 Balmoral Avenue South GP Inc v King, 2023 ONLTB 23677

**Date:** 2023-03-07

**File Number:** LTB-L-038094-22

**In the matter of:** 302, 21 BALMORAL AVE S  
HAMILTON ON L8M3J7

**Between:** 21 Balmoral Avenue South GP Inc Landlord

**And**

Leigh King Tenant

21 Balmoral Avenue South GP Inc (the 'Landlord') applied for an order requiring Leigh King (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's conduct. This conduct substantially interfered with the Landlord's lawful right, privilege or interest.

This application was heard by videoconference on January 26, 2023.

Only the Landlord's Representative Rachel Gibbons and the Landlord's Agent Howard Dixon were present in the hearing room when the application was heard at 1:37p.m. The Tenant called into the hearing room at 2:30p.m., however at that time the application had already been heard.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for compensation in the application. Therefore, the Tenant shall pay the Landlord \$3,257.00.

Substantial Interference

2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Tenant has constructed an enclosure on their balcony with wood, windows and plastic. A photograph of this enclosure was entered into evidence. The Landlord alleges that the Tenant's refusal to remove this enclosure substantially interferes with the Landlord's lawful

rights privileges and interests and seeks the reasonable out-of-pocket expenses that are the result of the Tenant's conduct.

4. The Landlord alleges that they were required to do maintenance work on all the balconies in the rental property because of the Landlord's mortgage financing commitment and an order from the City of Hamilton that the enclosure is contrary to subsection 8(1) of the *Building Code Act*, 1992 and that the Landlord must remove the enclosure.
5. Howard Dixon ('H.D') is the asset manager for the Landlord. He testified that the Landlord acquired the rental property on May 2, 2021. The Landlord's financing for the property

**File Number: LTB-L-038094-22**

imposed a condition that maintenance work had to be done on the property in accordance with an inspection. That maintenance work involved repairs to the retaining walls and repair of corroded balcony railings. A copy of the conditions imposed by the Landlord's lenders were entered into evidence.

6. H.D testified that the Landlord was unable to do any of the required balcony repairs until the Tenant removed their enclosure because the work requires renting large equipment to reach across all the balconies and it would be costly to acquire that equipment on multiple occasions.
7. On July 21, 2021 a letter was sent to the Tenant indicating that they had 30 days to remove the enclosure on their balcony. The notice also indicates that the reason the enclosure must be removed is because the Landlord is making improvements to the balconies. A copy of this letter was introduced into evidence.
8. H.D testified that the Tenant did not remove the enclosure by the deadline, so the Landlord contacted the City of Hamilton to conduct an inspection of the balcony. On October 1, 2021 the City of Hamilton issued an order to comply to the Landlord that the exterior alterations made to the balcony attached to the Tenant's rental unit were contrary to subsection 8(1) of the *Building Code Act*, 1992 and the enclosure needed to be removed or a permit for the enclosure needed to be obtained.
9. On January 14, 2022 the Tenant was served with an N5 and N6 notice of termination again asking them to remove the balcony enclosure.
10. The balcony enclosure was finally removed on May 5, 2022.
11. I accept the uncontested oral testimony of H.D and documentary evidence filed and find on a balance of probabilities that the Tenant's failure to remove their balcony enclosure substantially interfered with the lawful right, privilege or interest of the Landlord. This is because it interfered with the Landlord's obligations to their mortgage lender and opened the Landlord up to liability when the Tenant did not comply with the work order issued by the City of Hamilton.

Reasonable Costs

12. H.D testified that because the Landlord was unable to comply with the maintenance obligations imposed by their lender the lender required them to get a report from a structural engineer that the balconies did not pose an immediate safety risk and that the work could be delayed. This report cost \$1,017.00 and would not have been required had the Tenant complied with removing the balcony exposure.
13. The Landlord also seeks interest in the amount of \$840.00 on the \$10,000 that was held back by their mortgage lender because of the Landlord's failure to do the required maintenance work as a direct result of the Tenant's failure to remove their balcony enclosure.
14. The Landlord also seeks the \$1,400.00 in escalating costs that was charged to them between when they received the initial quote for the balcony repair work and when they were able to do the work. Copies of those quotes by Basking Ridge Construction Associates Inc were introduced into evidence.

**File Number: LTB-L-038094-22**

15. I find all of the Landlord's out-of-pocket expenses to be reasonable and that they were incurred as a result of the Tenant's substantial interference. As such, the Tenant shall pay the Landlord 3,257.00 to the Landlord.
16. The Landlord incurred costs of \$186 for filing the application and is entitled to reimbursement of those costs.

**It is ordered that:**

1. The Tenant shall pay to the Landlord \$3,257.00, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the substantial interference.
2. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
3. The total amount the Tenant owes the Landlord is \$3,443.00.
4. If the Tenant does not pay the Landlord the full amount owing on or before March 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 1, 2023 at 5.00% annually on the balance outstanding.

**March 7, 2023**

Amanda Kovats

**Date Issued**

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.