

Order under Section 16.1 of the
Statutory Powers Procedure Act
and the **Residential Tenancies Act, 2006**

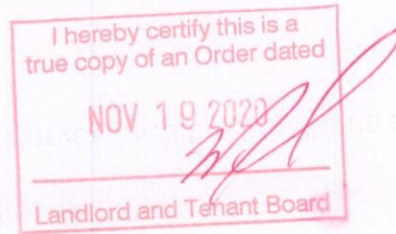
File Number: SWT-42797-20-IN

In the matter of: 248 CAMILLE CRESCENT
WATERLOO ON N2K3B6

Between: Refer to attached Schedule 2

and

Azfar Walli UI Hague
Humaira Sultana
Muhammad Wali UI Haque
Nimra Wali UI Haque
Sidra Wali UI Haque



Tenants

Landlords

INTERIM ORDER

The Tenants applied for an order determining that the Landlords failed to meet the Landlords' maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards. (T6 application)

The Tenants also applied for an order determining that the Landlords have collected or retained money illegally. (T1 application)

This application was heard by video conference on November 2, 2020.

The Tenants, the Tenant's Legal Representative, Shaun Harvey, and the Landlords attended the hearing.

Determinations:

1. As a preliminary issue the spelling of Landlord Sadra Wali was corrected to Sidra Wali.
2. The following issues will be dealt with at the next hearing:
 - a) Whether Azfar Walli UI Hague should be removed as a Landlord and listed as agent for Landlord Nimra Wali UI Haque.
 - b) Whether Humaira Sultana should be removed as a party/Landlord.

- c) Whether Muhammad Wali UI Haque should be removed as a party/Landlord.
3. As this order was not written by the timeline discussed at the hearing, the Tenant's Legal Representative is to submit his written submissions to the Landlords and the Board, with respect to his position on the issues raised in paragraph 2 above, by November 25, 2020.
 4. The Landlords are to submit their written submissions to the Tenant, the Tenant's Legal Representative and the Board, with respect to their position on the issues raised in paragraph 2 above, by December 9, 2020.
 5. The application was adjourned on November 2, 2020, so the following issues could be addressed in this interim order:
 - a) Whether the monetary jurisdiction of the Board is limited per application or per person.
 - b) Whether "General Damages" can be awarded to an occupant of the rental unit.

Whether the monetary jurisdiction of the Board is limited per application or per person

6. The Tenants are asking for the Landlord to be fined the maximum of \$35,000.00 per Tenant, for a total fine of \$70,000.00.
7. Section 207 of the Act says:
 - (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, c. 17, s. 207 (1).
 - (2) **A person** entitled to apply under this Act but whose claim exceeds the Board's monetary jurisdiction may commence a proceeding in any court of competent jurisdiction for an order requiring the payment of that sum and, if such a proceeding is commenced, the court may exercise any powers that the Board could have exercised if the proceeding had been before the Board and within its monetary jurisdiction.

(emphasis added)
8. As the monetary jurisdiction of the Small Claims Court is currently \$35,000.00, this is also the Board's monetary jurisdiction.
9. The Tenant's Legal Representative's position is that the \$35,000.00 maximum under s.207 of the *Residential Tenancies Act, 2006* ("the Act") is per party, it does not apply to the application. The Representative cited three cases to support this position:
 - i) *Kent v. Conquest Vacations Co.*, 2005 CarswellOnt 335, 194 O.A.C. 302, which says at paragraph 7 that the "right to sue for damages for breach of

contract does not arise out of the contract itself, that is, it is not a matter of agreement but is an independent right given by the law."

- ii) *Lock v. Waterloo (Regional Municipality)*, 2011 CarswellOnt 15974, which says at paragraph 17 and 18:

The Courts of Justice Act and its regulations should be interpreted liberally and as a coherent package. In my view, properly interpreted, **the effect of the applicable provisions is that plaintiffs suing together in one action in the Small Claims Court may properly each claim damages up to the maximum monetary jurisdiction of the court.**

Accordingly, both plaintiffs in this case are limited to claiming damages of \$25,000 each rather than \$25,000 in total, exclusive of interest and costs, and their claims are amended accordingly.

(emphasis added)

- iii) *McCrudden v Nead*, 2018 CanLII 123230 (ON SCSM), which cites both of the above cases and awards the plaintiffs each of the Plaintiffs were entitled to judgement for the maximum monetary jurisdiction against the Defendant. The court says:

In *Lock v Waterloo (Regional Municipality)*^[3], Deputy Judge Winny, in an action for damages based on personal injury to the two plaintiffs, found that each of the plaintiffs was entitled to claim damages up to the court's monetary limit as they had two separate causes of action.

In the case of *Kent v. Conquest Vacations Co.*, 2005 CanLII 2321 (ON SCDC)^[6], **the Divisional Court on appeal from the Small Claims Court decided that each of the plaintiffs was entitled to assert his/her cause of action for damages for breach of contract against the defendant in the same action.**

(emphasis added)

10. The Landlords did not have a position as they were not familiar with the caselaw. They submitted that the Board would have the better knowledge to interpret the case law.

Analysis

11. The Act clearly indicates in s.207(1) that the Board has the jurisdiction to award any "person" an amount up to the monetary jurisdiction of the Board.
12. That each "person" is entitled to an award is supported by the caselaw noted above, as well as *Bleeks v Keenan*, 2014 CanLII 90436 (ON SCSM), which also found that each Plaintiff

had a separate claim against the Defendant irrespective of them being jointly named in the matter.

13. Therefore, based on the above analysis I find that the Board has the jurisdiction to award each Tenant properly named in this application an amount that does not exceed \$35,000.00.

Whether "General Damages" can be awarded to an occupant

14. The Tenant's Legal Representative also asked the Board to determine whether the Board can award damages to the Tenants' children, as the Tenants are seeking this in their T6 application.
15. Therefore, the next issue: which "persons" the Board can award damages to.
16. Section 207(2), above, says if the claim exceeds the monetary jurisdiction of the Board a "**person** entitled to apply under this Act" can commence their proceeding in a court of competent jurisdiction. (emphasis added)
17. Subsection (2) explicitly refers only to *someone who is entitled to apply under the Act*. Therefore, a plain reading of the section means that this right does not extend to an occupant who does not have the right to apply under the legislation.
18. The T6 application was filed pursuant to section 29(1) of the Act which states:

29 (1) A tenant or former tenant of a rental unit may apply to the Board for any of the following orders:

1. An order determining that the landlord has breached an obligation under subsection 20 (1) or section 161.

[emphasis added]

19. The T2 application was filed pursuant to section 135(1) of the Act which states:

135 (1) A tenant or former tenant of a rental unit may apply to the Board for an order that the landlord, superintendent or agent of the landlord pay to the tenant any money the person collected or retained in contravention of this Act or the *Tenant Protection Act, 1997*.

[emphasis added]

20. In addition, sections 30 and 31 say the Board can issue remedy under s.29 where a "**tenant or former tenant**" (emphasis added) apply to the Board. Thus, the Board may only award a remedy to a tenant or former tenant, as those are the persons who have a right to file an application under the Act. Hence, only tenants, not occupants, can be awarded General Damages.

21. This interpretation is also supported by Divisional Court and Board jurisprudence.
22. The leading case of *Mejia v. Cargini*, 2007 CanLII 2801 (ON SCDC) (*Mejia*) provides that the Board has jurisdiction to award General Damages pursuant to s.30(1)(9) and s.31(1)(f) of the Act.
23. In *Mejia* the court references *MacKay v. Sanghera*, (2001) CarswellOnt 2349 (Div. Ct.), where the court also held that “to **“make any other order that it considers appropriate” afforded a basis for an award of damages to tenants for consequential damage arising from a landlord’s breach of its obligations under the Act”**.”
24. The important language in *MacKay* is that the award of damages is to the “tenants”, who have the right to file an application at the Board.
25. In TST-05294-19 (Re), 2019 CanLII 134590 (ON LTB), the Board says at paragraph 30 that general damage “awards are **intended to compensate a tenant** for a loss **they have suffered**” (emphasis added)
26. Similarly, in TST-50926-14-AM (Re), 2015 CanLII 9134 (ON LTB), the Board stated at paragraph 91:

Abatement of the rent in part can compensate for some **impact on a tenant** of a landlord’s breach but it is intended to address the difference in value to what is being paid for and what is being received. Where a landlord’s behaviour is such that it causes great distress and upset an award for damages in the nature of pain and suffering is appropriate because abatement is inadequate to compensate for those intangible losses.

(emphasis added)

27. Therefore, if the remedy of abatement is meant to compensate a tenant, or tenants, for the impact on them, then logically the further remedy of general damages can only flow to a tenant or tenants that are impacted by the Landlord’s behaviour.

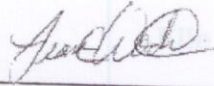
It is ordered that:

1. The Tenants’ application is adjourned to the next available date.
2. The Tenant’s Legal Representative is to submit their written submissions to the Landlord and the Board, with respect to their position on the issues raised in paragraph 2 above, by November 25, 2020.
3. The Landlords are to submit their written submissions to the Tenant, the Tenant’s Legal Representative and the Board, with respect to their position on the issues raised in paragraph 2 above, by December 9, 2020.

4. If the parties do not comply with this Order, the Board may refuse to accept the offending party's submissions.

November 19, 2020
Date Issued

South West-RO
150 Dufferin Avenue, Suite 400, 4th Floor
London ON N6A5N6



Diane Wade
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.