

Part 1: General Information

Requester's Information

☐ Landlord ☒ Tenant ☐ Other Party

First Name

L D

Last Name

B L A K E

Street Address

1 6 5 O N T A R I O S T R E E T

Unit/Apt./Suite

6 0 9

Municipality (city, town, etc.)

S T C A T H A R I N E S

Province

O N

Postal Code

L 2 R 5 K 4

Day Phone Number

(9 0 5) 3 9 7 6 8 4 0

Evening Phone Number

()

Fax Number

()

Unit, Building or Complex Covered by this Request

Street Number

1 6 5

Street Name

O N T A R I O

Street Type (e.g. Street, Avenue, Road)

S T R E E T

Direction (e.g. East)

Unit/Apt./Suite

Municipality (city, town, etc.)

S T C A T H A R I N E S

Province

O N

Postal Code

L 2 R 5 K 4

Other Parties to the Request

☐ Landlord ☒ Tenant ☐ Other Party

First Name

T E N A N T S L I S T E O N O R I G I N A L O R D E R

Last Name

Mailing Address (if different from rental unit address above)

Unit/Apt./Suite

Municipality (city, town, etc.)

Province

Postal Code

Day Phone Number

()

Evening Phone Number

()

Fax Number

()

If there is more than one other party, complete a Schedule of Parties form with their names and addresses (including the unit numbers) and file it with the request.

☒ I am requesting that the Board review the order

S O L - 4 0 2 9 7 - 1 3

issued on

1 0 / 1 0 / 2 0 1 4
dd mm yyyy

, because it contains a serious error.

(You must pay a \$50 fee to make this request.)

The Landlord and Tenant Board collects the personal information requested on this form under section 185 of the *Residential Tenancies Act, 2006*. This information will be used to determine applications under this Act. After an application is filed, all information may become available to the public. Any questions about this collection may be directed to a Customer Service Representative at 416-645-8080 or toll-free at 1-888-332-3234.

50701

Part 2: Reasons for Your Request

Explain in detail what serious error you believe is contained in the order, and how you believe the order should be changed. **If you do not convince the Board that there may be a serious error in the order, your request may be dismissed without holding a hearing.**

Please see attached document and enclosed disc.

Attach additional sheets if necessary

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Request for a Stay

- ☒ I am requesting that the Board stay the order I want reviewed. An order that is stayed cannot be enforced.

Explain why the order should be stayed:

This order potentially assesses and overly high rent increase above guideline
It affects all respondent parties to the original order

Attach additional sheets if necessary

Where the Order is under Appeal

- ☐ An appeal has been filed with the Divisional Court on the order I want reviewed. An order that is appealed is automatically stayed. **The Board cannot consider your review request unless it first decides to lift the stay.**

Explain why the Board should lift the stay resulting from the appeal:

Attach additional sheets if necessary

Part 3: Signature

Signature

☐ Landlord ☐ Tenant ☐ Agent ☐ Other Party

First Name

[illegible]

Last Name

[illegible]

Phone Number

(9 0 5) 3 9 7 6 8 4 0

Signature

Signature _____

Date (dd/mm/yyyy)

October 10 2014

Date (dd/mm/yyyy)
October 10 2014

Agent Information (if applicable)

Name		Company Name (if applicable)	
Mailing Address			Phone Number
Municipality (city, town, etc.)	Province	Postal Code	Fax Number

Important Information

1. You must make a request to review an order within 30 days of the date the order was issued. If you are late, you must also ask for an extension of time in writing.
2. A party may file only one request to review an order. If the same party files another request for review, it may be denied and the filing fee will not be refunded. Similarly, if a party files a request to review an order, they cannot file a request to review the decision or order that results from their initial request.
3. A member will review your request. If the member believes that there is a possibility that a serious error may exist, a hearing will be scheduled. If a hearing is scheduled, the Board will mail a copy of the review request and the Notice of Hearing to all parties.
4. It is an offence under the *Residential Tenancies Act* to file false or misleading information with the Landlord and Tenant Board.
5. You may contact the Landlord and Tenant Board at **416-645-8080** or toll-free at **1-888-332-3234**. Or, you may visit the Board's website at **www.LTB.gov.on.ca** for further information.





Filing Fee

Select how you are paying the filing fee:

☐ **Certified Cheque**

Money orders and certified cheques must be made payable to the "Minister of Finance"

☐ American Express

mm / yy

[illegible]

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Important: The information you fill in above is confidential. It will be used to process your request, but will not be placed on the file.

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50701



L.D. Blake

165 Ontario St. #609
St. Catharines Ontario
Canada L2R 5K4
1-905-397-6840

File # SOL - 40297 - 13
Request for Review (attachment)

October 20, 2014

This is a request to review the Tribunal proceeding SOL-40297-13 which was held in St. Catharines Ontario on September 18th, 2014 and adjudicated by Jonelle Van Delft.

Disc Contents

The disk accompanying this request for review contains the supporting documents for the submission and others provided for easy reference. A copy of this document is at the root level of the disc. The folders are as follows:

- Application ... the Landlord's original application to the Tribunal
- Engineering Report ... the 2008 document submitted by the Applicant.
- Law and Regulation ... The applicable Acts and Regulations
- Links ... Web links to places relevant to this submission.
- Starlight Gallery ... Pictures of Starlight buildings used at the tribunal
- Tribunal Audio ... Two versions of the audio transcript.
- Tribunal Order ... The Board's order for SOL-40297-13.
- Valley View ... before and after pictures of this building.

Parenthetic references to these files are used throughout this paper.

Introduction

This Request for Review is concerned with only 1 of the 9 items on the original application; item 3, the Building Exterior and Balcony Repair completed the 9th of May 2013. This constitutes the bulk of their financial claim and was hotly contested throughout the tribunal because it appeared to be a foregone conclusion we were going to pay, yet we tenants knew full well there was no need to completely remove and replace the balcony guards.

I will show that Ms Van Delft erred in accepting stale evidence. I will demonstrate incomplete debate of all expenses claimed. I will show how tenants were prevented from giving testimony and I will show a strong bias in favour of the landlord.

In my summary I will ask you to review this Tribunal for these errors and to issue a new order setting aside Item 3 (Building Exterior and Balcony Repairs) from the Applicant's claim .

The Story

To appreciate the problems with this proceeding, it is necessary to know some of the back-story that lead to the tribunal itself.

Valley View Apartments is approximately 50 years old. Prior to 2012, the building was finished in white, ceramic glazed brick. The original balcony guards were sheet metal and steel construction standing on poured concrete floor slabs. (Disc: Valley View, Before)

In 2008 Transglobe, our landlord at the time, commissioned a whole building review from Pretium Engineering Limited who created a document summarizing the building's condition. The sections

relevant to the balconies were on pages 9 and 10 of this report. It said the balcony slabs were in "fair to good condition" and the guards were in "fair structural condition". This same document also noted that only 10% of the balcony slabs had concrete related problems. (Disc: Engineering Report)

In 2010 Transglobe REIT commissioned construction workers to refurbish the balconies. The edges of the concrete slabs were cut back with power chisels and reconstructed, the guards were repaired as needed then sanded and painted. This process was quite extensive taking most of the summer. Certainly, at the work's conclusion my balcony was in good condition. The guards were intact, rigid, well attached and nicely painted. The slabs were solid, smooth and the minimal deterioration at their edges had been repaired.

In 2011 Transglobe REIT failed and its shares were purchased by Mr Daniel Drimmer, the original owner of Transglobe, who formed Starlight Investments. (Disc: Links, Our History)

In 2012 Starlight commissioned Triton construction to replace the balconies and paint the exterior of the building. (Disc: Application, Item 3) This work was very extensive. In late August we were notified of the impending work and in early September our balcony doors were sealed shut. Within days all balcony guards were removed from the building. Over the next 4 months the edges of the balcony slabs were cut back, new cement was poured and then they broke for the winter. In March of 2013 to the completion date, new glass and aluminium guards were installed building wide. Simultaneous with the balcony replacement, the building was painted two tone brown with the top three floors being dark brown and the lower floors being cream coloured. (Disc: Valley View, After)

Shortly after the work finished in May of 2013 we began receiving notices of a pending Tribunal concerning a "Rent Increase above Guideline". The hearing was held on September 18th of 2014.

Looking from a more global perspective we discover that Starlight Investments have a large number of buildings in Ontario. At least 17 of them have been decorated since 2011 to look just like ours creating a strong "brand image" for the company. (Disc: Starlight Gallery)

Issues

1) Stale Evidence.

In the Applicant's case Ms Tracy Brisco introduced the 2008 engineering assessment (Disc: Engineering Report) as probative evidence of the need to remove the balconies in 2012.

In questioning both the tenant's agent (Mr C. P. Woodall) and the tenants themselves repeatedly challenged the validity of this document in light of the repairs done in 2010. (Disc: Tribunal Audio at 05:55 to 29:55, 42:41, 53:05) The applicant's witness repeatedly allowed that no further assessments had been done, consistently answering "No" to the question of whether there was a document or testimony mandating additional work after 2010. (Disc: Tribunal Audio at 13:55, 20:35 and 24:00)

I will reiterate the respondents' objection.

First, the document from 2008 did not explicitly state the balcony guards needed to be replaced. It merely suggested modification or replacement as options saying: "Modification or completely replacing the guards could be considered." This is hardly a compelling reason to spend \$663,000, especially when you consider the original balconies were steel and could have been modified into compliance with the building code far more economically.

Second, after the 2010 refurbishment of the balconies, which was extensive, this document can not be considered to reflect the condition of the balcony slabs or guards in 2012. Their condition was substantially altered after the document was issued.

Finally, the applicant makes mention of hiring an engineering firm to organize the 2012 refurbishment project. (Disc: Tribunal Audio at 19:10). It should be noted from this engineer's initial response to their inquiries (Disc: Application page 47, pdf 56) that he was not hired to recommend whether replacement was or was not needed. His role was to manage the already decided replacement of the balconies.

2) Incomplete discussion of sub-item expenses

While the "Building Exterior and Balcony Repair" (Item 3) is claimed as a singularity it actually consists of nine sub-items that are priced out separately. (Disc: Application, pg. 54, pdf 63) Individual debate of each of these sub-items, had it occurred, may well have produced a different outcome.

"Hidden" in this we find an item of \$89,700 for exterior paint on the building. (Disc: Application, pg 55, pdf 64) which was not allowed to be discussed even when the issue was touched by a tenant. (Disc: Tribunal Audio 29:10). Had this item been debated it might well have been deemed cosmetic since the original finish of the building is ceramic glazed brick that should be maintenance free. Some paint loss is already occurring (Disc: Valley View, Paint Loss). The paint job itself very strongly resembles other Starlight buildings (Disc: Starlight Gallery, all) and is likely a part of their corporate branding scheme.

Additional categories for the Railing System and Concrete Repairs were also for large amounts. These should also have been similarly debated on their own and may well have been adjusted according to agreements reached in the proceeding.

3) Blocked tenant testimony

Capital Expenditure work presents a special challenge for the respondents in these matters since in the process of preparing for a major repair the landlord usually ends up destroying any evidence they may have used in their counter-arguments. It literally ends up in the dump.

In this case, by immediately removing the old balcony guards and cutting back the edges of the slabs, the landlord destroyed the very evidence tenants would need to construct a credible rebuttal argument. There was no time to commission engineering grade evidence. Close up photography to show the condition of the balconies was not possible because our balcony doors were sealed shut. It thus becomes impossible for us to offer evidence that rises above the anecdotal level.

The Adjudicating Member is heard many times throughout the audio transcript shutting down tenant participation with retorts such as "Are you an Engineer?" and "What proof do you have". (Disc: Tribunal Audio, 13:10, 13:25, 16:15, 20:00, 22:35, 51:05, 53:05, 56:30, 59:00)

It is particularly interesting to note that no such challenge was ever made to the Applicant's witness who's credentials were accepted without question and, at one point, defended by the adjudicating member herself. (Disc: Tribunal Audio, 54:00)

Had first person testimony from tenants about the condition of the balconies in the days immediately before removal of the guards been allowed, Ms Van Delft would have been repeatedly told there was nothing substantially wrong with the old railings. She would have learned they were rigid, complete, well attached and nicely painted. She would have learned there was no loose concrete on the slabs, no large cracks and the slab edges were solid and clean. She would have learned there was no reason to replace them.

It had only been two years since they were refurbished. The old balconies stood for 45 years without substantial deterioration or breakdown, it seems highly unlikely they would suddenly crumble to complete disrepair in two.

Summation

The Residential Tenancy Act (SO 2006, c.17) provides a very clear test of what is and is not an eligible Capital Expenditure for a Rent Increase Above Guideline, in section 126. The litmus test is in paragraph 8 which specifically excludes work that is not necessary from an Increase Above Guideline application, saying: "A capital expenditure to replace a system or thing is not an eligible capital expenditure for purposes of this section if the system or thing that was replaced did not require major repair or replacement."

As Ms Van Delft stated in the tribunal itself, the goal of section 126 is to allow landlords to recoup some portion of major expenses through limited increases in rent. But, if landlords are not to be allowed to wantonly reach into their tenants wallets, the first burden of proof has to be theirs. They need to credibly demonstrate their project was necessary work.

The landlord's evidence for replacing the balconies does not rise to this level. The only document submitted into evidence in support of the \$663,000 claim was from 2008 and was rendered non-representative by extensive changes made to the balcony slabs and guards in 2010. Moreover; the Applicant admitted to having no documentation after the 2010 repairs.

Absent credible proof of necessity per part 126, the claim for Item #3 should have been disallowed. Ms Van Delft erred in accepting the 2008 document as probative evidence.

Ms Van Delft also erred in procedure by not entertaining debate on the sub-items in item #3. In particular the \$89,700 expense for painting the exterior of the building was questionable. While it is billed with the balcony repairs, painting the exterior of a building is not an inherent part of fixing a balcony and thus should have been debated separately.

Most troubling is the glaring pro-landlord bias evident throughout the proceeding. This was especially obvious when Ms Van Delft repeatedly blocked tenant participation with blunt retorts. It was obvious she viewed the respondent tenants with contempt.

Moreover; in refusing to hear first person testimony from tenants regarding the condition of the old balconies Ms Van Delft so strongly biased the tribunal's outcome in favour of the applicant they likely could have won their case with a blank sheet of paper.

It is particularly interesting to note that many of my neighbours, all parties to the Application, are convinced the outcome was decided long before they gathered in the Tribunal chamber.

In view of these issues I am requesting a thorough review of this proceeding.

I am also seeking a new order with recalculation of rent increases excluding Item 3; the Building Exterior and Balcony Repair.

Yours Truly

L. D. Blake.