



Order under Section 21.2 of the
Statutory Powers Procedure Act
and the **Residential Tenancies Act, 2006**

In the matter of: 165 ONTARIO STREET, ST CATHARINES, ON, L2R5K4

Between: RED STARLIGHT LP Landlord

and

Refer to attached Schedule 2 Tenants

1. RED STARLIGHT LP (the 'Landlord') applied for an order permitting the rent charged to be increased by more than the guideline for one or more of the rental units in the residential complex (refer to attached Schedule 1).
2. This matter was originally heard on September 18, 2014 and an order was issued on October 10, 2014. The Tenants then filed a request to review and ultimately their request was granted and the matter was sent to a hearing *de novo* new hearing on September 17, 2015. A new order was issued on January 22, 2016. On February 22, 2016, the Landlord filed a request to review the new order. Consistent with the Board's Rules of Practice and established procedure, the Landlord was not required to serve a copy of the review request on the other parties.
3. After considering the Landlord's request for review and listening to the recording of the hearing held on September 17, 2015, I determined that I required further written submissions by both parties relating to repair/replacement of the balconies and railings; painting of the interior corridors; and exterior painting of the building. After examining the material submitted at the hearing and after the hearing and again listening to the original hearing recording this decision was made.
4. The main issue was whether or not the Hearing Member, on September 17, 2015, made an error in process or procedure. A hearing member has broad discretion in making decisions as the hearing member is in the best position to determine facts and assess credibility of the parties. That discretion shall not be interfered with lightly as the hearing member was in the best position to assess the credibility of the parties and give the appropriate weight to the evidence before him.
5. The Landlord requested the review because the Landlord alleged that the Hearing Member made serious errors of fact, law, and used an unreasonable exercise of discretion when he improperly excluded repair/replacement of the balconies and railings; painting of the interior corridor; and exterior painting of the building.

6. Section 126 of the *Residential Tenancies Act, 2006*, S.O., 2006, c.17 ("the Act") was considered in its entirety when reviewing the submissions made by both parties.

Repair/Replacement of Balconies/Railings

a) Landlord's Position

7. The Landlord's position is that there were deficiencies in the balconies and railings. These included that there was corrosion, deterioration of the joins between the railing and the balcony concrete slabs and that there were dimensional shortcomings of the railing system relative to the code safety requirements.
8. The Landlord argued that the replacement and repair project was both extraordinary and significant in terms of the scope of work. The Landlord indicates that all balconies were addressed. In the opinion of the Landlord, the expenditure satisfied the eligibility criteria because the work was necessary to address deteriorated physical joins between the railing system and the concrete slab and further to ensure the integrity of the concrete slab to prevent further deterioration. Additionally, the Landlord argues that the new system was also undertaken to satisfy housing standards found in the Building Code Act, 1992, S.O. 1992, c. 23. ("the Building Code") and the Municipal Standards Property bylaw of St. Catharine's.

b) Tenants' Position

9. In the written submissions received by the Tenants they specifically point out that the Landlord failed to lead specific evidence at the September 17, 2015 and, instead, primarily relied on a dated Engineering report from 2008.

c) Hearing Member's Decision

10. The Hearing Member ultimately found that he was not convinced that the balcony rail and concrete repairs that were detailed in the 2008 report were the same that were required when work was completed much later. Additionally, the Hearing Member demonstrated that he had clear understanding and appreciation for both parties' arguments in paragraph 17 of his order. This was clear upon receipt of the written submissions I requested from the parties as they essentially outlined what was consistent in the Hearing Member's decision.
11. In paragraph 20 the Hearing Member quotes from the 2008 Engineering Report and then goes on with his analysis in paragraph 21 and 22 (reproduced below):
20. The engineering report contains the following *Discussion and Recommendations* with respect to the balconies:

The balcony decks were generally in fair to good condition. The cracks appear to be at the reinforcing steel. They appear to be thermally induced. The cracks are not a structural concern at this time. Repairs to the spalled

areas should be completed. The cracks should be routed and sealed in the near future. If left as is, concrete deterioration will continue and extensive repairs will eventually be required. Consideration could be given to waterproofing the balcony slab subsequent to the concrete repairs.

The balcony guards are in fair structural condition. Repairs and refinishing the guards will be required in the near future. The guards do not meet the dimensional requirements of the current Building Code. Complete replacement of the guards is at the discretion of the Owner, but should be considered.

The lower panel on the guards covers the balcony slab edges. This will trap debris and moisture and lead to accelerated deterioration of the guard panel and balcony slab. Modifying or completely replacing the guards could be considered.

21. Although the engineering report finds the covering of the slab edge by the lower panel of the guards will lead to accelerated deterioration of the guard panel and balcony slab, it does not find that major repair or replacement is required. It notes, "*If left as is, concrete deterioration will continue and extensive repairs will eventually be required.*" The evidence before me is that some work was done in 2010. There was no subsequent engineering report with respect to the continued deterioration of the balconies. The only evidence before me in support of the Landlord's position was that of MLD who testified that he witnessed significant concrete cracks and deterioration as well as corrosion of rebar and support posts. He also testified that the support posts of the railing were weakened and the balcony was chipped back 6 to 8 inches to the rebar to remove the posts and the balcony reformed and poured. Some of the balconies had the topside of the slab repaired as well. The number of balconies completed for this was not clarified. The replacement of the guards appears to have been the main impetus for the balcony work with the spalling of the topside of the slabs a secondary consideration. Indeed, MLD testified that his company recommended replacing the balcony guards because their dimensions did not meet the current building code and that it was therefore a good time to do slab work.

22. Given the lack of a subsequent engineering report, the evidence of MLD with respect to the reason for the recommendation, and the fact that there is no requirement that the balcony guards be retrofitted to meet a change in the Building Code, I find that this capital expenditure is not eligible. I am cognizant of the argument that the balcony repair was necessary to protect the physical integrity of the residential complex or parts of it by removing the guards and replacing them with ones that do not cover the balcony slab edge and thereby stop the accelerated deterioration of the slab. However, even if that were the case, the Landlord has not proven that the balconies or the guards required major repair or replacement. The 2008 engineering report does not support such a finding. The testimony of MLD does not support such a finding either as he identifies the dimensions of the guards as the reason for the recommendation that they be replaced. Accordingly, I am not satisfied that the balconies or the rail guards required major repair or replacement.

12. The test on a review is not whether or not the Reviewing Member would have made the same findings of fact. It is whether or not the findings that were made by the Hearing Member were within the range of reasonable. While a

Hearing Member has broad discretion in the issuance of an order it is important that the order, and the reasons for the findings, be clear and transparent.

13. In particular with respect to the balcony repairs, a hotly contested issue at the hearing de novo, MLD actually gave three reasons as to why his firm recommended the balcony replacement. He indicated clearly in his testimony that there was a safety concern as cement was starting to fall from the balconies; there was an additional safety concern as the railings no longer were to code and finally that there was corrosion of anchors.
14. These are important considerations as they include safety concerns. It is not fully clear from the Hearing Member's reasons whether he turned his mind to all three of the reasons that MLD stated. It may be that ultimately the Landlord is still not successful, but, the full breadth of their position should be clearly analyzed.
15. The Landlord's review request did take issue with other findings, namely, various painting expenditures that were denied. It must be remembered that the on review, the purpose is for the reviewing member to determine if the Hearing Member made findings that were in the reasonable range. I have decided that since it has been decided that the request must be heard in greater detail that the Landlord may make arguments as to how these findings were not in the reasonable range; and likewise the Tenants may make arguments as to how they were in the reasonable range.
16. Ordinarily, I would have simply requested the parties to complete a review hearing in writing, being mindful of the time that the parties have already spent on this case. However, the written submissions that I already received were not as specific and detailed as required which led to further time delay as all of the record needed to be reviewed an additional time.
17. Therefore, either a hearing by telephone or an in-person hearing is required. The parties can submit their preferences to the Board no later than February 15, 2017, the Board will then make a determination. Notices of hearing will follow.

January 20, 2017
Date Issued


Elizabeth Usprich
Vice Chair SW-RO, Landlord and Tenant Board

Southern-RO
6th Floor, 119 King Street West
Hamilton, ON, L8P4Y7 Fax No: 905 - 521 -- 7870

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

165 ONTARIO STREET, ST CATHARINES, ON, L2R5K4

115	414	709
116	416	711
117	417	712
118	418	714
119	420	715
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305	604	819
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317	615	908
320	616	909
401	617	910
402	618	911
403	619	912
404	620	914
405	701	915
406	702	916
407	703	918
409	705	919
410	707	920
412	708	

Schedule 2 - Tenants who are Affected by this Order: File Number: SOL-40297-13-RV2-IN2

ACHEAMPONG, VIVIAN
ADAM, SMELSER
AL HUSAINI, FAROOG
AL SHAIBANI, MOHAMMED
AMIR, ZAINAB MOHAMED
ANAM, FAIZA
ANDREW, NAGY
ANGLE, VIRGINIA
ANIOL, ANGELA
ARMSTRONG, JESSICA
BARNHARDT, BRENT
BAUMBARTNER, ANDREW
BENNICI, JESSE
BERING, JACOLYNNE
BERNICKY, BARBARA
BLACKMORE, TREVOR
BLAKE, LD
BOESE, JAMES
BRANSTON, COLLIN
BRODGEN, NANCY
BROWN, MARK
BROWN, MICHELE
BROWN, ROSEMARY
BROWN, TABITHA
BURKE, JESSIE
BURNS, ASHLEY
CAIN, MARGARET
CAMPBELL, BARBARA
CAPASSO, JOSEPH
CECCHI, JORDAN MICHAEL
COOK, DEBORAH
CORBI, AMANDA
COURCHESNE, NANCY
COUSINS, JANE
CRUISE, HOLLY
CSUKA, WILLIAM
CUMMING, STEVEN
DERTINGER, NICHOLAS
DIEUZ, CAROL
DRESSEL, CAROLYN ANN
DUGUAY, ADAM
DUVAL, CATHIE
DZUIBANOWSKI, MAURICE

EATON, CLAYTON
EDELMAN, MARIA
ELZOWAWI, ALHUSSEIN
FEATHER, JANICE
FISHER, KARLI
FITZGIBBON, MARY JO
FLEMING, W M MACRIS
FORTIN, DONNA
FRANCIS, ASHTONNE GORING
FREDERICK, ALEX
FREEMAN, SHAWN
GALLOWAY, SUSAN
GARCIA, MAYELAYNE
GORING, KERRY
GREEN, CHARLES
HABTOM, FEVEN
HEBERT, BERTRAND
HERSTEK, BENNY
HIGNETT, DAVIS
HOUDE, JOANNE
HOUSING, NIAGARA REGIONAL
HURSON, DEBORAH
JACQUES, KENNETH
JASINSKI, STEVEN
JOHNSON, BRANDEN
JOHNSTON, LYNDIA
JONES, JUSTYN
KARLOVA, ANNA
KOSTROMA, VLADIMIR
KRAVCIK, STEPHANIE
KRIKUN, DARIA
LAI, STANFORD
LANCASTER, TIM
LARSEN, SIMONE
LEE, STEVEN
LI, MENGXUE
LIN, LIANG
MACDONALD, JANET
MADOLE, DON
MAHLE, LAURIE
MALANGIS, JOCELYN
MASON, LINDA
MCCOURT, KENDRA

Schedule 2 - Tenants who are Affected by this Order: File Number: SOL-40297-13-RV2-IN2

MCFADDEN, SEAN
MCLAUGHLIN, DIANNE
MCNABB, RANDY
MELLEN, KENNETH
MIAN, JAVID
MOATE, JAMES
MULVIHILL, ERIN
MURPHY, KARI
MURPHY, MAXINE
NEIRA, MERCEDES
NESBITT, LAURA
NICKERSON, RUBY
PENNER, MARY
PETCH, DEBORAH
PETTIPAS, KATHY LYNN
PIETIKAINEN, ERIKKI
PRENTICE, ROB
RAGOONATH, FATIMA ALYSSA
REDDICK, RONNIE
REID, DANIELLE
REID, DARREN
ROMEIKO, DEBBIE
RYAN, SYLVIA
SAAD, MOHAMED ABUEL
SALIU, MYSLIM
SAWATSKY, MARLENE
SEGUIN, ROANNE
SMITH, MARTIN
SPECIAINY, GERALD
STAVROU, PETER
SWEENEY, JOHN
TAYLOR, BETTY
THOMPSON, DIANE
THOMPSON, THEODORE
TRIPP, DIANE
VANDERVAART, JULIE
VILBRUN, STALL
VON BORMANN, NIKI
WEISS, ROBIN
WITTIW, STELLA
WOLBERT, KEVIN
XHEMALI, BEXHET
YI, ZHAN

YOUNG, RAMONA
YU, FANG
ZHU, HAI

