

File Number: SOL-40297-13-RV2-IN



Order under Section 126  
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

SOL-402970-13-RV2-IN issued June 28, 2016 had a date missing in the background of the proceedings. That has been corrected and bolded below. No other changes have been made. The Landlord should only serve the amended order to the Tenants.

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).

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.

Preliminary Matters

- 1) Having considered the Landlord's request for review and listened to the recording of the hearing held on September 17, 2015, I have determined that I require further written submissions by both parties relating to the issues indicated below.

**It is ordered that:**

- 1) For each of the three items listed below the Landlord and the Tenants shall provide the Board with written submissions addressing whether this item was an eligible capital expenditure because it was necessary (not optional) in order to restore and/or maintain the physical integrity of the building:
  - a. repair/replacement of the balconies and railings;
  - b. painting of the interior corridors; and
  - c. exterior painting of the building

I certify this is a true copy of the order

*Brandon O'Neill*

Staff Member

JUN 29 2016

Dated: \_\_\_\_\_  
Landlord and Tenant Board

File Number: SOL-40297-13-RV2-IN

- 2) The parties shall not lead any new evidence in their submissions. The parties may only refer to evidence already entered as Exhibits at the hearing held on September 17, 2015 before Member Guzina, or oral testimony that was provided during that hearing. The parties may obtain a copy of the hearing recording by contacting the Board.
- 3) In preparing their written submissions, the parties should have regard to the following provisions in the *Residential Tenancies Act, 2006*:

126(7) Subject to subsections (8) and (9), a capital expenditure is an eligible capital expenditure for the purposes of this section if,

- (a) it is necessary to protect or restore the physical integrity of the residential complex or part of it;
- (b) it is necessary to comply with subsection 20 (1) or clauses 161 (a) to (e);
- (c) it is necessary to maintain the provision of a plumbing, heating, mechanical, electrical, ventilation or air conditioning system;
- (d) it provides access for persons with disabilities;
- (e) it promotes energy or water conservation; or
- (f) it maintains or improves the security of the residential complex or part of it.

(8) A capital expenditure to replace a system or thing is not an eligible capital expenditure for the purposes of this section if the system or thing that was replaced did not require major repair or replacement, unless the replacement of the system or thing promotes,

- (a) access for persons with disabilities;
- (b) energy or water conservation; or
- (c) security of the residential complex or part of it.

- 4) The parties should also have regard to the definition of "capital expenditure" contained in subsection 18(1) of O. Reg. 516/06:

"capital expenditure" means an expenditure for an extraordinary or significant renovation, repair, replacement or new addition, the expected benefit of which extends for at least five years including,

- (a) an expenditure with respect to a leased asset if the lease qualifies as determined under subsection (2), and
- (b) an expenditure that the landlord is required to pay on work undertaken by a municipality, local board or public utility, other than work undertaken because of the landlord's failure to do it,

but does not include,

- (c) routine or ordinary work undertaken on a regular basis or undertaken to maintain a capital asset in its operating state, such as cleaning and janitorial services, elevator servicing, general building maintenance, grounds-keeping and appliance repairs, or
- (d) work that is substantially cosmetic in nature or is designed to enhance the level of prestige or luxury offered by a unit or residential complex;

**File Number: SOL-40297-13-RV2-IN**

“incurred” means, in relation to a capital expenditure,

- (a) the payment in full of the amount of the capital expenditure, other than a holdback withheld under the *Construction Lien Act*,
- (b) if the expenditure relates to a lease, the assumption, when the lease commences, of the obligations under it, or
- (c) if the expenditure relates to work undertaken by a municipality, local board or public utility, when the work is completed;

“physical integrity” means the integrity of all parts of a structure, including the foundation, that support loads or that provide a weather envelope and includes, without restricting the generality of the foregoing, the integrity of,

- (a) the roof, exterior walls, exterior doors and exterior windows,
- (b) elements contiguous with the structure that contribute to the weather envelope of the structure, and
- (c) columns, walls and floors that support loads.

- 5) Any submissions that do not address the issues indicated above will not be considered.
- 6) Any submissions that attempt to introduce new evidence not led at the hearing on September 17, 2015 before Member Guzina will not be considered.
- 7) The Landlord shall submit all of their submissions to each of the Tenants and to the Board on or before July 20, 2016.
- 8) The Tenants shall submit all of their submissions to the Landlord and to the Board on or before August 17, 2016.
- 9) Following the receipt of all submissions I will determine whether or not an oral or electronic review hearing is necessary to complete my consideration of the Landlord’s review request.
- 10) The Landlord is ordered to serve each of the named Tenants a copy of this order together with the Landlord’s review request by no later than July 8, 2016. The Landlord is not required to serve copies of the exhibits that accompanied the review request, but these shall be provided by the Landlord to any Tenant who requests a copy.

**June 29, 2016**

Amended Date Issued

Original date issued: June 28, 2016

**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.



**Elizabeth Usprich**

Vice Chair SW-RO, Landlord and Tenant Board

**Schedule 1 - Units affected by this Order:****File Number: SOL-40297-13**

165 ONTARIO STREET, ST CATHARINES, ON, L2R5K4

115	414	709
116	416	711
117	417	712
118	418	714
119	420	715
120	502	716
201	503	717
205	504	718
207	506	719
208	507	801
210	508	802
211	509	803
212	510	804
214	511	806
215	512	807
216	514	809
217	516	810
218	517	811
219	519	814
220	520	815
302	601	816
303	602	817
304	603	818
305	604	819
306	605	820
307	606	901
308	607	902
309	608	903
311	609	904
312	610	905
314	611	906
315	612	907
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**

Tenant names hidden to protect privacy

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

Tenant names hidden to protect privacy