



Order under Section 78(11) Residential Tenancies Act, 2006

Citation: REX ENTERPRISES v Spring, 2023 ONLTB 51698

Date: 2023-07-20

File Number: LTB-L-001708-23-SA

In the matter of: A, 992 EGLINTON AVE W
TORONTO ON M6C2C5

Between: REX ENTERPRISES

And

Martin Spring

I hereby certify this is a
true copy of an Order dated
JUL 20, 2023
Landlord and Tenant Board

Landlord

Tenant

REX ENTERPRISES (the 'Landlord') applied for an order to terminate the tenancy and evict Martin Spring (the 'Tenant') because the Tenant failed to meet a condition specified in the order issued by the LTB on January 4, 2023 with respect to application LTB-L-076347-23.

The Landlord's application was resolved by order LTB-L-001708-23 issued on March 22, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-001708-23.

This motion was heard by videoconference on May 4, 2023.

The Tenant, the Tenant's legal representative, Dan McIntyre, the Landlord, Brandon Brophy, and the Landlord's legal representative, Teri Landriault, attended the hearing.

Determinations:

1. The Tenant breached 2 conditions specified in the order issued by the Board on January 4, 2023, with respect to application LTB-L-076347-23.
2. Specifically, I find on a balance of probabilities that the Tenant tampered with the smoke detector inside the unit on January 19, 2023 and the Tenant permitted a visitor to smoke in the common area hallway of the building in which the unit is located on January 5, 2023 at 6:08pm when their visitor enters through the front door with a lit tobacco product, and 9:18pm when another of the Tenant's visitors exit the front door of the building with lit tobacco products in their mouth.
3. The Tenant claimed that the roof repairs caused the smoke detector to become loose and dislodge from the ceiling and to hang from its wires. The Tenant relied on photographic evidence showing the cracks on the wall by the ceiling in the bathroom of the rental unit.

The Tenant testified that these cracks showed up as a result of the roof repair. However, the Landlord provided a photograph of the same cracks that were visible in 2019. Therefore, I find it more likely than not that the Tenant tampered with the smoke detector, and it was not a result of the roof repair.

4. While the issues surrounding the Tenant and their visitors smoking outside the rental unit in front of the building in a non-smoking area, may not be within the jurisdiction of the Board to consider, the fact that the order states that the Tenant and their guests are not to smoke in this area and there was evidence provided that both the Tenant and their visitors continue to smoke in this area is something additional to consider regarding whether or not it would be unfair to set aside the Landlord's eviction order.
5. Additionally, on January 17, 2023 at 4:14pm a visitor of the Tenant is seen on video inside the hallway to the back door with a lit tobacco product. Also, January 18, 2023 at 9:18pm a visitor of the Tenant is seen in the hallway to open the back door to let the Tenant inside and this visitor has a lit tobacco product in their hand in the hallway.
6. On the Tenant's motion to set aside the order they claim that the Tenant has no such knowledge of their guests smoking in common areas and that he does not permit his guests to do so. Clearly this is not the case when on January 18th the Tenant is seen with his guest in the common area and their guest has a lit tobacco product.
7. In the Tenant's own testimony he suggests that a person does not have to be smoking tobacco products to be in contravention of the *Smoke-Free Ontario Act, 2017 (Act)*, they only have to have the product lit. Section 12 of this Act prohibits smoke or held lit tobacco products including held or lit cannabis and electronic cigarettes in an enclosed public space. Additionally, subsection 12(2) 5 of this Act prohibits holding or smoking lit tobacco in any indoor common areas in a condominium, apartment building or university or college residence, including, without being limited to elevators, hallways, parking garages, party or entertainment rooms, laundry facilities, lobbies and exercise areas.
8. It would appear as though the Tenants ability to deter his guests from having lit tobacco products in the common areas of the complex is, let's say, "Up in Smoke".
9. For the reasons above, I find that it would be unfair to set aside the order issued March 22, 2023.
10. The ongoing violations by the Tenant permitting their visitors/guests continue to cause prejudice to the Landlord. This has been an issue for several years and there is no evidence put forward that the Tenants efforts on deterring his guests is going to be a functional future reality. For this reason, the Tenant's motion to set aside the order is denied.
11. The Tenant submitted that they would need about 4 month's to vacate the rental unit if the motion was not granted. However, since it is more likely than not that the Tenant had tampered with the smoke detector knowing that his rental unit is being used as an area for his cigar shop patrons to smoke inside, in my view a further delay would put the Landlord at an unduly prejudicial disadvantage and may provide safety concerns for the Landlords property in the instance there were a fire in the unit.

It is ordered that:

1. The motion to set aside Order LTB-L-001708-23 issued on March 22, 2023 is denied.
2. The stay of order LTB-L-001708-23 is lifted immediately.

July 20, 2023
Date Issued



Terri van Huisstede
Member, Landlord and Tenant Board

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