



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

Citation: Lady Brantford Ltd. v Hill, 2024 ONLTB 20863

Date: 2024-03-27

File Number: LTB-L-092069-23-SA

In the matter of: 109, 19 IROQUOIS ST
BRANTFORD ON N3S6N8

Between: Lady Brantford Ltd.

And

Justin Hill

I hereby certify this is a
true copy of an Order dated
MAR 27, 2024
Landlord and Tenant Board

Landlord

Tenant

Lady Brantford Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Justin Hill (the 'Tenant') and for an order to have the Tenant pay compensation for damage they owe because the Tenant did not meet a condition specified in the order issued by the LTB on February 28, 2023 with respect to application LTB-L-019904-22.

The Landlord's application was resolved by order LTB-L-092069-23, issued on January 3, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-092069-23.

This motion was heard by videoconference on February 29, 2024. The Landlord's agent Dave Malcolm and legal representative Jackie Struthers, the Tenant and the Tenant's legal representative Yoel Yinger attended the hearing.

Determinations:

1. The prior order issued on February 28, 2023 was a consent order based on a L2 application to terminate the tenancy for substantial interference with reasonable enjoyment, lawful rights, privileges and/or interests and for willful and/or negligent damages to the rental unit.
2. The prior order required the Tenant to comply with several conditions. In particular the prior order required the Tenant to pay to the Landlord \$3,678.38 for the costs of damages by way of a repayment plan and to maintain a ordinary state of cleanliness in the rental unit.
3. The ex-parte order issued on January 3, 2024 terminates the tenancy because the Tenant failed to pay to the Landlord \$200.00 towards the damages on or before November 1, 2023.

4. The Tenant does not dispute breaching the prior order and stated that the breach was due to some confusion with the funds in his account which affected his pre-authorized payment to the Landlord. The parties agree that the Tenant has subsequently paid the required amount owing on November 21, 2023.
5. The parties agreed that since the issuance of the ex-parte order on January 3, 2024, the Tenant has paid the required payments for the months of December 2023 and January 2024, but has failed to pay the required payment for February 2024.
6. The Landlord also presented evidence at the hearing that the Tenant has also failed to comply with other terms of the original order issued on February 28, 2023 with respect to keeping the rental unit in a ordinary state of cleanliness. The Landlord submitted into evidence photographs taken from a recent inspection of the rental unit on February 22, 2024 (LL exhibit). The photos indicate that the rental unit is not in an ordinary state of cleanliness and confirm that excess garbage and/or clutter is being stored in the rental unit.
7. The Tenant did not dispute that the rental unit had fallen into a state of unordinary cleanliness and that he was in breach of this condition in the prior order. The Tenant testified that he suffers from a developmental disability which impeded his ability to comply with the prior order. The Tenant stated that he has actively been working with a support service (Community Living) and that on or about the end of December 2023 his designated case worker took a leave of absence which left him without any support.
8. The Tenant testified that since the date of the prior inspection (February 22, 2024) he has been assigned a new case worker who has offered to assist in cleaning the rental unit and/or reducing the clutter and further stated that he has since signed up for direct deposit from ODSP to assist with paying both the monthly rent and/or ordered damages. The Tenant stated that due to a delay in processing his requests, the damages and rent payments for February 2024 will be paid late, but submitted into evidence an email from his ODSP caseworker confirming that payment was mailed to the Landlord on February 29, 2024 (TT exhibit).
9. The Landlord opposed the Tenants motion and argued that the stay should be lifted as the Tenant has breach more than one term of the prior order. The Landlord further stated that due to the current living conditions in the rental unit, the Landlord is unable to commence the intended repairs.
10. Section 78(11)(b) of the Act states that the Board may set aside an ex-parte order if satisfied that having regard to all of the circumstances that it would not be unfair to do so. This applies even if the Board is satisfied that there was a breach of the prior order. Further, section 78(12) of the Act states that the Board may amend the previous settlement or terms in the prior order if satisfied that it is appropriate to do so when granting relief under section 78(11)(b).
11. Based on the evidence and submissions before me, I find that it would not be unfair to set aside the ex-parte order issued on January 3, 2024. Although there is no dispute that the Tenant breached the prior order with respect to the November 1, 2023 payment ordered

for damages, the Tenant provided a reasonable explanation for this breach and the Landlord agreed that the Tenant rectified this breach within 3 weeks.

12. Further, although the Tenant may have committed subsequent breaches of the prior order with respect to the February 2024 payment and the term respecting the cleanliness of the rental unit, the Tenant has also provided a reasonable explanation for the breach and the evidence before the Board suggests that the Tenant has a reasonable plan to address and/or rectify the concerns.
13. As such, the ex-parte order issued on January 3, 2024 will be set aside. The terms with respect to the repayment schedule for the damages and the cleanliness of the rental unit will be amended to allow the Tenant an opportunity to preserve his tenancy and get caught up on the prior repayment plan.

It is ordered that:

1. The motion to set aside Order LTB-L-092069-23, issued on January 3, 2024 is granted. The order is set aside and cannot be enforced.
2. The previous order issued on February 28, 2023 with respect to LTB-L-019904-22 is amended as follows:
 - a) The Tenant shall pay to the Landlord \$1,478.38, which represents the costs of damages currently owing from the prior order and to February 29, 2024 in accordance with the following schedule:
 - \$200.00 on or before the first day of each month commencing April 1, 2024 and continuing through to October 1, 2024
 - \$78.38 on or before November 1, 2024.
 - b) On or before April 30, 2024, the Tenant shall bring the rental unit to an ordinary state of cleanliness, including but not limited to ensuring that the rental unit is free of excessive clutter, garbage and/or pet feces.
 - c) If the Tenant complies with the term in subparagraph b) the Tenant shall ensure that the rental unit remains in an ordinary state of cleanliness for the period of May 1, 2024 to April 30, 2025.
3. If the Tenant fails to comply with any one of the terms in accordance with paragraph 2 of this this order, the outstanding balance of any damage and costs to be paid by the Tenant to the Landlord pursuant to paragraph 2 a) of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant.

March 27, 2024
Date Issued



Fabio Quattrocchi
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.