



Order under Section 78(6) Residential Tenancies Act, 2006

Citation: Strucke v Sinclair, 2024 ONLTB 60673

Date: 2024-08-26

File Number: LTB-L-047421-24

In the matter of: A, 115 Yonge St. South
Walkerton ON N0G2V0

Between: Sharon Strucke Landlord
Kenneth Strucke

And

Neil Sinclair Tenant

Sharon Strucke, Kenneth Strucke and Alanis Paralegal (the 'Landlord') applied for an order to terminate the tenancy and evict Neil Sinclair (the 'Tenant') because the Tenant failed to meet a condition specified in the order issued by the Board on November 15, 2023 with respect to application LTB-L-056445-22.

A hearing was held by videoconference on August 7, 2024 to consider this application.

The Landlord, S. Strucke and the Tenant attended the hearing.

Determinations:

1. The order provides that the Landlord can apply to the LTB under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenant to terminate the tenancy and evict the Tenant if the Tenant does not meet certain conditions in the order. The Landlord's application was directed to hearing for additional clarifying information/evidence.
2. The Landlord's application is based on a bald assertion that the Tenant breached the condition of the consent order issued on November 15, 2023 by smoking cigarettes/marijuana again in his rental unit. I find there was not enough evidence to establish the Tenant substantially interfered with another tenant's reasonable enjoyment of their rental unit or complex or that the Tenant substantially interfered with the Landlord's lawful right, privilege or interest because of the following:
3. The L4 application and declaration that accompanied the L4 application is void of any dates or details of any specific incident of the Tenant smoking in the unit. The Landlord did not observe the Tenant smoking in the rental unit nor did the Landlord summon any witnesses to corroborate the Landlord's bald assertion. The Landlord has not provided any written complaints from other tenants about smoke odor emanating into their unit or

of reports of the Tenant smoking in his unit. In his own defense the Tenant denied smoking in the unit since consent order was issued on November 15, 2023.

4. The Landlord wanted to rely on photographs taken on July 27, 2024 which I did not view or consider because first, the Landlord failed to share the photographs with the Tenant in advance of the hearing as required by the Board's Disclosure Rules and second, they would be irrelevant given they were taken well after the application was filed on June 18, 2024 which is the relevant time period in question.

It is ordered that:

1. The L4 application is dismissed.
2. Order LTB-L-056445-22 issued on November 15, 2023, remains in effect.

August 26, 2024
Date Issued

Sandra Macchione
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

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