



## **Order under Section 77(8) Residential Tenancies Act, 2006**

**Citation:** Bruce County Housing Corporation v Sherwood, 2023 ONLTB 81785

**Date:** 2023-12-21 **File Number:**  
LTB-L-058487-23-SA

**In the matter of:** 202, 529 GARY ST  
KINCARDINE ON N2Z0G8

**Between:** Bruce County Housing Corporation Landlord

**And**

Samantha Sherwood Tenant

Bruce County Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Samantha Sherwood (the 'Tenant') and for an order to have the Tenant pay compensation for damage they owe because the Tenant failed to meet a condition specified in the order issued by the Board on September 29, 2022 with respect to application LTB-L-03138922 / LTB-L-017738-22.

The Landlord's application was resolved by order LTB-L-058487-23, issued on August 23, 2022. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-058487-23.

The motion was heard by videoconference on December 11, 2023. The Landlord's representative Leslie Summers, and ttrb Angela Yenssen, attended the hearing. Also in attendance was Sherri Grandine, an RPN with a community treatment team, who works with the Tenant and who testified at the hearing.

### **Determinations:**

1. The Tenant has been a tenant with this landlord since 2017. The Tenant suffers from schizophrenia, an acquired brain injury, memory issues and substance use disorder as described by the doctor's letters entered as evidence.
2. At a hearing on September 26, 2022, the Tenant consented to an order prohibiting her from smoking in the residential complex including her rental unit.

3. Since that time fifteen months ago, the Landlord's representative has confirmed four incidents where the Tenant was smoking in her unit. The Landlord's representative has also communicated with the Tenant about not smoking in the unit before applying to the Board for an eviction order. The Landlord's representative submits that they believe there were more incidents but that they could not be confirmed.
4. The Tenant is on medication for her mental health issues. The Tenant does smoke when she becomes anxious but forgets that she is not permitted to smoke in her unit. The evidence and testimony show that the medication has been adjusted which may have cause issues with controlling these issues. The Tenant was hospitalized in September for two months, her medication has been adjusted and the Tenant has been stable since returning home. She has not smoked in the unit since returning.
5. Ms. Grandine has been meeting with the Tenant weekly. A full-time replacement worker will be assigned who will be able to spend more time with the Tenant.
6. The Landlord points to the fact that there was a mattress fire on June 2, 2022, in the Tenants unit, due to smoking when the Tenant fell asleep in bed. The Landlord is concerned about the safety of other tenants.
7. Considering the fact that this incident took place 17 months ago and that the smoking in the unit has since been limited, although there is a chance that this may happen again, I find this is not a reason to evict the Tenant at this time. The Tenant is not smoking in the unit, is on new medication, and is working with increased support services.
8. Based on the evidence before me it is protected under the Human Rights Code. As such the Landlord has a duty to accommodate to the point of undue hardship. I am not satisfied that point has been reached.
9. The Tenant agreed to permit the Landlord to perform monthly inspections of her rental unit.
10. After considering all of the circumstances, I find that it would not be unfair to set aside order LTB-L-058487-23.

**It is ordered that:**

1. The motion to set aside Order LTB-L-058487-23, issued on August 23, 2023, is granted.
2. Order LTB-L-058487-23, issued on August 23, 2023, is set aside and cannot be enforced.
3. Order LTB-L-031389-22 / LTB-L-017738-22 remains in effect.
4. The Landlord may perform monthly inspections to ensure the Tenant is not smoking in the rental unit.

**December 21, 2023**

**Date Issued**

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Greg Joy

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.