



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

Citation: Medallion Corporation v Usher, 2023 ONLTB 74669

Date: 2023-11-20 **File Number:**
LTB-L-008472-23-SA

In the matter of: 318, 280 Wentworth Street West
Oshawa Ontario L1J1N2

Between: Medallion Corporation Landlord

And

Sandra Usher Tenant

Medallion Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Sandra Usher (the 'Tenant' because the Tenant failed to meet a condition specified in a consent order issued by the Board on January 17, 2023 with respect to applications LTB-L-044370-22 and LTB-L-060744-22.

The Landlord's application was resolved by order LTB-L-008472-23, issued on March 30, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-008472-23.

The motion was heard by videoconference on May 1, 2023 to consider this application.

The Landlord's Legal Representative Samuel M Korman, the Landlord's instructing client Joy Taralba, the Landlord's witness Yvonne Pattison, the Tenants support person Anne Usher and the Tenant attended the hearing.

Determinations:

1. After considering all of the circumstances, I find that it would not be unfair to set aside order LTB-L-008472-23.

2. The 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 consent order issued on January 17, 2023.
3. The Landlord filed their L4 application on February 14, 2023, alleging that the Tenant breached paragraph #2 of the order where it states:

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The Tenant agrees not to engage in acts that would substantially interfere with the reasonable enjoyment of other tenants or the Landlord. Examples could include- excessive noise emanating from the rental unit, altercations while on the property of the residential complex.

The breach

4. It is not contested that the Tenant did not meet the condition specified in the order by playing loud music on January 27, 2023.
5. The application was filed within 30 days of the breach.

Set Aside Considerations

6. Pursuant to subsection 78(11)(b) of the Act, the Board has discretion to set aside an eviction order even where the tenant has breached an order if having regard to all the circumstances, it would not be unfair to set aside the order.
7. The Tenant submitted that she didn't receive the Board order dated January 17, 2023. There is no dispute that security attended at the rental unit on January 27, 2023 and that there was music being played as it was a Friday evening. Once asked to decrease the volume at approximately 11:00 p.m. that this request was complied with.
8. The Tenant stated that she feels like she is walking on eggshells since the order was issued, not having any visitors and worried all the time as she is loud talker. Since her daughter has come to live with her two years ago to care for her post stroke, complaints are arising from either playing music or volume emanating from her television. Since becoming aware that the bedrooms of the tenants impacted by the noise are below her living room, extra care will be taken to ensure that the level of noise is reduced. Based on her commitment to future compliance, she asks that the order be set aside.
9. The Landlord's legal representative submitted that the incident report clearly documents that there was a breach of the prior order on January 27, 2023 as per the incident report

which document the incident start time as 10:57 p.m. and end time as 11:16 p.m. That building security attended at the Tenant's unit at 11:04 p.m. and that music could be heard as he approached the door. On arrival, the Tenant or her occupant opened the door and claimed that the noise was not that loud however complied with the turning down the volume of the playing music.

10. The Landlord's representative submitted that the Tenant has breached the prior order and that since the L4 application was filed four additional noise complaints have arisen on March 4, 6, 14 and 15. The Landlord requested that the motion be denied and the stay lifted.

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Discretionary Relief Under Subsection 78(11)(b)

11. I have carefully considered all of the submissions and evidence presented. Subsection 78(11)(b) provides discretion to set aside an order where to do so would not be unfair.
12. The Tenant has testified that she is seeking the opportunity to preserve her housing, that it would be difficult to find alternative housing based on her limited Canada Pension Plan (CPP) disability pension and total household income of \$2,400.00. If evicted, based on current housing pricing she and her daughter would find themselves homeless. Lastly, that headset usage has been put into place to mitigate noise, and that as of mid March there have not been any additional complaints arising.
13. Given the Act's remedial purpose, I find that it would not be unfair to give the Tenant a final opportunity to preserve her tenancy with the Landlord, taking into account her long term tenancy of 7 years, and housing insecurity she and her daughter would face if evicted. I believe that given their newfound understanding that bedrooms are located below their living room and by using earbuds or headsets, they may enjoy their television watching and music playing without disturbing others.
14. For these reasons, I am giving the Tenant an opportunity to continue her tenancy. The Tenant's motion is therefore granted.

It is ordered that:

1. Order LTB-L-008472-23, issued on March 30, 2023, is cancelled.

2. Order LTB-L-044370-22 and LTB-L-060744-22, issued on January 17, 2023, is varied as follows: The Tenant shall keep the volume of her t.v. and music to such level that it can not be heard by others, alternatively continue to use earbuds or headsets while enjoying playing music.
3. The remainder of order LTB-L-044370-22 and LTB-L-060744-22, issued on January 17, 2023 is unchanged and remains in full force and effect.

November 20, 2023

Date Issued

Alicia Johnson

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.