



Order under Section 77/78 Residential Tenancies Act, 2006

Citation: Toronto Seniors Housing Corporation v Martin, 2023 ONLTB 75788

Date: 2023-11-17

File Number: LTB-L-028660-23-SA

In the matter of: 1304, 145 STRATHMORE BLVD
TORONTO ON M4J4Y9

Between: Toronto Seniors Housing Corporation Landlord

And

Craig Martin Tenant

Toronto Seniors Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Craig Martin (the 'Tenant') because the Tenant failed to meet a condition specified in the order issued by the Board on December 19, 2022 with respect to application LTB-L-039002-22.

The Landlord's application was resolved by order LTB-L-028660-23, issued on May 18, 2023, 2022. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-028660-23.

The motion was heard by videoconference on August 3, 2023.

The Landlord's representative J. Audette, the Landlord's witness B. Chattergoon and the Tenant attended the hearing.

Determinations:

1. The Tenant's motion to set aside the eviction order was brought pursuant to subsection 78(11) of the Residential Tenancies Act, 2006 (the "Act").
2. The Board must first determine whether or not the Tenant breached order LTB-L-039002-22 issued on December 19, 2022 (the "Section 78 Order").
3. If the Board finds that the Tenant did breach the Section 78 Order, then the Board must decide whether or not "in all the circumstances" it would be "unfair to set aside" the eviction order. If the Board determines that it would not be unfair to set aside the eviction order then the Board is supposed to grant the motion and set aside the order. If the Board determines that it would be unfair to set aside the eviction order then the motion must be denied.
4. The Section 78 Order provided that The Tenant shall restore the rental unit to a safe, clean and reasonable living condition by February 1, 2023.

5. The Tenant admits to breaching the Section 78 Order. In support of the breach, the Landlord produced taken from an April 4 inspection, showing clutter within the rental unit. The pictures revealed the accumulation of items, such as clothing, crates and household items, which were stacked in the washroom, kitchen, sleeping area and hallway of the rental unit. Based upon the evidence presented, including the Tenant's own testimony, I find the Tenant breached the Section 78 Order and failed (i) to restore the rental unit to a state of reasonable cleanliness; (ii) to ensure the hallways are clean and accessible; and, (iii) to ensure the items are stacked securely and not higher than 1 meter.
6. The next issue is whether or not "in all the circumstances" it would be "unfair to set aside" the eviction order.
7. The Tenant, a senior, is a long-term tenant who lives alone in the rental unit. The Tenant testified he was unable to comply with the Section 78 Order as result of his deteriorating physical condition. The Tenant indicated he suffers from excessive pain as a result of a past car accident, resulting in limited mobility and an inability to lift more than 10 pounds. Although the Tenant indicated he requires assistance with cleaning, he stated he took steps to move furniture and throw out some items after the Section 78 Order.
8. The Landlord's Senior Services Coordinator, Bibi Chattergoon (BG), testified she started working with the Tenant approximately 7 months prior. BB testified the Tenant has been given opportunities to achieve compliance, but the Tenant has been avoidant and has refused to engage with the Landlord. BB indicated the Tenant has demonstrated an inability to let go of his belongings and states the Tenant remains in breach of the Section 78 Order. The Landlord requests that the stay be lifted.
9. While it is concerning the Tenant has refused to comply with the Section 78 that was agreed upon by the parties at the initial December 13, 2022 hearing, I am satisfied the Tenant's physical limitations contributed to some delay in the Tenant's ability to restore the rental unit to a clean and reasonable living condition. As an acknowledgment of his physical limitations, the Tenant indicated he recently reached out to the Landlord and indicated he is now receptive to receiving assistance with professional cleaning his rental unit. Recent email correspondence from the Landlord on June 15, 2023 indicated that during a recent inspection on June 14, 2023, some improvements were noted, stating "*there were less items in the apartment, cleaner floors, clear pathway from the entrance to the window*". While I am certainly sympathetic to the Landlord's situation and in particular BG's testimony that the recent inspection revealed more work is required, given the Tenant's noted health issues, the recent improvements in the rental unit and the Tenant's recent expressed willingness to receive help, I find it would not be unfair to set aside the order as requested by the Tenant provided the Tenant take those necessary steps in a timely manner to ensure compliance with the original Section 78 Order.

It is ordered that:

1. The motion to set aside Order LTB-L-028660-23, issued on May 18, 2023, is granted.
2. Order LTB-L-028660-23, issued on May 18, 2023, is set aside and cannot be enforced.

3. Order LTB-L-039002-22 issued on December 19, 2022 is hereby amended as follows:

- (i) Paragraph 1 of Order LTB-L-039002-22 issued on December 19, 2022 is replaced with the following paragraph:

The Tenant agrees to restore the rental unit to a safe, clean and reasonable living condition by December 31, 2023, this will include, but is not limited to, doing the following:

- a. Arranging for the rental unit to be professionally cleaned;
- b. Ensuring all closets are accessible and free from clutter;
- c. Removing combustible items near or on the stove;
- d. Reducing the amount of combustible materials/excessive clutter in the unit to a level acceptable to Toronto Community Housing (i.e. rooms can be used for their intended purposes);
- e. Clearing pathways to all exits and windows and of a minimum clearance of 1 meter;
- f. Ensuring egress pathways are clear of any obstructions from the floor to the ceiling to provide a safe means of egress for emergency responders;
- g. Ensuring that stacked items are stacked securely and are not stacked higher than approximately 1 meter;
- h. Ensuring all exits and entranceways to the unit are clear and accessible – i.e. all unit doors open all the way;
- i. Cleaning the rooms of the unit so that they are in reasonable state of cleanliness;

- (ii) Paragraph 2 of Order LTB-L-039002-22 issued on December 19, 2022 is replaced with the following paragraph:

The Landlord will provide the Tenant with 24 hours' notice of entry and will inspect the unit after December 31, 2023 to assess compliance with paragraph 1

November 17, 2023
Date Issued

Peter Nicholson
Member, Landlord and Tenant Board

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