



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

Citation: Ajax Municipal Housing Corporation v Vanleeuwen, 2023 ONLTB 69982

Date: 2023-10-19

File Number: LTB-L-077218-22-SA

In the matter of: 304, 40 Kitney Drive
Ajax Ontario L1S4G3

Between: Ajax Municipal Housing Corporation Landlord

And

Ian Vanleeuwen Tenant

Ajax Municipal Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Ian Vanleeuwen (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 mediated settlement issued by the Board on February 2, 2022 with respect to application TEL-19681-22.

The Landlord's application was resolved by order LTB-L-077218-22, issued on February 10, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-077218-22.

The motion was heard by videoconference on April 26, 2023.

The Landlord's agent David Yun, the Landlord's witness John Pegg (superintendent), the Tenant's legal representative Sarah Matthew 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-077218-22.
2. There is no dispute that the Tenant breached the consent order as per the actions of the Tenant on October 4, 7, and 16, 2022 this was confirmed by the Tenant's representative.
3. The only issue before the Board was whether or not, pursuant to section 78(11)(b) of the *Residential Tenancies Act, 2006* (the 'Act') having regard to all the circumstances, it would not be unfair to set aside the order.
4. The residential complex is a 6 storey seniors only building consisting of 77 units, the Landlord is a social housing provider. The Tenant waited over 9 years to move into the rental unit.

5. On January 11, 2022 the previous matter came before the Board based on a L2 application alleging the Tenant or someone living with the Tenant committed an illegal act at the residential complex. This application was resolved by way of an order on consent, TEL-19681-22 issued on February 2, 2022.
6. The terms of that order outline that: "the Tenant shall not commit an illegal act at the residential complex as follows: the Tenant shall not commit an act of aggression towards another person at the residential complex. This term is in effect from January 12, 2022 to January 11, 2023."
7. On November 3, 2022, the Landlord filed an L4 application which resulted in the order the Tenant is asking to be set aside. The application cited three incidents in October that were brought to the Landlord's attention by a complaint from another tenant. The allegations were disclosed to the Tenant in a letter dated October 20, 2022 as per the requirement of paragraph #3 of the previous order, TEL-19681-22.
8. The allegations are as follow:
 - On October 4, 2022 a tenant was entering the building with her sister when you approached them both. You shouted at them while shaking your fist stating that this is a crazy building to live in and she should get out of his face. The tenant and her sister responded by telling you to leave them alone but you continued to shout that they should get out of your face.
 - On October 7, 2022 this same tenant was on her way to put out the garbage. While approaching unit 304 you rushed out and blocked her path and stated she was not going anywhere. The tenant returned to her unit and was not able to dispose of her garbage.
 - On October 16, 2022 a group of Tenants were gathered in the Common Room socializing. You were on your way out when you turned around and entered the Common Room. The Tenant stated you started yelling at them. You said "enjoy your coffee and drink as it will be the last one you will be having in this building". One of the Tenants asked you what you meant by what you said and you stated "you are not going to get any hints of what is going to happen" and then you left.
9. On February 10, 2023, the ex parte order was issued.
10. The Tenant is a retired senior citizen who suffers from paranoid schizophrenia. The Tenant alleges that the Landlord's application to evict him is a breach of the *Ontario Human Rights Code*, R.S.O. 1990, Chapter H.9, due to disability.
11. The Tenant does not deny the allegations as per the dates in question, it was submitted that this was a result of becoming treatment resistant to his then medication.

12. Since the alleged incidents, the Tenant has received new medication which is reviewed every four weeks and was said to be stable. He has also been actively participating in a counselling program with a support worker at Lakeridge Health and was awaiting entrance into the ACT program. The program is aimed at assisting people with severe and persistent mental illness, with a focus on individualized services.
13. Additionally, as per the Landlord's request, the Tenant has entered into a peace bond as pertaining to contact with the Landlord's superintendent, John Pegg commencing April 18, 2023 for a 12 month duration.
14. The Landlord's superintendent John Pegg testified to a physical altercation with the Tenant that occurred on September 22, 2021, in which the Tenant punched him on the head repetitively and police were called to scene. Since that occurrence, he no longer feels comfortable with the Tenant, avoiding him where possible and submits that the Tenant also intimidates other tenants.
15. John Pegg testified that while the one individual tenant brought forth the allegations giving rise to the application, there may be other instances of inappropriate behaviour by the Tenant, however, tenants are afraid of him and will not report.
16. Based on the allegations of October 4, 7, and 16, 2022, and the Tenant's past physical altercation with John Pegg, the Landlord submits that the Tenant poses a high risk to other tenants as his behaviour is unpredictable and questions the Tenant's ability to uphold the requirements of the prior order.
17. When questioned about the duty to accommodate, John Pegg submitted that he is aware that the Tenant is medicated, however he is unaware of any other accommodations that the Tenant may require.
18. In the Landlord's written submissions it's noted that, "the Landlord is cognizant of its duty to accommodate the Tenant's disability under the *Human Rights Code* and respectfully submits that it has satisfied this duty to the fullest degree possible and that based on the correspondence from the Tenant's physician, that the disruptive incidents were born out of medication noncompliance."
19. The issue before the Board is whether having regard to all the circumstances, it would not be unfair to set aside the order.
20. In *Walmer Developments v. Wolch*, 2003 CanLII 42163 (ON SCDC), as in the case before me, the tenant's disability was the cause of the problems giving rise to the landlord's notice to terminate. She suffered from schizophrenia and, when she did not take her medication, she caused problems. The Divisional Court concluded that landlords are required to accommodate the needs of disabled tenants to the point of undue hardship. Accordingly, the Board, when exercising discretion under subsection 78(11)(b) of the Act, must have regard to the landlord's obligations under section 17 of the *Ontario Human Rights Code*.

21. In the current case, while being aware of the Tenant requiring to take medication and noting his change in behaviour in response to the changes in medication, no specific accommodations were noted.
22. It is clear that the Tenant is a person with a disability, medical records from Lakeridge Health confirm that he was diagnosed with schizophrenia at the age of 29, the Tenant is now 54 years old.
23. While the impact of the Tenant's actions and words are undeniable, there was no physical element of aggression, rather these can be best described as impulsive reactions.
24. In the evidence before the Board, it is sufficient to conclude that the Tenant did not comply with the mediated agreement as a result of his disability. It would therefore be discriminatory to evict the Tenant for conduct directly attributable to his disability, without considering the Landlord's duty to accommodate to the point of undue hardship. As already noted, I am unclear as to what steps the Landlord had taken to mitigate that duty.
25. The Landlord is seeking an eviction, I consider the impact an eviction would have on the Tenant, a tenant who suffers from severe mental health issues and has resided in municipal housing for several years. I am mindful of the submission that if evicted, the tenant would most certainly face homelessness.
26. The Tenant has demonstrated that despite his disability, he continues to seek mental health supports, is awaiting admission into the ACT program for which he had been referred for treatment and has entered into a peace bond. The peace bond encompasses provisions for keeping the peace, being on good behaviour and not possessing firearms.
27. Having considered all of the disclosed circumstances, I am satisfied that it would not be unfair to set aside the order, and while I note that the Landlord submitted unsolicited post hearing submissions dated June 28, 2023, in view of procedural fairness, those were not read nor considered in arriving at my determination.

It is ordered that:

1. The motion to set aside Order LTB-L-077218-22, issued on February 10, 2023, is granted.
2. Order LTB-L-077218-22, issued on February 10, 2023, is set aside and cannot be enforced.
3. Order TEL-19681-22 issued on February 2, 2022 continues in full force and effect.

October 19, 2023

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Alicia Johnson
Member, Landlord and Tenant Board

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