



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

Citation: Niagara Regional Housing v Costiff, 2023 ONLTB 65247

Date: 2023-10-05

File Number: LTB-L-047727-23-SA

In the matter of: 2-725 Welland Avenue
St. Catharines, ON L2M 7X9

Between: Niagara Regional Housing Landlord

And

David Costiff Tenant

Niagara Regional Housing (the 'Landlord') applied for an order to terminate the tenancy and evict David Costiff (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 mediated settlement signed by the parties on February 15, 2023 with respect to application LTB-L-018196-22.

The Landlord's application was resolved by order LTB-L-047727-23, issued on July 5, 2023.

The Tenant filed a motion to set aside LTB-L-047727-23 on July 17, 2023.

This motion was heard by videoconference on August 31, 2023.

The Landlord's Legal Representative Judith Callendar, the Landlord's agent Donna Rose, the Landlord's witness Amanda Hilton ('AH') and the Tenant attended the hearing.

Determinations:

1. The consent agreement with respect to order LTB-L-018196-22 that had been agreed to by the Tenant and the Landlord outlined that the Tenant had agreed to ensure that his dog, Callie was under control at all times while on the residential complex. This term of the agreement included excessive barking or acting in an aggressive manner as part of being "under control".
2. The Tenant also agreed not to leave his exterior door propped open to permit his dog from freely entering and exiting the unit from the back door into the unit's enclosed backyard. The Landlord in kind had agreed to erect a reinforced, higher fence around the Tenant's backyard area which has been completed.
3. The Tenant also agreed to ensure that his dog would be equipped with a bark collar at all times when outside on the residential complex, which includes the Tenant's backyard.

4. The Landlord's application under s. 78(1) of the *Residential Tenancies Act, 2006* (the 'Act') outlined that the Landlord had received complaints about the Tenant's dog barking excessively and aggressively on May 15, 2023, May 18, 2023, June 3, 2023, June 7, 2023, June 8, 2023 and June 10, 2023.
5. AH testified and submitted video evidence of her having come back to her unit on June 8, 2023, where the Tenant's back door is open, and the Tenant's dog is in the back yard unaccompanied. The Tenant's dog proceeds to bark at AH as she approaches her own backyard gate, and the Tenant can be heard calling for his dog after he hears her bark. Other videos were submitted showing instances where the Tenant's dog would bark at AH as she would be in her backyard.
6. AH testified that she has been in her unit for 17 years and lives with her daughter and her own dog. She testified that she is unable to use her backyard space while the Tenant's dog is in their backyard, as the dog will continually bark at her. AH testified that the dog's behaviour has continually startled her as she is leaving her unit, which has led to panic attacks.
7. AH testified that even when she brings the Tenant's dog treats and tries to soothe her that the Tenant's dog will continue to bark at her in an aggressive manner.
8. The Tenant acknowledged the breaches and testified that in one instance where he ended up getting his wheelchair stuck in his grass wherein he required assistance from another tenant.
9. The Tenant also testified that he had purchased a bark collar for his dog, which would activate upon barking and would increase in voltage should the barking not stop. This bark collar had broken in June, which resulted in the Tenant having to purchase another one when he had the money to do so in July. He testified that the new collar is operated remotely wherein he is able to issue the shock himself should he hear his dog barking.
10. While the Tenant did agree that he breached the mediated settlement, the Tenant took issue with the settlement testifying that "dogs bark" and that Callie is his "guard dog" as he has had issues in the past at the residential complex.
11. The Tenant testified that he attempted on many occasions to try to introduce his dog to AH however, he testified that she refused. The Tenant believes that if AH was introduced to Callie by himself that the barking would cease. AH testified in cross-examination that she was never invited by the Tenant to be introduced to Callie and that she had tried to sooth Callie prior by speaking with her through the fence and giving her treats.
12. The Tenant testified that Callie is about four years old and has been living with him in the unit for that past two years. He testified that he lives alone however, his daughter and son-in-law visit regularly, and his brother also comes over often to assist him with various tasks. The Tenant's grandson also takes Callie for walks every day.
13. When asked how the Tenant planned on dealing with the issue moving forward, the Tenant testified that he would ensure that Callie would be equipped with the new bark collar whenever she would be outside on the residential complex. The Tenant also testified that his brother is planning on moving into the unit with him and he would assist with ensuring that Callie was acting appropriately.

14. The Tenant was asked whether or not he had enrolled Callie into a training program to which he replied that he hadn't, and that Callie is simply protecting the property when she barks and is a "guard dog". When asked whether he would be willing to part with Callie to save his tenancy, the Tenant remarked that Callie is his only companion and that he would be at a loss without her.

s.78(11) Considerations

15. The Tenant testified that he has lived in the unit for 26 years. He is currently on a pension and would likely be homeless if evicted as he would not be able to afford the rents charged in the current market.
16. The Tenant is in a wheelchair and has been so for 5 years. The Tenant is missing one leg and his other ankle is disfigured.
17. The relationship between the Tenant and AH goes back for quite some time considering AH has been in the unit for 17 years. AH testified that the Tenant had dogs prior but never with the issues that Callie has had. It is clear that the relationship between AH and the Tenant is tumultuous and involves other issues that were not raised as part of this application and set-aside motion.
18. That said, having regarded all of the circumstances in accordance with s. 78(11)(b) of the Act, I find that it would not be unfair to set aside the order.
19. The Tenant has a long-standing tenancy and has health and financial issues that would seriously affect his ability to find a new unit should he be evicted. He has a new bark collar for Callie and has testified that his brother will be moving into the unit to assist him.
20. That said, while the Tenant agreed to the previous mediated settlement he admitted in testimony that he had agreed to provisions he was unsure he would be able to adhere to, or at the very least found at a later date that he would not be able to adhere to. That said, in this instance, due to above-noted circumstances as outlined, the Tenant will be given one more chance to comply.
21. In addition to the previous settlement provisions, the Tenant will also be directed to enrol Callie into a reputable dog training program within 30 days of the issuance of this order.
22. As well, the Tenant will be ordered to ensure that Callie will never be in the backyard of the unit unaccompanied by either the Tenant or someone else.

It is ordered that:

1. Order LTB-L-047727-23, issued on July 5, 2023, is set aside.
2. Order LTB-L-018196-22 is cancelled and replaced with the following:
3. The Tenant's dog, known as Callie, shall be under control and accompanied by the Tenant or someone else at all times while on the residential complex which includes the backyard of the rental unit. For further clarification, "under control" includes barking excessively or acting in an aggressive manner.

4. The Tenant shall not leave the exterior back door propped open for the dog to freely go in and out of the unit.
5. The Tenant shall, within 30 days of the date of this order (November 5, 2023) and at his own expense, enroll his dog known as Callie into a training program with a reputable dog trainer. The Tenant shall provide the Landlord proof of same once enrolled and shall ensure that the training program is completed successfully, proof of which shall also be provided to the Landlord once completed.
6. The Tenant's dog, known as Callie, shall be equipped with bark collar at all times when outside on the residential complex, which includes the backyard of the rental unit.
7. Should the Tenant fail to comply with the terms of this order, the Landlord may apply under s. 78 of the Act, without notice to the Tenant, for an order terminating the tenancy and evicting the Tenant. The Landlord must make this application no later than 30 days after the Tenant's breach.

October 5, 2023
Date Issued

Jagger Benham
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.