



## Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

**Citation:** Le v Steeves, 2023 ONLTB 60712

**Date:** 2023-09-27 **File Number:**  
LTB-L-020556-22-RV

**In the matter of:** Main Floor Unit, 3 Janet Court Hamilton  
Ontario L8E4X8

**Between:** Ha Le Landlord

**And**

Jennifer Steeves Tenant

### Review Order

Ha Le (the 'Landlord') applied for an order to terminate the tenancy and evict Jennifer Steeves (the 'Tenant') because:

- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises;
- the Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was resolved by order LTB-L-020556-22 issued on April 26, 2023. The Landlord's application for eviction was granted on the basis that the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation. The other grounds were not considered.



On May 19, 2023, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On May 25, 2023, interim order LTB-L-020556-22-RV-IN was issued, staying the order.

This request was heard by videoconference on June 21, 2023 and July 10, 2023.

The Landlord and the Tenant attended the hearing. The Tenant was represented by K. Farrell and S. Bogdanov appeared on behalf of the Landlord.

**Determinations:**

1. The scope of the review is to determine whether the Board erred in failing to admit and consider evidence related to the exercise of the Board's discretion to deny or delay the eviction (section 83(2) of the *Residential Tenancies Act, 2006* (the 'Act')).
2. The Tenant requested an adjournment on the ground the Board failed to issue summons for the Landlord's husband and the Landlord's daughter. The Landlord opposed the request.
3. I denied the request. The hearing was adjourned on June 21, 2023, because the Tenant's representative needed more time to review the Recording of the previous proceedings. The summons requests were not filed in time for the Board to process them for the hearing. The Tenant was aware of the next hearing date when the hearing was adjourned on June 21, 2023, yet the requests for summons were filed on July 4, 2023, 3 business days before the hearing. In any event, the evidence the Tenant sought to adduce by summoning the witnesses was for the purpose of challenging the good faith of the Landlord, an issue that is outside the scope of the review.
4. It was not disputed that there is a serious error in the order or that a serious error occurred in the proceedings because the original Member did not hear evidence and submissions on whether to deny or delay the eviction before deciding this issue.
5. The Tenant sought to widen the scope of the review to include rehearing the issue of whether the Landlord gave the notice of termination in good faith. I declined to revisit the issue because during the previous hearing the Tenant conceded that the Landlord gave the notice in good faith. On October 19, 2022, the Landlord's legal representative started adducing evidence from the Landlord about her intentions with respect to the property. The Tenant's former legal representative interrupted and conceded good faith, therefore the examination of the Landlord on this issue ended (see Part 2 of 2 of Hearing Recording at 1.23).
6. I proceeded to hear evidence and submissions on whether, having regard to all the circumstances, it would not be unfair to deny or delay the eviction.



## Mandatory Refusal

7. The Tenant asked for mandatory refusal of the eviction because the Landlord is in serious breach of the Landlord's responsibilities under the Act or a material covenant in tenancy agreement, because the reason for the application being brought is that Tenant has complained to a governmental authority of the landlord's violation of a law dealing with health, safety, housing or maintenance standards or because the reason for the application being brought is that the Tenant has attempted to secure or enforce her legal rights (section 83(3) of the Act).
8. To refuse the eviction for serious breach, there must be a serious breach and the breach must be ongoing at the time of the hearing, not in the past (*Puterbough v. Canada (Public Works and Government Services)*, [2007] O.J. No.748 (Ont. Div. Ct.)).
9. The Tenant alleged that the Landlord failed to fulfill her maintenance obligations with respect to mould in the unit and installing a railing on the stairs of the front porch.. The Tenant failed to establish that there was a mould problem. After the Landlord gave the notices of termination that gave rise to this applications, the Tenant called a mould company to do an inspection of the unit but the inspection did not take place because the other tenant of the complex opposed an inspection. It is pertinent to note that the Tenant filed a maintenance application in December 2021 and never mentioned any mould problem. She also did not notify the Landlord of a mould problem. In the maintenance application the Tenant raised the issue of a railing for the front porch. The Tenant claimed she informed the Landlord about the problem on November 14, 2021 and informed the City Hamilton's Property Standard's office on December 8, 2021. The City issued a notice of violation requiring the Landlord to instal a railing. The City had trouble contacting the Landlord, but the Landlord had a handyman install a railing two weeks after the City contacted her. The City was not satisfied with the quality of the work, so the City reinforced the railing and fined the Landlord. Thus, there is no ongoing breach and in any event the circumstances of the breach were not serious enough to warrant refusing the application.
10. The Tenant also alleged that the Landlord harassed her by giving her several notices of termination, mostly notices of termination for Landlord's use. The Tenant testified that one evening the Landlord sent "strange men" to leave a notice of termination in between her door. The strange men were the Landlord's husband, whom the Tenant knows, and another individual. The Landlord alerted the Tenant in advance before her husband attended the complex to give the notice. The Landlord has the right to give notices of termination under the Act and the mere issuance of a notice of termination is not harassment. In this case the Landlord issued notices of termination for Landlord's own use commencing in December 2020. The notices were defective and an application based on one of the notices was dismissed in August 2021 because the Landlord failed to pay compensation before the termination date in the notice. Finally, the Landlord retained a legal representative and served proper notices of termination on the Tenant before filing



this application. The Tenant conceded that the Landlord in good faith requires the unit for her own use therefore the application is not frivolous, Under the circumstances, the Landlord did not harass the Tenant.

11. The Tenant further alleged that a former tenant, Corey Larman (CL), harassed her, namely verbal abuse and stalking, but the Landlord failed to do anything about it. The Tenant and CL had been friends for over 20 years. In her Tenants Rights application filed in December 2021, the Tenant did not allege harassment by CL. There is no record of a harassment complaint by the Tenant, whereas there is a record of a complaint by CL against the Tenant. Furthermore, any harassment is not ongoing as CL moved out in August 2022.
12. With respect to the Tenant's claim of retaliation because she complained to a governmental authority about maintenance or safety, the Landlord gave the notices of termination before the Tenant reported the railing issue to the City of Hamilton therefore the claim of retaliation is unfounded.
13. I find that the Landlord did not give the notice of termination because the Tenant attempted to enforce her rights. The first attempt by the Tenant to enforce her rights was in November 2019, when she objected to a rent increase. The Landlord accepted her objection and accepted various payment proposals from the Tenant during the COVID-19 pandemic when the Tenant was unemployed. The Landlord made soup for the Tenant when she was sick. According to the Tenant herself there was no issue between her and the Landlord until December 2020, when the Landlord gave her the first notice of termination for Landlord's own use.

#### Discretion - Circumstances of the Parties

14. The Tenant submitted that the eviction should be denied or delayed for a year because of the Tenant's circumstances. The Tenant testified that given her financial circumstances it would be difficult for her to find new accommodation. The Tenant earns about \$2,600.00 a month after taxes. She testified that she had been looking at alternative accommodation but she cannot afford similar accommodation without sharing accommodation. The Tenant testified that it would cost about \$3,000.00 to move. Furthermore, it is difficult to find new accommodation because she filed a consumer proposal and her credit rating is not good. The Tenants wants a long delay of the eviction so that she can save to move. A further impediment to finding new accommodation is that the Tenant has four pets, including an elderly dog who cannot climb stairs. The Tenant also testified that she currently lives close to her ailing father whom she visits twice a week, and close to her current workplace. The Tenant also submitted that she suffers anxiety and move would be stressful.
15. The Landlord testified that she needs to sell her current home and move to the Tenant's unit to alleviate financial stress. The application was filed on November 29, 2021 and a resolution of the application has been delayed by litigation. In early 2023, the Landlord refinanced the mortgage on the residential complex subject to the application because of



financial stress. The Landlord acknowledged that she has rented rooms in her current basement on Airbnb to supplement her income.

16. Having regard to all the circumstances, I find that it would be unfair to deny the eviction or delay the eviction for a year. The Landlord has a right under the Act to regain her property for her own use. The Landlord wants to rationalize her finances and the choice of selling her current home and moving into the Tenant's unit is the Landlord's prerogative. Selling the Landlord's current home will take time; therefore a delay of the eviction would benefit both parties.
17. It is common knowledge that the rental market is tight and therefore it is not easy to find new accommodation. However, the fair solution is not to deny the eviction or give the Tenant a year to save money to move. The Tenant's circumstances are not remarkable. She is employed and can find new accommodation. The Tenant can still visit her father twice a week or go to work from her new accommodation, as she drives. The issue is not finding ideal new accommodation but suitable accommodation within the Tenant's means. Having regard to all the circumstance, it would not be unfair delay the eviction until November 30, 2023.

**It is ordered that:**

1. Order LTB-L-020556-22 issued on April 26, 2023, is varied as follows.
2. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before November 30, 2023.
3. The Landlord may file this order with the Court Enforcement Office (Sheriff) **upon receipt** so that the eviction may be enforced.
4. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after December 1, 2023.
5. The interim order issued on May 25, 2023, is cancelled. The stay of order LTB-L-02055622 is lifted immediately, but the order may not be enforced before December 1, 2023,

**September 27, 2023**

**Date Issued**

Egya Sangmuah

Vice Chair, Landlord and Tenant Board



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