



**Order under Section 77(8)
Residential Tenancies Act, 2006**

Citation: ELM PLACE INC. C/O BRIARLANE RENTAL PROPERTY MANAGEMENT v Fead,
2023 ONLTB 61117

Date: 2023-09-11

File Number: LTB-L-036861-23-SA

In the matter of: 606, 1460 GHENT AVE
BURLINGTON ON L7S1X7

Between: ELM PLACE INC. C/O BRIARLANE RENTAL PROPERTY MANAGEMENT Landlord

And

James Fead Tenant

ELM PLACE INC. C/O BRIARLANE RENTAL PROPERTY MANAGEMENT (the 'Landlord') applied for an order to terminate the tenancy and evict James Fead (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 order issued by the LTB on June 16, 2022 with respect to application SOL-23072-21.

The Landlord's application was resolved by order LTB-L-036861-23, issued on June 1, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-036861-23.

The motion was heard by videoconference on August 30, 2023. The Landlord's representative David Ciobotaru, and the Tenant, represented by Elena Grigorieva, attended the hearing.

Preliminary Matters:

The Tenant's representative requested an adjournment as she had just recently been retained. The Landlord's representative objected to the request noting that the matter and previously been adjourned and also makes note of the seriousness of the allegation.

This application was filed on May 8, 2023. The matter was adjourned on July 17, 2023 due to a conflict with the Member assigned to heard the application. It is clear to me that the Tenant has had ample time to retain representation. In addition, the Tenant had legal representation at the original hearing and is therefore aware of the process if indeed the Tenant required legal assistance. Considering the above factors,, as well as the seriousness of the allegation of the Tenant setting fires in his unit, the request to adjourn was denied.

The second issue that arose was the Landlord's witness's capacity to speak English. The proceedings began with a relative of the Tenant's translating. As the hearing proceeded it

appeared to me that the long rambling answers from the witness were not being effectively translated. I was also concerned about the independence of the translation being provided. Mr. Ciobotaru informed me that he has a person he knows who can assist. The matter was stood down to contact this person.

Mr. Farzad Lahouti appeared and informed me that he has 12 years experience translating from Farsi and could assist. I accepted, instructing the parties that if I became uncomfortable with the independence of the translation being provided or the quality of the translation, the matter may be adjourned.

Determinations:

1. The order that gave rise to the L4 application placed a condition on the Tenant that he should not cause any intentional fires in his unit.
2. The Landlord's witness, Mohammed Akarami, is the Tenant's next-door neighbour. The witness testified that he has been awoken at 2:00am by smoke in his unit. The witness testified that he can see into the Tenant's unit from his balcony and saw him lighting a fire in a container of some sort. He testified that the Tenant was using paper and socks to create the fire. The witness was how he know the fire was started with paper and socks if he only saw the fire after he smelled the smoke. HE answered that he saw the Tenant continuing to use paper and socks on the fire. Mr. Akarami reported the incident to management the next day.
3. When Mr. Akarami was asked simple questions, ones that could generally be answered with a yes or no, there were frequently long and rambling answers. The witness was instructed through the translator to keep the answers brief, by both me and the Landlord's representative. The witness did not comply with this direction. I found this to lead me to question the reliability of the witness's testimony. This in addition to my concern about the testimony of the fire being started with paper and socks. As the proceedings were exclusively through a translator, it became challenging to rely on this witnesses testimony.
4. In addition to my concern about this witness, I find it odd that a fire alarm in the residential complex was not set off if indeed there was a fire set in the unit that caused smoke to enter the witness's unit. I also found it peculiar that the witness would not call the fire department or the police if the Tenant was seriously impairing the safety of other residents in the residential complex. Under questioning it was understood that the Landlord had not instructed the Tenant to call the fire department or anyone else if the Tenant was starting a fire.
5. As this was the only witness to support the allegations in the Landlord's application, I find there is insufficient evidence to determine the Tenant has set a fire in his rental unit.

It is ordered that:

1. The motion to set aside Order LTB-L-036861-23, issued on June 1, 2023, is granted.
2. Order LTB-L-036861-23, issued on June 1, 2023, is set aside and cannot be enforced.

September 11, 2023

Date Issued

Greg Joy
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.