



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

**Citation:** 1000168055 Ontario Inc v Bodne, 2023 ONLTB 51915

**Date:** 2023-07-21

**File Number:** LTB-L-014139-23-SA

**In the matter of:** 3, 107 SIXTH AVE  
BRANTFORD ON N3S1B1

**Between:** 1000168055 Ontario Inc Landlord

**And**

Ashley Bodne Tenant

1000168055 Ontario Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Ashley Bodne (the 'Tenant').

The Landlord's application was resolved by order LTB-L-014139-23, issued on January 23, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-014139-23.

The motion was heard by videoconference on May 9, 2023. The Tenant attended the hearing. The Landlord was represented at the hearing by Susanne Draper.

**Determinations:**

1. As explained below the Tenant's request to set aside order LTB-L-014139-23 is granted.
2. The parties appeared before the Board on January 23, 2023. Order LTB-L-028863-22, issued January 24, 2023, prohibits the Tenant from engaging a series of conduct to continue the tenancy.
3. The Landlord's application alleges on February 9, 2023, the Tenant threw garbage outside the balcony contrary to paragraph 8 of order LTB-028883-22. The Tenant denies throwing garbage over the balcony. The Tenant told the Board she stopped throwing garbage over the balcony pursuant to the previous Board order.

*Other Breaches*

4. The L4 application for eviction plead a series of breaches of LTB-L-028863-22. However, the only breach that was determined in order LTB-L-014139-22 was the Tenant threw garbage outside her window February 9, 2023. Since this is a motion to set aside LTB-L-014139-22, the only issue I have jurisdiction to determine is whether the Tenant threw garbage outside her balcony window.

*Mandy Harper*

5. Mandy Harper testified as a witness for the Landlord. Ms. Harper lives in the same building, directly below the Tenant.
6. On February 9, 2023, Ms. Harper noticed some cat litter dumped in the garden outside the window.

*Keith Lear*

7. Keith Lear testified on behalf of the Landlord. He lives in the same building, right across the hall from the Tenant.
8. Mr. Lear noticed the kitty litter outside Ms. Harper's unit. He told the Board there was a video of the Tenant throwing the cat litter out the window, however he deleted it.

*Darsha Anton*

9. Ms. Anton is the property manager for the rental unit. She said she received a text message from another Tenant named Mike. Mike took some pictures of the cat litter dumped outside the building.

*Analysis*

10. The Landlord's witnesses were not helpful to its case. None of the witnesses saw the Tenant throw the cat litter over the balcony.
11. I find it unusual that Mr. Lear deleted his evidence that supports the Landlord's claim. By all accounts multiple tenants seemed to have issues Ms. Bodine's tenancy. If there was evidence that existed that would assist in evicting the Tenant, it is reasonable to assume that Mr. Lear would have preserved the evidence for the hearing before the LTB.
12. Even more puzzling is why the other tenant, Mike, did not testify as a witness at the hearing. All the witnesses suggested Mike has pictures of the cat litter thrown outside the balcony. If this were the case, it would be expected that Mike would testify at this hearing. If Mike was unavailable, the Landlord's representative could have provided the pictures and the Board could have determined the appropriate weight to give them.
13. I find the evidence provided by the Landlord does lead me to conclude the Tenant threw cat litter over her balcony.
14. After considering all of the circumstances, I find that it would not be unfair to set aside order LTB-L-014139-23.

**It is ordered that:**

1. The motion to set aside Order LTB-L-014139-23, issued on January 23, 2023, is granted.
2. Order LTB-L-014139-23, issued on January 23, 2023, is set aside and cannot be enforced.
3. Order LTB-L-028863-22 is restored and remains in effect.

**July 21, 2023**  
**Date Issued**

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**Bryan Delorenzi**  
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.

2023 ONLTB 51915 (CanLII)