



Order under Section 78(6) Residential Tenancies Act, 2006

Citation: JTS Properties v Ingram, 2023 ONLTB 40452

Date: 2023-06-20

File Number: LTB-L-069323-22-SA
(CEL-04823-22)

In the matter of: 211, 80 Scott Street
Brampton Ontario L6V1S4

Between: JTS Properties Landlord

And

Sindi Ingram Tenant

Your file has been moved to the Landlord and Tenant Board’s new case management system, the Tribunals Ontario Portal. Your new file number is LTB-L-069323-22.

JTS Properties (the 'Landlord') applied for an order to terminate the tenancy and evict Sindi Ingram (the 'Tenant') because the Tenant did not meet a condition specified in the order issued by the LTB on March 7, 2022 with respect to application CEL-03988-21.

The application was resolved by order CEL-04823-22 issued on May 13, 2022.

On May 20, 2022, the Tenant filed a motion to set aside order CEL-04823-22.

The motion was heard by videoconference on October 13, 2022 and December 19, 2022.

Debra Abate attended the hearing as the Landlord and was represented by, Sabrina Sciulli. The Tenant attended the hearing and was represented by James Hill.

Heather Sawyer, Antoinette Smith and Pam Sterling attended as witnesses for the Landlord. Christopher Caines attended the hearing as witness for the Tenant.

Determinations:

1. The order provides that the Landlord can apply to the LTB under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenant to terminate the tenancy and evict the Tenant if the Tenant does not meet certain conditions in the order. This application was filed within 30 days of the breach.
2. I find that the Tenant has not met the following conditions specified in the order:

3. On a balance of probabilities, I find that on or about April 2, 2022, the Tenant or their guest caused garbage juice staining on the carpet in the hallway leading from the Tenants unit to the back door of the residential complex. Although the Tenant denied it being her unit door, the Tenant did not deny that it was her garbage that the Landlord found at the back door. It was the Tenants position that someone must have gone into the garbage bin and then took it out and placed it there to frame the Tenant.
4. I prefer the evidence of the Landlord who photographed the stain leading from the Tenants unit to the back door. The Landlord also testified that this was not the first time this type of incident had occurred with the garbage. Although the Tenant denied that it was her rental unit door that the Landlord photographed, on a balance of probabilities I find that the photographs taken do provide that the staining comes from the Tenants unit.
5. I am not satisfied that the storing of items in the Tenants parking spot including tarps, bikes and motorcycles to be a breach of the order. It was unclear whether the Landlord took issue with the items being stored there or whether it was the tarps blowing off the stored items that that was the issue.
6. I do however find that on or about April 16, 2022 the Tenants guests were working on the e-bikes in the Tenants parking spot and that this conduct substantially interferes with the Landlord. Although the Tenant denies that she knew these people were in her spot taking apart the bikes and denied them being her guest, I find the Landlord evidence much more compelling.
7. The Landlord testified that Christopher Caines is a regular visitor of the Tenant and the Landlord identified Mr. Caines as the person in the photograph working on the bikes. She knows him from seeing him around the complex and is familiar with his association with the Tenant.
8. Although Christopher Caines testified at the hearing that it was not him in the photograph and that he does not attend the residential complex, under cross examination regarding the recent prescription in the Tenants garbage dated March 3, 2022, Mr. Caines could not recall the last time he attended the complex. I did not find the testimony of Mr. Caines credible on the basis that he denied attending the complex for some time and there were 2 witnesses from the Landlord that testified that he attends the complex on a regular basis and he was also identified by the Landlord as the one in the photograph on April 16th.
9. Pursuant to subsection 78(11)(b) of the *Residential Tenancies Act, 2006*, at a hearing on a Tenants motion to set aside an order terminating the tenancy, the Board must consider all of the circumstances in order to determine whether or not it would be unfair to set aside the order.
10. The Tenant has been trying to stay clean and turn her life around and feels if she loses her housing it would not provide her with a stable environment to stay clean. The Tenant would also lose her subsidy and her current rent is what she can currently afford. If she has to move, then she would not be able to afford alternative housing.
11. The Landlord would not agree to continue the tenancy on the basis that they had consented to the arrangements for the Tenants conditions under their consent order in order to give the Tenant another chance at preserving the tenancy despite several previous N5 notices for similar conduct. Also, because the Tenant had breached the order

in less than a month and because the Tenant denied taking responsibility for their garbage and denied the issue of people working on e-bikes in her parking spot, even after the Landlord identified the guests.

12. I do not find it appropriate to consider another conditional order under the circumstances. I do however find that a delay is appropriate so that the Tenant can secure alternative housing.

It is ordered that:

1. The motion to set aside Order CEL-04823-22 issued on May 13, 2022 is denied.
2. The stay of order CEL-04823-22 is lifted on July 15, 2023.

June 20, 2023
Date Issued

Terri van Huisstede
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.