



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

Citation: City of Brantford, Housing v Scott, 2023 ONLTB 38601

Date: 2023-05-19 **File Number:**
LTB-L-000610-23-SA

In the matter of: C, 124 SHERWOOD DR
BRANTFORD ON N3T1N9

Between: City of Brantford and Housing Landlord

And

Debra Scott Tenant

City of Brantford and Housing (the 'Landlord') applied for an order to terminate the tenancy and evict Debra Scott (the 'Tenant') because the Tenant did not meet a condition specified in the order issued by the LTB on June 3, 2022 with respect to application SOL-24940-21.

The application was resolved by order LTB-L-000610-23 issued on March 21, 2023.

On April 11, 2023 the Tenant filed a motion to set-aside order LTB-L-000610-23 along with a request to extend time to file the motion which was granted.

The motion was heard by videoconference on May 4, 2023. The Landlord's representative, Nicole Murray, and the Tenant attended the hearing. Joshua Harvey ('JH') attended the hearing as witness for the Landlord.

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 condition(s) in the order. This application was filed within 30 days of the breach.
2. I find that the Tenant has not met the following condition specified in the order:

The Tenant made excessive noise on December 31, 2022 which required police attendance to the residence. As part of the original order, the Tenant was not to make excessive noise for a period of 12 months from January 5, 2022 to January 4, 2023.

3. The Tenant testified that they were not aware of any excessive noise on this date and suggested that it may have been the result of her moving items from her unit to the basement and using the stairs. The Tenant had been cleaning her unit by sorting and

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cleaning and donating items she no longer needed. The Tenant suggested that the music likely came from her television while she was playing her Queen CD. The Tenant confirmed that police attended her unit at around 9am on December 31st.

4. The Tenant further stated that she is often disturbed by someone's CPAP machine and that the sound of it makes her turn her music up in order to drown out the noise of it. The Tenant further indicated that she would like to maintain her tenancy because she has a homeless brother that she looks out for and she often goes to visit her mother to care for her on the other side of town. That if she were to become homeless, she would no longer be able to provide the ongoing support her family requires.
5. JH testified that the noise started on December 30, 2022 with constant loud music and banging onwards to December 31, 2022 until about 2 or 3am and that they called the police because of the ongoing noise. The police did not attend the unit until around 9am on December 31st.
6. JH further testified that the police told him that he was charging the Tenant with mischief and that the Tenant was uncooperative when the police spoke to them.
7. JH further testified that the issue with the noise is unrelenting and has been going on for several months. The most recent incident being the day before the hearing between 8pm and into the morning until 3am with loud music playing and persistent banging on the walls to their unit. JH has a child and family and the noise often disturbs them. The music is loud enough that they can clearly hear which song is playing at any given time.
8. Although it is admirable what the Tenant does to support her own family, on a balance of probabilities, I find that the Tenant made excessive noise on December 31, 2023 and this is a breach of the order. Additionally, the Tenant continues to make excessive noise.
9. The Tenant has lived in the rental unit for about six and a half years. They are on subsidized housing and an eviction could mean that she would be homeless and without support.
10. The Landlord provided the Tenant with some resources for housing options and resources for alternative housing.
11. Given the length of time the Tenant has resided in the unit and based on other housing availability, I find it appropriate to give the Tenant more time to move out of the unit and will provide additional time before the stay is lifted.

It is ordered that:

1. The motion to set aside Order LTB-L-000610-23 is denied. The order remains unchanged.
2. The stay of Order LTB-L-000610-23 is lifted on June 30, 2023.

May 19, 2023

Date Issued

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

Terri van Huisstede
Member, Landlord and Tenant Board

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

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