



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

File Number: LTB-L-077992-22-SA

In the matter of: 1006, 5950 Bathurst St., North York ON M2R1Y9

Between: Rosslyn Residences Landlord

And

Jennifer Cornfield Tenant

Rosslyn Residences (the 'Landlord') applied for an order to terminate the tenancy and evict Jennifer Cornfield (the 'Tenant') because the Tenant failed to meet a condition specified in the order issued by the Board on September 7, 2021, with respect to application TNL-30963-21.

The Landlord's application was resolved by order LTB-077992-22, issued on March 27, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-077992-22.

This motion was heard by videoconference on April 19, 2023.

The Landlord's Legal Representative, Charlie Bobrowsky, the Landlord's witness, Zlatan Redzepovic, the Tenant, and the Tenant's support worker, Courtney Detwiler, attended the hearing.

Determinations:

1. The types of order the Board can make with respect to this type of motion are set out subsection 78(11) of the *Residential Tenancies Act, 2006* (the 'Act').
2. First, the Board must determine whether the Tenant breached order TNL-30963-21. If the Board finds that there was no breach by the Tenant, then the motion must be granted, and the eviction order set aside. Second, if the Board finds that the Tenant did breach the agreement then it must decide whether to grant discretionary relief pursuant to paragraph 78(11)(b) of the Act. That provision states that the Board must decide whether or not "in all the circumstances" it would be "unfair to set aside" the eviction order. If the Board

determines that it would not be unfair to set aside the eviction order, then the Tenant's set aside motion is granted. If the Board determines that it would be unfair to set aside the

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eviction order, then the motion must be denied. Third, if the motion is denied, the Board must then consider when to lift the stay of the eviction order.

3. In this case, the Landlord's Legal Representative could not prove to the Board that the Tenant had in fact breached order TNL-30963-21. The Landlord's evidence claimed that there were pictures and footage of the Tenant smoking inside the residential complex. However, the evidence was not conclusive and even the Landlord's Legal Representative's own witness, assistant Building superintendent, Zlatan Redzepovic, could not confirm the Landlord's claims.
4. Therefore, since the Landlord could not prove the allegations in the L4 application, this application must be dismissed and the Tenant's motion to set aside order LTB-L-07799223, issued on March 27, 2023, is granted.

It is ordered that:

1. The motion to set aside Order LTB-L-077992-23, issued on March 27, 2023, is granted.
2. The Landlord's application under section 78 of the Act is dismissed.
3. Order TNL-30963-21, issued on September 7, 2021, remains in effect.

May 1, 2023
Date Issued

Michael Di Salle
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.

