



Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: Herosilla v Merritt, 2023 ONLTB 30576

Date: 2023-04-14

File Number: LTB-L-075120-22-RV

In the matter of: 1-125 PAGE ST
ST CATHARINES ON L2R4A8

Between: Andres Herosilla Landlord

And

Dale Merritt Tenant

Review Order

Andres Herosilla (the 'Landlord') applied for an order to terminate the tenancy and evict Dale Merritt (the 'Tenant') because the Tenant failed to meet a condition specified in the order issued by the Board on October 14, 2022, with respect to application LTB-L-005530-22.

This application was resolved by order LTB-L-075120-22 issued on February 24, 2023. The hearing for this application was held on February 14, 2023, but neither party attended the hearing. The Landlord's application was dismissed as abandoned.

On March 1, 2023, the Landlord requested a review of the order and that the order be stayed until the request to review the order is resolved.

On March 2, 2023, interim order LTB-L-075120-22-RV-IN was issued, staying the order issued on February 24, 2023.

The request for review was heard in by videoconference on March 23, 2023.

The Landlord, the Landlord's legal representative, Francisco Gomez, the Tenant and the Tenant's Housing Caseworker, Annelise Morton, attended the hearing.

Determinations:

The Request for Review

1. The Landlord says he was not reasonably able to participate in the hearing that took place on February 14, 2023, because he did not receive the notice of hearing.
2. According to the Board file, there is no confirmation that the notice of hearing was actually emailed to the Landlord or to the Landlord's legal representative. The Board file also

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indicates that the notice of hearing was mailed to the Landlord on February 24, 2023, which was after the hearing took place.

3. Based on the documents in the file, I was satisfied that the Landlord failed to receive the notice of hearing and he was therefore not reasonably able to participate in the hearing that took place on February 14, 2023. I therefore granted the Landlord's request for review and proceeded to hear the merits of the Landlord's L4 application.

The L4 Application

4. The consent order issued on October 14, 2022, provides that the Landlord can apply to the Board 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 alleged breaches.

a) The Breaches

5. By way of background, the residential complex is a large house which has five independent rental units throughout. Each unit is a bachelor style or has one bedroom and the majority of the tenants are single individuals.
6. I find that the Tenant has failed to meet the following two conditions specified in the consent order:
 - Placing non-collectable garbage items at the curb of the residential complex; and
 - Placing garbage and other items on the common shared stairway of the residential complex in such a way that causes a fire or health hazard or impedes access by the Landlord for work that needs to be done.
7. The Landlord showed numerous pictures taken by himself, a pest control technician and another tenant in the complex over the course of several days. The pictures show:
 - bulky furniture items and other garbage on the curb of the complex;
 - garbage and large items in the shared stairwell and landing outside the rental unit; and
 - bicycles and large furniture on the stairs and in the common hallways blocking entry to the complex and to other units.
8. The Landlord's first batch of pictures were taken outside the complex and show several large pieces of furniture, including a couch, as well as several black garbage bags, coat racks and other items lying next to the house. Another picture shows a pile of garbage in bags sitting on the front lawn. The Landlord says he knows these are the Tenant's belongings because he saw security camera footage of the Tenant and his guests placing these items outside the complex.



9. The Landlord's second batch of pictures show a large pile of black garbage bags in the stairwell as well as several large items that tend to move and change over time including a large laundry basket filled with items, a coat rack, a chair, a large piece of ply wood, a mop and bucket, a large bookshelf and other items. The pictures show these items in the stairwell beginning on October 14, 2022, until at least October 22, 2022. The Landlord filed their L4 application on October 27, 2022.
10. The Landlord's final batch of pictures show the Tenant's bicycles at the bottom of the shared stairwell as well as a large couch blocking the bottom of the stairs. These pictures were taken over the course of approximately three days. The Landlord says he knows that the bicycles belong to the Tenant and his guests because his insurance agent conducted an inspection at one point, saw these bicycles and declared them a fire hazard because they blocked the entrance to the complex and other units. The Landlord then spoke to the Tenant about his bicycles at that time, and the pictures contain the same bicycles he spoke to the Tenant about.
11. The Tenant says that none of these batches of pictures represent an actual breach of the consent order. First, the Tenant denies that the items and garbage left outside are his. Second, he says that the large pile of items in the landing are not garbage but are his personal belongings that were left outside while pest control treated the rental unit on October 14, 2022. Finally, the Tenant agrees that the couch is his, but he says it was brand new and he was in the course of moving it into his rental unit when the picture was taken. For the following reasons, I am not persuaded by the Tenant's explanations.
12. First, the Tenant's overall testimony was vague, lacked sufficient detail and tended to be inconsistent. He also tended to focus on the perceived harassment he has faced from the Landlord rather than provide clear explanations about the Landlord's pictures and testimony.
13. Also, the Landlord admits that the rental unit was treated for pests on October 14, 2022, and I find that likely explains why the Tenant left a pile of his belongings outside the rental unit on the landing on that day. However, when asked why he failed to bring his belongings into the unit for at least the next 7 days, the Tenant said that the treatment made the pests worse and he had no interest in bringing his belongings back inside. I am not persuaded by the Tenant's testimony on this point. Instead, it appears to me that much of the pile is garbage that the Tenant has chosen to store on the landing. I would also note that the Landlord provided a picture of the inside of the Tenant's unit which is crowded and piled with more garbage, large items and furniture. Taken altogether, I am satisfied that the Landlord's pictures establish that the Tenant left garbage and other large items on the landing for several days and this violates the conditions the Tenant agreed to.
14. Finally, although the Tenant says that the couch on the stairs is brand new and he was in the process of moving it upstairs, I am not persuaded by the Tenant's testimony. There is one individual who can be seen in the picture, but rather than appearing to move or lift the couch, it appears that this person is attempting to squeeze by the couch to get upstairs. In short, nothing in this picture confirms the Tenant's testimony that he was moving the couch



into the rental unit. Instead, the couch appears to be left blocking almost the entire stairwell as well as the entrance to the rental units at the bottom of the stairs.

15. Based on the evidence before me, I am satisfied that the Tenant has repeatedly breached the conditions set out in the consent order. The Tenant's testimony on these points was vague and inconsistent and the Landlord provided numerous pictures taken by different individuals over the course of several days which show that the Tenant has repeatedly breached the conditions set out in the consent order.

b) Relief From Eviction

16. As I am satisfied that the Tenant breached the consent order, the next issue before me is whether, after considering all of the circumstances, it would be unfair to grant relief from eviction.

17. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'). In particular, I asked the Tenant and his caseworker at the hearing whether there were any disabilities or other concerns that have resulted in the behaviour described above. Both the Tenant and the caseworker denied that the Tenant is experiencing any disabilities that have contributed to the behaviour. I am therefore satisfied that the Duty to Accommodate is not engaged in this instance.

18. I have considered that the Landlord has already attempted to work with the Tenant by reaching a detailed consent order with very clear conditions. Before the conditions were enforceable, the Landlord gave the Tenant and his caseworker 11 days in order to put a plan in place to be able to adhere to the conditions. The Tenant reached this consent order with the assistance of his previous housing caseworker who was present with him at the original hearing. I have also considered that the Tenant is living in close quarters with other residents and his behaviour is negatively impacting those tenants.

19. However, I have also considered that the Tenant has lived in the rental unit along with his girlfriend since approximately June 1, 2021. I have also considered the testimony from the Tenant's housing caseworker when she says that the Tenant is part of a vulnerable population that is at high risk of homelessness.

20. Based on the Tenant's vulnerability, and after considering all of the circumstances, I find that it would not be unfair to postpone the eviction until May 31, 2023, pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The Landlord's request to review order LTB-L-075120-22 issued on February 24, 2023, is granted. The order is cancelled and replaced with the following:
2. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before May 31, 2023.



3. If the unit is not vacated on or before May 31, 2023, then starting June 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after June 1, 2023.

April 14, 2023
Date Issued



Laura Hartsliet
Member, Landlord and Tenant Board

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

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on December 1, 2023, if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.