



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

Citation: LONDON & MIDDLESEX COMMUNITY HOUSING v BROAD, 2023 ONLTB 14765

Date: 2023-01-10

File Number: LTB-L-053324-22

In the matter of: 931 Southdale Road East
London ON N6E1B3

Between: LONDON & MIDDLESEX COMMUNITY HOUSING Landlord

And

EVELYN BROAD Tenant

LONDON & MIDDLESEX COMMUNITY HOUSING (the 'Landlord') applied for an order to have the tenancy terminated because EVELYN BROAD (the 'Tenant') failed to meet a condition specified in the order issued by the Board on July 28, 202 with respect to application LTB-L-001539-22.

This matter was directed to hearing to clarify the alleged breach(es). This application was heard by videoconference January 5, 2023.

Only Olesya Gryn, agent for the Landlord, and the Landlord's Legal Representative, Cameron Burgess, attended the hearing. Maggie Haynes attended as a witness for the Landlord.

As of 10:28 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the Board. There was no record of a request to adjourn the hearing, therefore the hearing proceeded based on the Landlord's uncontested testimony/evidence.

Determinations:

1. The order provided that the Landlord could 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 did not meet certain condition(s) specified in the order.
2. Maggie Haynes (MH), a Housing Stability Co-Ordinator who works with tenants at risk of eviction testified that since she was assigned the Tenant, she has made numerous

attempts to engage with the Tenant prior to the hearing and has attempted to refer the Tenant to available resources; all attempts have been unsuccessful.

3. MH referred to the unit inspection done on July 15, 2022, which was relied on to determine the clutter image rating referred to in the order. MH summarized the clutter in the unit, including that the basement and landing to the basement were inaccessible and the kitchen and second bedroom where the amount of clutter was not at an acceptable rating. The overall rating was determined to be a level 6; the Tenant was aware of how this rating level was determined as she took part in the original hearing and consented to the terms requiring decluttering by specified dates.
4. MH further testified that, as indicated by the pictures taken from the August 26, 2022 inspection, there was insufficient improvement overall, such that the unit was still deemed to be at a level 6; the Tenant was supposed to have the clutter level reduced to a level 5 by August 25, 2022. As the entire unit was not reduced to a level 5 by this date, most notably the basement and landing were still inaccessible and thus a hazard, the Tenant breached the conditional order.
5. Olesya Gryn (OG), the Tenant Services Manager, testified that since the hearing was scheduled there were many attempts to contact and/or visit the Tenant to encourage her to do the necessary decluttering. There was an in-person meeting with the Tenant on August 26, 2022, when the unit was still deemed to be at a level 6. On September 12, 2022 she emailed the Tenant regarding the housing stability fund that could help her pay off the arrears, as she still owed \$129.60 out of the \$453.60 that was to be paid by August 31, 2022; the Tenant was also encouraged to clean the basement and landing. The Tenant still owes the \$129.60 from the arrears and the basement and landing were not addressed.
6. OG also testified that on September 15, 2022, she emailed the Tenant reiterating the need to declutter and the section 78 breach clause; the Tenant was also given another copy of the Clutter Image Scale as a guide for decluttering. On October 3, 2022, the Tenant agreed to have a reinspection of the unit but then asked for an extension; the reinspection took place on October 18, 2022; there was no visible change to the rental unit, as such the unit remained at a rating level of 6. On October 30, 2022, OG emailed the Tenant again about the breach clause and why the L3 application based on a breach of conditions was filed; OG specified that the basement area needed cleaned/to be accessible, and the arrears had to be paid. On November 25, 2022 the Tenant agreed to meet but was not present, the same happened on November 29, 2022. When they finally met on December 20, 2022, the Tenant admitted there was no progress with respect to reducing the clutter level rating in the unit.
7. OG submitted that the Tenant has been given a number of opportunities to bring her unit down to the required level, but there has been no more progress and the unit remains at a level 6, as it was on August 26, 2022. Further, the Tenant has still not paid the remaining \$129.60 from the arrears, and is now behind another couple of months.

8. I find, based on the Landlord's uncontested evidence and testimony, that at the time the Landlord filed the L4 application, September 9, 2022, the Tenant has not met the following conditions specified in the order:
 - i) Pay \$453.60 by April 31, 2022 per paragraph 2; \$129.60 remains unpaid.
 - ii) Remove the clutter from the rental unit from a rating of 6 to a rating of 5 according to the Clutter Image Rating Scale provided by the Landlord to the Tenant, on or before August 25, 2022 as per paragraph 3.
9. The previous application included a request for an order for the payment of arrears of rent. The resulting order required the Tenant to pay rent or some or all of the arrears of rent. Accordingly, in addition to eviction, the Landlord is entitled to request an order for the payment of arrears of rent.
10. The Tenant was ordered to pay \$453.60 for rent arrears in Order LTB-L-001539-22. The amount that is still owing from that order is \$129.60 and that amount is included in this order. As a result, the previous order LTB-L-001539-22 is cancelled.
11. The Landlord collected a rent deposit of \$.00 from the Tenant and this deposit is still being held by the Landlord. The last month rent deposit and any applicable interest shall be applied to the last month of the tenancy.
12. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenant did not abide by the conditional order to declutter the rental unit to a level 5 by or pay all the arrears the required dates; the rental unit remains at a level 6 on the Clutter Image Rating Scale, which is the same level it was at when the original hearing took place in July 2022. Further, the Tenant did not attend the hearing to offer any other considerations.

It is ordered that:

1. Order LTB-L-001539-22 is cancelled.
2. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before January 21, 2023.
3. If the unit is not vacated on or before January 21, 2023, then starting January 22, 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 January 22, 2023.
5. The Tenant shall pay to the Landlord \$129.60, the balance remaining from the arrears, minus the last month rent deposit and any applicable interest; the Tenant shall pay the difference to the Landlord.
6. If the Tenant does not pay the Landlord the full amount owing on or before January 21, 2023, the Tenant will start to owe interest. This will be a simple interest calculated from January 22, 2023 at 5.00% annually on the balance outstanding.

7. If the Tenant does not vacate the rental unit on or before January 21, 2023, the Tenant shall also pay to the Landlord \$2.79 per day for compensation for the use of the unit starting January 22, 2023 to the date the Tenant moves out of the unit.

January 10, 2023

Date Issued

Diane Wade

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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on July 22, 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.

