



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

Citation: Bodnariuc v Sloss, 2024 ONLTB 33314

Date: 2024-05-03

File Number: LTB-L-060280-23

LTB-L-066833-23

In the matter of: Unit B, 82 HIGH ST
BOWMANVILLE ON L1C3B4

Between: Marcio Bodnariuc
Roula Angelis Bodnariuc

And

Kyle Sloss

I hereby certify this is a
true copy of an Order dated
MAY 03, 2024
Landlord and Tenant Board

Landlords

Tenant

Marcio Bodnariuc and Roula Angelis Bodnariuc (the 'Landlords') applied for an order to terminate the tenancy and evict Kyle Sloss (the 'Tenant') because the Tenant failed to meet a condition specified in the order issued by the Board on April 11, 2023 with respect to application LTB-L-021238-22.

A hearing was held by videoconference on November 28, 2023 and February 22, 2024 to consider these applications. The Landlords attended the hearings and were represented by Dan Schofield. The Tenant attended the hearings and was represented by Carrie Aylwin.

Determinations:

1. The prior order issued on April 11, 2023 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.
2. The prior order was based on a L2 application filed by the Landlord. At the hearing, the parties consented to a conditional order which stated that the tenancy would continue subject to the terms ordered.
3. Both applications filed by the Landlords allege a breach of the same consent order issued on April 11, 2023 and as such, both applications were heard together.
4. The residential complex is a detached dwelling consisting of two rental units.
5. For the reasons set out below, I find that the Tenant has failed to meet some or all of the conditions set out in the prior order. Therefore, the Landlord's application is granted.

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6. This application was filed on August 1, 2023, and alleges a number of breaches of the prior order.

Lawn:

7. The application alleges that the Tenant breached paragraph 1 a) of the prior order which states:
 - a) Regardless of Compliance, Pool to be removed and lawn underneath to be repaired.
8. The Landlords submitted into evidence photographs taken on July 20, 2023 (LL exhibit #1). The photographs show a large patch of dirt on the backyard lawn and an outline of where the pool was previously placed. The Landlords agree that the above ground pool installed by the Tenant was removed but argued that the Tenant failed to comply with the prior order by failing to repair the lawn. The photograph submitted by the Landlords show some patches of grass growing in the area where the pool used to be.
9. The Tenant disputed being in breach of the prior order and submitted into evidence photographs taken by himself of the lawn and a receipt showing that grass seed and fertilizer was purchased on or about April 13, 2023 (TT exhibit #1).
10. Based on the evidence and submissions before the Board, I am not satisfied that the Tenant is in breach of the prior order with respect to this condition. The prior order does not set a strict deadline date as to when the area of the lawn previously damaged was supposed to be repaired. Further, the evidence submitted by both parties show signs of new grass growing in the area where the pool used to be. There was also no dispute that the Tenant removed the pool from the backyard after the Landlord's application was filed.

Parking:

11. The Landlord's application alleges that the Tenant is in breach of paragraph 1 d) of the order which states:
 - d) The tenant shall park his truck on the driveway. No motor vehicles, Trailers, or any other vehicles of any kind will be stored in the back yard. The backyard is defined as the gross area of the rental unit. The tenant acknowledges that should the neighbor next door move their fence onto the property line, and as a result, the tenants parking is reduced, the landlord shall not be liable. The tenant shall be liable for their own snow removal beyond the back wall of the rental property.
12. The Landlords testified that the Tenant breached the prior order by parking in the other rental units (Unit A) parking spot. The Landlords agreed that the residential complex consists of one driveway and stated that each tenant was assigned to park on one

specific side of the driveway. The Landlords submitted into evidence an email sent to the Tenant on July 21, 2023 and a photograph taken on July 20, 2023 showing the Tenant and/or a guest of the Tenant had parked in the parking spot assigned to Unit A (LL exhibit #2).

13. I am not satisfied that the Tenant is in breach of this term of the prior order. The prior order makes no reference to the Tenant parking in a designated parking space on the driveway, but rather only requires that the Tenant park his vehicle on the driveway and not on the grass or other common areas of the residential complex. The Landlord's own evidence suggests that the Tenant has complied with this condition of the prior order and therefore I find that there is no breach of this condition.

Modifications to the rental unit:

14. The application alleges that the Tenant is in breach of paragraph 1 e) of the prior order which states:

e) The Tenant agrees that he will not make any modifications to the rental unit without written permission of the Landlord.

15. The Landlords testified that the Tenant breached the condition above by installing a gazebo on the backyard deck of the rental unit and submitted into evidence a video recording showing the gazebo installed (LL exhibit #3). At the hearing the Landlord confirmed that they discovered the installation of the gazebo on or about June 29, 2023.

16. As stated above, the Landlord's application was filed on August 1, 2023. The Landlord's application was filed more than 30 days after the date the Landlords discovered and/or learned of this alleged breach. Therefore, pursuant to section 78(5) of the Act, the Board does not have jurisdiction to terminate the tenancy based on this alleged breach.

17. The Landlord's application also alleges that the Tenant installed cabinets in the garage of the rental unit without the Landlord's consent. The application does not specify the date the Landlords became aware of this issue and further, the Landlords provided no evidence or testimony at the hearing with respect to this issue.

18. Therefore, I am not satisfied that the Tenants have breached this condition of the prior order and the request to terminate on this alleged breach is denied.

Cleanliness:

19. The application alleges that the Tenant has not complied with paragraph 1 f) of the prior order which states:

f) The Tenant agrees that he will keep the rental unit in an ordinary state of cleanliness.

20. The Landlords allege that they inspected the rental unit on July 7, 2023 and observed the rental unit to not be in an ordinary state of cleanliness. In particular, the application alleges that the stove, the closets and garage of the rental unit are not being kept in an ordinary state of cleanliness.
21. The Landlords submitted into evidence photographs of the rental unit taken on or about July 7, 2023 and prior to this inspection date (LL exhibit #4). Most of the photographs suggests signs of damages to the rental unit. The Landlords were advised that this was not relevant to the alleged breach. The photographs do however indicate the outside and inside of the stove are not in a state of cleanliness.
22. The Tenant disputed that he has failed to keep the rental unit in a ordinary state of cleanliness and submitted into evidence photographs of the rental unit taken on or about September 25, 2023 (TT exhibit #2). The photographs do show that the rental unit has been cleaned, specifically the stove top and the inside of the stove.
23. Based on the evidence and submissions before the Board, I am satisfied that the Tenant has breached the prior order with respect to this ordered condition. Although majority of the photographs submitted into evidence from Landlords suggests damages to the rental unit and are not part of the application, the photographs submitted with respect to the state of the stove does suggests that the Tenant is not maintaining an ordinary state of cleanliness in the kitchen area of the rental unit. The photographs suggest obvious signs that the stove has not been cleaned and/or been kept in a clean state for several months.
24. Although the Tenant submitted into evidence photographs of his own to suggest that the stove is in an ordinary state of cleanliness, the photographs were taken almost two months after the Landlord's application was filed and when the alleged breach occurred. I accept the fact that the Tenant has rectified the breach, however, the evidence before me suggests that as of July 7, 2023 (the date of the Landlords inspection) that the Tenant was in breach of paragraph 1 f) of the prior order.

Communication with Landlords

25. The application alleges that the Tenant breached paragraph 1 g) of the prior order which states:
 - g) The Tenant agrees that he will be cooperative and only speak to the Landlords when necessary for rent payment or maintenance issues. The conversation will be kept business like by both the Landlords and Tenant and the parties agree not to raise their voices or use foul or insulting language. Communication will be in writing whenever possible. The parties agree that police shall not be called to mediate Landlord and Tenant Disputes unless there is an imminent safety risk.
26. The Landlords testified that on July 2, 2023 they emailed the Tenant to inquire about rent payment for the month of July 2023. The Tenant responded on the same date stating the following:

Hello yesterday was a holiday so the rent does not have to be payed till today ! Enjoy the rest of your weekend thank you for the harassment.

The Landlords submitted into evidence a copy of this email exchange (LL exhibit #5).

27. On July 7, 2023 the Tenant emailed both the Landlord Marcio Bodnariuc and the Landlord's legal representative accusing the Landlords of breaking into and/or stealing the Tenant's cash from the garage of the residential complex. The Landlords submitted into evidence email correspondence from this date (LL exhibit #6).

28. On July 21, 2023 the Tenant sent the following email to the Landlords:

I give you a work order and this is how you act? I would be embarrassed! I don't know who's vehicle that was sorry I can't help you

29. The Landlords argued that the Tenant's email communication was rude and a form of harassment and that the Tenant further breached the prior order by emailing the Landlord's legal representative and not the Landlords directly.

30. The Tenant did not dispute the emails sent to the Landlords but argued that he did not mean to be offensive in his comments nor did he mean to offend the Landlords.

31. Based on the evidence and submissions before the Board I am not satisfied that the Tenant has breached this condition of the prior order. Although the Landlords may not appreciate the messages sent by the Tenant on the alleged dates, I find that the correspondence is of no way offensive, nor does it suggest that the Tenant is being hostile towards the Landlords.

32. I also do not accept that that the Tenant has breached the prior order by emailing the Landlord's representative regarding his maintenance issues and not the Landlords directly. The Landlord's representative was on record with the Board and represented the Landlords on the file pertaining to the prior order. Therefore, I find that it is reasonable that the Tenant felt that it was appropriate to email the Landlord's representative with respect to his issues and/or concerns with the rental unit.

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33. This application was filed on August 25, 2023 and alleges that the Tenant breached paragraph 1 g) of the prior order. As stated above, this paragraph states:

g) The Tenant agrees that he will be cooperative and only speak to the Landlords when necessary for rent payment or maintenance issues. The conversation will be kept business like by both the Landlords and Tenant and the parties agree not to raise their voices or use foul or insulting language. Communication will be in writing whenever possible. The parties agree that police shall not be called to mediate Landlord and Tenant Disputes unless there is an imminent safety risk.

34. The incidents and/or events surrounding this alleged breach occurred from August 24 – 25, 2023.
35. The Landlords testified that on August 24, 2023 they served the Tenant with a notice to enter (NOE) the rental unit on August 25, 2023 between 9:30am to 6:00pm for a period of less than 3 hours. The purpose of the entry was to address maintenance requests submitted by the Tenant. The Landlords submitted into evidence a copy of the NOE (LL exhibit #7).
36. On August 24, 2023 the Tenant sent an email to the Landlord Marcio Bodnariuc and the Landlord's legal representative complaining about the notice of entry served. The email is titled as "fake notice of entry". The Landlords submitted into evidence a copy of the email correspondence on this date (LL exhibit #8).
37. On August 25, 2023 at approximately 9:40am, the Landlords attended the rental unit to enter as per the notice of entry served the prior day. The Landlords submitted into evidence a video recording taken from Mr. Bodnariuc on this day (LL exhibit #9).
38. In the video, the Tenant can be seen standing on the front driveway of the residential complex and obstructs the Landlords from fully parking their vehicle in the driveway. The video further shows that as the Landlord Marcio Bodnariuc walked up to the front door of the rental unit, the Tenant obstructs the Landlord's path and shouts "get the fuck off my property". The Tenant further proceeded to call the Police and allege that the Landlords were being violent and attempting to break into the rental unit.
39. The Tenant did not dispute the incident that occurred on the alleged date, but argued that the Landlord's NOE was unlawful as it did not set out a specific and reasonable time of entry. The Tenant further stated that he had concerns with the Landlord entering the rental unit because in a previous incident where the Landlords were present in the rental unit the Landlords were taking pictures of his daughter in her bedroom. The Tenant however did not provide the Board with a specific date of this incident nor did the Tenant provide any evidence as to when he advised the Landlords of this incident.
40. Based on the evidence and submissions before me, I am satisfied that the Tenant has breached the prior order with respect to the incident that occurred on August 25, 2023. The video evidence submitted into evidence is clear that the Tenant was verbally abusive and aggressive towards the Landlords when they attempted to enter the rental unit and the Tenant further made a false claim to the Police with respect to the Landlord's conduct.
41. Although the Tenant disputed the contents of the Landlords notice of entry, I still find that the Tenants conduct was unacceptable and in breach of both the Act and the prior consent order. The Act provides tenants with a right to file an application before the Board if they feel that the landlord has entered the rental unit illegally or substantially interfered with the tenant's reasonable enjoyment of the rental unit.

42. I also find that there was insufficient evidence before the Board to suggest that the Tenant had good reasoning for his conduct. I do not accept the Tenant's testimony that he acted in the way he did due to a previous incident with the Landlords, where they allegedly took photographs of his daughter. The email correspondence between the parties prior to this incident and submitted into evidence makes no suggestion that the Tenant had concerns of this alleged incident and the Tenant further provided insufficient evidence such as a prior correspondence or complaints to lawful authorities regarding this alleged incident. In my view, the Tenant is only raising this incident as an attempt to excuse his conduct on date of the breach.
43. As such, the Landlord's application is granted as they have established that the Tenant has breached the prior order issued on April 11, 2023.

Relief from eviction:

44. 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 not be unfair to postpone the eviction until June 30, 2024 pursuant to subsection 83(1)(b) of the Act.
45. Based on the evidence before me, I find that the tenancy is not viable. The Tenants breach of the prior order, in particular with respect to the August 25, 2023 incident suggests to me that the Tenant has a complete disregard for the consent order issued by the Board and the ordered terms. The Tenant's own testimony and response to the Landlord's representatives' questions on cross examination suggests that the Tenant sees no issues with his conduct that occurred on the date of this breach.
46. Further, the Board's records confirm that this is not the first time that the Tenant has breached the prior order. In order LTB-L-030447-23 issued on October 5, 2023, the Board had also found that the Tenant had breached one of the terms of the prior order, however, relief from eviction was granted. This order ought to have been a strict warning to the Tenant that failure to comply with the terms of the prior order may result in termination of his tenancy and despite this, the Tenant has continued to show a disregard for the consent order issued.
47. Under the Act, the general intention is that the Board has an obligation to uphold and enforce the agreements into which landlords and tenants enter into. If it does not do so, then there is little incentive for parties to attempt negotiation. Board orders and mediated agreements are not mere suggestions with respect to conduct, but legally binding orders. If the Board does not uphold and enforce its own orders, disrespect for the Board's processes will inevitably ensue.
48. Based on the evidence and submissions before me I find that any further conditional order issued would only result in a subsequent breach and require the parties to appear before the Board again on a future date. Therefore, I find that termination of tenancy is warranted in these circumstances.

49. I am however mindful to the fact that the Tenant has resided in the rental unit for approximately 7 years and has four children residing in the rental unit. As such, I find that it would not be unfair to delay termination to June 30, 2024 to allow the Tenant some additional time to secure alternate housing.

50. This Order contains all the reasons for this matter. No further reasons will issue.

It is ordered that:

1. Order LTB-L-021238-22 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 June 30, 2024.
3. If the unit is not vacated on or before June 30, 2024, then starting July 1, 2024, 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 July 1, 2024.

May 3, 2024
Date Issued



Fabio Quattrociochi
Member, Landlord and Tenant Board

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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 of the Tenant expires on January 1, 2025 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.