



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

Citation: Fred Victor Centre v Bynoe, 2026 ONLTB 19224

Date: 2026-03-05

File Number: LTB-L-031055-25-SA2

In the matter of: 319, 40 OAK ST
TORONTO ON M5A2C6

Between: Fred Victor Centre Landlord

And

Phillip Bynoe Tenant

Fred Victor Centre (the 'Landlord') applied for an order to terminate the tenancy and evict Phillip Bynoe (the 'Tenant') because the Tenant did not meet a condition specified in the with respect to application LTB-L-038605-24.

The Landlord's application was resolved by order LTB-L-031055-25, issued on April 23, 2025. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-031055-25.

This motion was heard by videoconference on March 31, 2026.

The Landlord was represented at the hearing by Vee Guevara. The Tenant and their support worker, Dixon Hall, attended the hearing.

Determinations:

1. The Tenant failed to meet a condition specified in the with respect to application LTB-L-038605-24. Specifically, the Tenant failed to reduce the clutter to a level 7 on the clutter scale on or before March 31, 2025.
2. 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 he failed to meet the conditions specified in the order.
3. This motion is brought pursuant to subsection 78(11) of the Act. As the Tenant acknowledges breaching the order, the only issue before me is whether I am satisfied, having regard to all the circumstances, that it would not be unfair to set aside the order.

The surrounding circumstances

4. The Tenant is approximately 60 years old and has resided in the rental unit for approximately 15 years. The rental unit has been the Tenant's long-term home.
5. The Tenant lives with serious and ongoing physical health challenges. The Tenant testified that he suffered a collapsed lung which required three separate surgeries and resulted in a permanent loss of approximately 25 percent of his lung capacity.
6. Trudy Hewitt ('TH') testified at the hearing. TH is a registered social worker with over a decade of experience working with individuals facing eviction due to hoarding. She testified that the Tenant's clutter is a manifestation of a mental health condition.
7. TH testified that hoarding disorder is complex and typically requires long-term intervention, including therapy and coordinated support services, in order to achieve lasting improvement. She testified that progress is gradual and requires ongoing professional assistance.
8. The Landlord is a non-profit housing provider that operates supportive housing for vulnerable individuals. While the Landlord operates supportive housing, it also has an obligation to ensure that its buildings are maintained in a safe condition.
9. The Landlord submitted photographic evidence of the rental unit which shows that the unit is heavily cluttered. The photographs demonstrate that access to areas of the unit, including the bathroom, is obstructed by accumulated items.
10. The Tenant's housing support worker testified that the Tenant is currently receiving support services and that efforts are ongoing to secure additional mental health counselling. The support worker testified that continued support is expected to assist the Tenant in bringing the rental unit into compliance.
11. The Landlord's agent testified that the level of clutter has interfered with its ability to inspect and maintain the rental unit. The Landlord also testified that this situation has been ongoing for several years.

Analysis

12. The Act is remedial legislation and the courts have determined that evicting a tenant is a remedy of last resort. In the cases of *Sutherland v. Lamontagne*, [2008] O.J. No. 5763 (Div. Ct.) and *Paderewski Society v. Ficyk*, [1998], the Divisional Court stated,

"To put somebody out of their home must, in my view, call for clear and compelling circumstances that it's no longer possible for the arrangement to continue."

13. In other words, eviction should only be ordered if it is not possible to bring the tenancy back into good standing
14. There is no dispute, based on the photographs, provided that the level of clutter in the Tenant's unit is extreme.
15. There is no dispute that the level of clutter in the Tenant's unit is extreme and that the Tenant breached the prior order.

16. However, based on the evidence before me, while the quantity of items in the rental unit is significant, the Landlord did not establish that the condition of the unit poses an immediate or imminent fire hazard. Additionally, there was insufficient evidence that the condition of the unit was unhygienic or was causing direct impacts to neighbouring tenants.
17. The Landlord claims there has been complaints by other tenants but did not elicit testimony from any of the complaining tenants. The Landlord also suggested they are facing charges from the local fire department. Again, the Landlord did not provide any witnesses or documentary evidence to support that fact.
18. TH attended at the rental unit and testified that, while the level of clutter was significant and required intervention, she did not observe evidence of biohazards or conditions such as rotting food or other unhygienic materials. TH testified that, based on her observations, the level of clutter appeared to fluctuate between levels 6 and 8 on the clutter scale. TH further testified that, with appropriate supports, it is possible for the Tenant to reduce the clutter to a level that meets safety standards.
19. I accept TH's evidence. She was a credible and experienced witness with specialized knowledge in this area. I also accept that the Tenant's conduct arises from a mental health condition and that the Tenant is currently receiving appropriate supports.
20. In my view, the appropriate outcome is to grant the Tenant one final opportunity to comply with his obligations.
21. While the Tenant requested approximately six months to reduce the clutter, I find that a firm deadline is necessary to ensure compliance and to address the Landlord's concerns. The photographs do depict an extreme level of cluttering and there needs to be a sense of urgency from the Tenant and those assisting him to reduce the cluttering to manageable level. Accordingly, the Tenant will have until May 31, 2026, to reduce clutter in the rental unit to a level 7.
22. After considering all of the circumstances, I find that it would not be unfair to set aside order LTB-L-031055-25 on the conditions set out below.

It is ordered that:

1. The motion to set aside order LTB-L-031055-25, issued on April 23, 2025, is granted.
2. Order LTB-L-031055-25, issued on April 23, 2025, is set aside and cannot be enforced.
3. The Tenant shall reduce the clutter in his unit to a level 7 on the clutter scale on or before May 31, 2026.
4. The Tenant shall not obstruct or interfere with the Landlord's attempts to inspect the rental unit if the Landlord gives a notice of entry that is in accordance with the Act.
5. If Tenant fails to comply with the conditions set out in paragraphs 3 and 4 of this order, the Landlord may apply under section 78 of the Residential Tenancies Act, 2006 (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.

March 5, 2026
Date Issued

Bryan Delorenzi
Member, Landlord and Tenant Board

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