



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

File Number: LTB-L-017424-26

In the matter of: 609, 42 LEROY GRANT DR
KINGSTON ON K7K6W8

Between: Homestead Land Holdings Limited Landlord

And

Barbara Robertson Tenant

Homestead Land Holdings Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Barbara Robertson (the 'Tenant') because the Tenant did not meet a condition specified in the mediated settlement signed by the parties on August 22, 2025 with respect to application LTB-L-000154-25.

A hearing was held by videoconference on March 30, 2026 to consider this application.

The Landlord's legal representative Jessica Shanani, the landlord's witnesses Megan Goodberry, Harry Hakim, Marcia Maltez, and Allen Miller attended the hearing on behalf of the Landlord. The Tenant and their legal representative John Done attended the hearing for the Tenant.

Determinations:

Background

1. The order LTB-L-000154-25 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.
2. The Landlord's legal representative and full-time employee of the Landlord Jessica Shannani completed and filed the L4 application on behalf of the Landlord on February 25, 2026.
3. In the declaration portion of the L4 application form the following is outlined as reasons for the filing:

“Per the Mediated Settlement issued August 22, 2025, the Tenant was required to comply with paragraphs 2 through 6 of the Order for a period of 12 months. Paragraph 2 states: The Tenant shall not engage in any form of harassing threatening abusive or disrespectful conduct including the use of vulgar profane or discriminatory language or behaviour toward the Landlord its agents contractors employees or other residents. The Tenant Barabara Robertson has breached this provision. On February 9 2026 at approximately 3:10 p.m. a resident of the residential complex was exiting the building. The Tenant was standing on the sidewalk near the exit with her dog as the resident passed by. The Tenant yelled why didn't you hold the door you fucking goof. The resident did not reply and subsequently expressed frustration to the Landlord. The resident provided the Landlord with a written letter signed by her and an email dated February 11 2026 detailing the incident.

The Tenant further breached paragraph 2 on February 12 2026 at approximately 5:28 p.m. when staff received a call from her. During the call the Tenant asked the staff member if they wanted to hear something and staff confirmed they would listen she alleged that the Community Manager of the residential complex was having an affair with a resident. She claimed that she and others had observed the Community Manager entering and exiting the resident's unit and that she had seen him behind another nearby residential complex. She stated she would not make such claims up and that she does not lie. The staff member advised they had another call to take and ended the conversation wishing her goodnight. In these incidents the Tenant engaged in harassing abusive and disrespectful conduct by using profane language toward a resident and making unsubstantiated harassing allegations against staff in direct violation of paragraph 2 of the Mediated Settlement.”

4. Paragraph 2 of the order on consent in LTB-L-000154-25 dated August 22, 2025 outlines the following:
 2. *The Tenant shall not engage in any form of harassing, threatening, abusive or disrespectful conduct, including the use of vulgar, profane or discriminatory language or behaviour, toward the Landlord, its agents, contractors, employees or other residents.*
5. The L4 application was referred to a hearing to confirm the alleged breach.
6. Noteworthy, same legal representatives in attendance in the hearing of LTB-L-000154-25 when the order on consent was arrived at were in attendance in the matter as before me in LTB-L-017424-26 on March 31, 2026.

Preliminary issue – Motion to dismiss

7. The Tenant brought a preliminary motion to dismiss that L4 application for the outlined reasons as follows; copied herein from the submissions of the Tenant's legal representative John Done as uploaded in the Board's record in DOC- 7661498:

The Declaration Omits Elements Normally found in an Affidavit, Necessary to Reliability

1. In the L4, at page 7, is a “Declaration.” It shows the name of the Applicant as “Jessica Shanani”.
2. The L4 also describes Ms. Shanani as a paralegal, and she signed it as the “Applicant’s Representative.”
3. It appears that the allegations in the Declaration are not within Ms. Shanani’s personal knowledge.
4. Yet nowhere in the Declaration does it identify the source of the hearsay allegations therein.
5. Similarly, nowhere in the Declaration does Ms. Shanani declare that she believes the source of the hearsay allegations.
6. Likewise, nowhere in the Declaration does Ms. Shanani indicate whether she communicated directly with the source of the allegations.

February 9, 2026 Allegation about Ms. Robertson and Another Tenant

7. The Declaration omits the location of the event, and more specifically it fails to allege that the incident occurred on the residential complex.

February 12, 2026 Allegation about a Telephone Call

8. The Declaration fails to identify the location of Ms. Robertson and the staffer who received the call.
9. Without information showing where the call was made, there is no evidence relating to an essential element, that the act occurred in the residential complex.

Law & Argument

The Declaration Does Not Qualify as an “Affidavit” under the RTA, s. 78(2)

10. In an L4, the Landlord must “...include with the application ... an affidavit setting out what conditions of the settlement or order have not been met and how they have not been met.”¹ A Landlord may substitute a declaration.²
11. In an application, the contents of an affidavit are confined to matters within the affiant’s personal knowledge. The only hearsay it may contain are facts which are not contentious, and even that is subject to two conditions, that it identify the source of the information and the fact that the witness believes in the truth of the statement.³
12. An affidavit based on hearsay should be disregarded.⁴

13. The declarant is Jessica Shanani. She is the Landlord's paralegal. The declaration makes two allegations. The first describes an incident on February 9, 2026, where Ms. Robertson allegedly used profane language toward another resident. The second describes an incident on February 12, 2026, where Ms. Robertson allegedly slandered another resident.

14. Neither incident is within Ms. Shanani's personal knowledge. When Ms. Shanani made the declaration, which in substance amounts to a statement made under oath, she did so in support of her client's application to evict Ms. Robertson without notice. The consequences of Ms. Shanani's statement were serious, potentially making homeless an elderly woman with disabilities who relies on public assistance.

15. Despite these consequences, Ms. Shanani's declaration omitted the identity of the source of the information for both allegations. Nor did the declaration say that she believed these sources were telling the truth. The declaration did not even say that Ms. Shanani spoke to these unidentified sources directly.

16. While the law about affidavits tends to arise from the civil justice system, this is a distinction without a difference. Affidavits are an exception to the prohibition against hearsay, which protects tenants against unmeritorious claims. In the normal course, an L4 leads to an *ex parte* order. So they tend to proceed without even being examined upon.

17. When considering whether such a faulty declaration meets the requirements of the RTA, s. 78(2), what is at stake is the Board's very integrity. Faulty affidavits trivialize the consequences of an *ex parte* application and have the capacity to bring scheme underlying the RTA, s. 78 and L4s into disrepute.

The Affidavit Omits an Essential Element about the Alleged Telephone Call, that the Act Occurred in the Residential Complex

18. Without information showing where the call was made, there is no evidence relating to an essential element, that the act occurred in the residential complex.

The Affidavit about the Alleged Telephone Call Omits Facts Showing it Affected the Character of the Premises

19. To the extent that the Landlord relies on the ground of "substantial interference with the landlord's reasonable enjoyment" in the RTA, s. 64(1), the LTB should find that the tenant's conduct does not affect the character of the premises; where the effect is on the character of the Community Manager, the LTB should deny the landlord's application.

20. The "right, interest, privilege" clause in s. 64 is potentially very broad. Just as the courts have held that not any illegal act is sufficient and that it must also affect the character of the premises⁵ (arguably from a physical/security aspect) the LTB should conclude that the "right, interest or privilege" in s. 64 has to affect the character of the premises (i.e., not the character of the landlord), even though there is no express requirement that the conduct take place on the premises.

5 The majority in *Re Swansea Village Co-operative Inc. v. Balcerzak* (1988), 63 O.R. (2d) 741 (Div. Ct.) concluded that the language of the illegal act provision was "that commonly associated with the carrying on of a criminal activity or nuisance, such as keeping a common gaming or bawdy house, that disturbs other tenants or affects the character of the premises."

Relying on *Swansea Village Co-operative Inc. v. Balcerzak*, [above](#), the adjudicator in *Toronto Housing Company Inc. v. Thorne* (18 January 2001; Ittleman), File No. TNL-21798 (ORHT) [[CRO No. TP-1676](#)] held the act must have the potential to affect the character of the premises or to disturb the reasonable enjoyment of the landlord or other tenants.

21. Any connection between the telephone call and the landlord's "right, interest, privilege" is remote and would only arise if the recipient of the call repeated the tenant's remarks. That is entirely within the Landlord's control.

The Allegation about the Telephone Call Is In Substance an Effort to Litigate a Slander Claim

22. In substance, the nature of the second allegation, arising from the tenant's alleged telephone call, is that she slandered the Landlord's community manager.

23. Defamation is a highly specialized and highly technical area of the law. In practice, defamation law is about whether defences apply, not whether a statement is untrue; there is a low threshold for making out a *prima facie* case.

24. These defences involve antiquities of common law and are a labyrinth even for those schooled in the law.

25. The task of deciding whether a defence to defamation is available is outside of the skill set of the LTB, and of a lay adjudicator.⁶

26. Consider Professor Brown's description of defamation law: 26.1. "The law of defamation is, admittedly, a 'peculiar tort'. It has been referred to unkindly as 'a mausoleum of antiquities peculiar to the common law and unknown elsewhere in the civilized world.' Diplock J. has noted its 'artificial and archaic character'. Other judges and commentators have lamented its obscurity, complexity, technicalities, absurdities, irrationality, 'foolish conceits', 'false values and fatuous', 'minute and barren distinctions'. It is, said one author, like the anecdotal description of the design of the camel, 'an ungainly child of compromises'. *Even for those who have studied the law of defamation well and have mastered its intricacies, it remains 'a labyrinth of uncertainties, of false clues, blind alleys, and unexplored passages.'* As a result, we have become the beneficiary 'of centuries of haphazard, Byzantine, and often baffling evolution'." (at 1-2 – 1-4) [emphasis added]

26.2. V.V. Veeder, "The History and Theory of the Law of Defamation", 3 Colum. L. Rev. 546 at 546 (1903), quoted by Brown (at 1-4 – 1-5), stated: 26.2.1. "Unfortunately the English law of defamation is not the deliberate product of any period. It is a mass which has grown by aggregation, with very little intervention from legislation, and special and peculiar circumstances have from time to time shaped its varying course. The result is that perhaps no other branch of the law is as open to criticism for its doubts and difficulties, its meaningless and grotesque anomalies. It is, as a whole, absurd in theory, and very often mischievous in its practical operation."

26.3. “Where freedom of speech or of the press are at stake, it has been suggested that it may be more appropriate to defer to the decision of a judge rather than a jury to provide a sensitive and sensible resolution of the interests involved.” (at 17-47) Brown (at 17-47, footnote 297) quotes Professor David Anderson’s “Is Libel Law Worth Reforming?”, 140 U. Pa. L. Rev. 487 at 540 (1991), where he states: “On the whole, judges are more sympathetic to speech interests than jurors and more sensitive to subtle threats against those interests. We may as well be candid: constitutional protection of speech against the chilling effects of libel consists primarily of rules encouraging judges to decide factual matters that previously were left to juries.”

6 Brown, Raymond E. *The Law of Defamation in Canada*, vol. 1 & 3, (Toronto: Carswell, 1994).

Ms. Shanani May Not Represent the Landlord because She is a Witness

27. The Law Society of Ontario’s Paralegal Rules of Conduct, Rule 4.04 provides:

4.04 THE PARALEGAL AS WITNESS

The Paralegal as Witness

4.04 (1) A paralegal who appears as advocate shall not testify or submit his or her own affidavit evidence before the tribunal unless permitted to do so by law, the tribunal, the rules of court or the rules of procedure of the tribunal, or the matter is purely formal or uncontroverted.

28. A declaration, which is in substance an affidavit. should not be made by a paralegal who acts for a party, for then the paralegal becomes advocate and witness .in the same case.

8. The Landlord’s legal representative submitted that pursuant to the LTB rules, she was in a capacity to make the application and complete the declaration without being a witness. That she interviewed the parties/ witnesses before applying to the Board.
9. On the issue of the phone call of February 12, 2026, it is the Landlord’s position that the subject matter is not a civil claim rather the Tenant exhibiting abusive, and harassing conduct towards the Landlord’s staff. And is a breach of the prior order.
10. That considering any missing details in the application itself, as the matter was referred to a hearing, the Landlord was prepared to advance the necessary witnesses to support the allegations and permit the Tenant’s legal representative to cross examine their testimonies.

Analysis

11. While several issues were raised as outlined by the Tenant’s legal representative above in support of the motion to dismiss, without addressing the merits of each individually the motion was granted for two primary reasons which I found most persuasive as follows.

RE: February 9, 2026 incident

12. The declaration as filed lacked particulars to permit the Tenant to adequately defend against the alleged breach of the prior order. I say this as the allegation contains a reference to a single utterance of inappropriate/ disrespectful language that is alleged to have happened on February 9, 2026 at approximately 3:10 p.m. – outlined as *“a resident of the residential complex was exiting the building. The Tenant was standing on the sidewalk near the exit with her dog as the resident passed by. The Tenant yelled why didn’t you hold the door you fucking goof.”* I take notice of the passage of time and the ability for anyone to recollect the utterance of such words where one instance has been outlined without the necessary detail to ensure procedural fairness and ability to defend is preserved.
13. While the Landlord notes that the complainant made a written report of the incident, as submitted by the Tenant’s legal representative, the declaration omitted the identity of the source of the information regarding the allegation. Nor did the declaration outline that the Landlord’s legal representative/ agent believed these sources were telling the truth nor any attestation to that effect. Further, there was no reference to suggest that the drafter of the application spoke to the unidentified sources directly. These are essential elements when seeking a termination of tenancy pursuant to s.78(1) of the Act.

RE: February 12, 2026

14. Secondly, as outlined at the time of hearing, regarding the telephone call conversation of February 12, 2026 which allegedly took place with a member of the Landlord’s staff - again for which the name was not provided, and the Tenant I was not compelled to accept that subject of the call, an allegation that the Tenant was spreading rumors that the Community Manager of the residential complex was having an affair with another resident can be construed as a violation of the prior order. I say this as if I were to accept that the call occurred and the subject of the exchange was as alleged I question if this type of scenario would squarely fall within the intent of the prior order where it was outlined that the Tenant is “not engage in any form of harassing, threatening, abusive or disrespectful conduct,” without inference and speculation. In this instance, I am more persuaded that this form of “gossip”, where occurring, can be construed as a form of slander and subject to exclusive jurisdiction of another competent court and not the LTB.
15. For the above outlined reasons, the motion to dismiss was granted.
16. On the issue of request for costs. Given the subject matter and arguments raised, I am satisfied that either party did not invoke any conduct which would give rise to consideration for an award of costs pursuant to LTB Rule 23. Therefore, the request is denied.
17. This order contains all reasons for the determinations and order made. No further reasons will be issued.

It is ordered that:

1. The Landlord's L4 application is dismissed.

May 5, 2026
Date Issued

Alicia Johnson
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.