



File Number: LTB-L-006019-26-SA

In the matter of: 2, 975 BARTON ST E
HAMILTON ON L8L3C8

Between: FOUNDATION CAPITAL HOLDINGS LIMITED Landlord

And

ARLIE LEWIS Tenant

FOUNDATION CAPITAL HOLDINGS LIMITED (the 'Landlord') applied for an order to terminate the tenancy and evict ARLIE LEWIS (the 'Tenant') because the Tenant did not meet a condition specified in the order issued by the LTB on January 6, 2026 with respect to application LTB-L-038204-25.

The Landlord's application was resolved by order LTB-L-006019-26, issued on January 26, 2026. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-006019-26.

This motion was heard by videoconference on May 7, 2026.

The Landlord's Legal Representative, L. Barder, the Landlord's Agent, A. Ward, the Tenant's Legal Representative, M. Menzildzic, and the Tenant attended the hearing.

Determinations:

There was a breach of the previous order

1. The Tenant failed to meet a condition specified in the order issued by the LTB on January 6, 2026 with respect to application LTB-L-038204-25. The Tenant failed to remove all her belongings from the exterior balcony outside the back door of the rental unit on or before January 20, 2026.
2. At the outset of the hearing, the Tenant's Legal Representative submitted that order, LTB-L-038204-25, issued on January 6, 2026, was confusing and permitted the Tenant and required the Landlord to give the Tenant an additional five (5) days if they believed the Tenant had not complied. She submitted and relied on the wording of paragraph 2(e) that order. Paragraph 3 of the order reads as follows:

“2. The Tenant shall:

- (a) remove all her belongings from the exterior balcony outside the back door of the rental unit on or before January 20, 2026. The area outside the Tenant's back door shall be completely clear of any items on or before that date,

- (b) The Landlord shall be entitled to carry out an inspection on or after January 20, 2026,
- (c) If the Tenant has not complied with paragraph a, above, on or before January 20, 2026, then the Landlord is entitled to file an application pursuant to paragraph #3 below on or before January 31, 2026,
- (d) Commencing February 2026, and continuing for a period of 12 months, the Landlord is entitled to carry out a monthly inspection of the exterior balcony and must promptly draw the Tenant's attention to any further need for clearance,
- (e) If the Landlord is obliged to communicate with the Tenant pursuant to paragraph b, above, the Landlord shall provide the Tenant five days to carry out the clearance,
- (f) If the Tenant fails to carry out the clearance within five days of communication from the Landlord, the Landlord is entitled to file an application as outlined in paragraph #3 of this order.”
Emphasis Added

3. In this application, the Landlord asserted that the Tenant failed to comply with paragraph 2(a) of the order. Upon the plain reading of paragraph (e) above, it requires the Landlord to give the Tenant five days to carry out the clearance “if the Landlord is obligated to communicate with the Tenant pursuant to paragraph (b), above.” Paragraph (b) reads “the Landlord shall be entitled to carry out an inspection on or after January 20, 2026.” I was not satisfied that in reading together paragraphs (e) and (b) of the order changes the condition to be met by the Tenant as set out in paragraph (a).
4. There was no dispute that the Landlord requested an amendment of the prior order and on March 5, 2026 order, LTB-L-038204-25-AM, was issued to correct a clerical error. The amendment pertained to paragraph 2(e) of the order and was amended to read as follows:

“(e) If the Landlord is obliged to communicate with the Tenant pursuant to **paragraph d** above, the Landlord shall provide the Tenant five days to carry out the clearance.”
5. I was also not satisfied that the amendment in the order impacted the condition set out in paragraph 2(a) of the order to be met by the Tenant as the amendment only relates to paragraph 2(d) regarding future inspections by the Landlord.
6. The Tenant testified that her belongings were removed from this area and submitted into evidence a copy of a photo taken on March 11, 2026 (DOC-7873169pg6). The Tenant acknowledged that her garbage bin, recycling bin, and a floor mat remain in the area. Under cross-examination, the Tenant testified that she did not think leaving these items on the back balcony was an issue.
7. The Landlord’s Agent, who is the leasing agent for the Landlord, testified that she has visited the rental complex many times. In support of her visit on February 18, 2026, she

provided a copy of two photos taken of the back balcony area (DOC-7429044pgs3-4) which showed a number of the Tenant's belongings still being stored in this area, including a chair, chest, shelf, bicycles, toys, and many other items. The Landlord's Agent also testified that she provided by hand to the Tenant another notice on March 7, 2026 to clear the balcony area.

8. Based on the evidence before me, I was not satisfied that the Tenant removed all her belongings from the back balcony on or before January 20, 2026 as ordered. The Landlord's Agent's photos were dated February 18, 2026 and clearly showed a number of items still being stored in the area. The Tenant's photos was dated March 11, 2026 which was after the photos provided by the Landlord's Agent.

The surrounding circumstances

9. After considering all of the circumstances, I find that it would not be unfair to set aside order LTB-L-006019-26.
10. The Tenant testified that she is 64 years old, receiving ODSP, and has resided in the unit for 20 years. She asserted that she is a person with a disability who has significant health concerns including limited and reduced mobility, and mental health issues. In support of her assertion, she provided copies of two letters from her family doctor and one from her pain specialist into evidence (DOC-7873169pgs1-4). The Tenant further testified that she received assistance from family and friends to remove the belongings from the exterior balcony.
11. The Tenant's Legal Representative submitted that the Tenant has complied with the conditions in the order, namely the removal of the Tenant's belongings from the exterior balcony outside the back door of the rental unit. She also submitted that the underlying application brought by the Landlord related to clutter and there being a fire safety concern and that the order addressed those concerns and imposed conditions on the Tenant which have now been met. She further submitted that if the Landlord has any remaining concerns with the items on the back balcony, such as the Tenant's garbage can and recycling bin, the Tenant will remove them.
12. She requested that the LTB use its discretion and not evict the Tenant who is on a fixed income, disabled, requires medical supports in the area, and has lived there for 20 years. She also submitted that an eviction ought to be a remedy of last resort and would severely prejudice the Tenant due to the current housing crisis and changes in market rent.
13. The Landlord's Agent confirmed in her testimony that she attended the residential complex on May 2, 2026 and under cross-examination that the back balcony area was cleared of all items except what appeared to be garbage bins in front of the Tenant's back door. She also testified that the condition of the back balcony had impacted the Landlord's ability to lease vacant units at the complex and submitted that unit closest to the Tenant's was on the market for over one year.
14. The Landlord's Legal Representative requested that the motion be denied and the stay lifted immediately. She submitted that the conditions in the order were very clear, and stated twice that "all" items must be removed which the Tenant has failed to do as a garbage can, recycling bin, and mats remain in the area. She also submitted that the

Tenant has had ample opportunity to comply and continues to choose not to remove all items. She further submitted that the Tenant has not requested permission or sought any accommodation from the Landlord to continue store certain items on the back balcony.

15. The prior order was issued after a hearing with respect to the allegations in the Landlord's original application. The order gave the Tenant relief from eviction in the form of a conditional order to remove **all** belongings from the exterior balcony outside the back door of the rental unit. There is no dispute that the Tenant has not removed **all** belongings. However, this is a long term tenancy, 20 years in length, the Tenant is on a fixed income, is disabled, and an eviction at this time would significantly impact her. The *Residential Tenancies Act, 2006* (the 'Act') is predicated on a remedial nature. If the Tenant can remedy the breach, then the tenancy ought to continue. The Tenant's Legal Representative submitted that the Tenant could remove the last remaining items.
16. The Tenant has left a garbage can, a recycling bin, and floor mats on the back balcony. Having these items on the back balcony amounts to a continued breach as prior Hearing Member, after hearing all of the evidence in this matter, ordered the Tenant to remove "all" belongings from the area. Therefore, I find that it would not be unfair to set aside the order provided the prior order is amended to include a clause requiring the Tenant to remove these last few belongings within ten (10) days as part of the conditions.

It is ordered that:

1. The motion to set aside Order LTB-L-006019-26, issued on January 26, 2026, is granted.
2. Order LTB-L-006019-26, issued on January 26, 2026, is set aside and cannot be enforced.
3. Paragraph 2 of the previous order issued on January 6, 2026 with respect to LTB-L-038204-25 is amended to include the following clause:

2. The Tenant shall...

(g) ensure all belongings, including her garbage can, recycling bin and rugs, are not stored on the exterior balcony outside the back door of the rental unit and shall be removed on or before May 25, 2026.

May 15, 2026
Date Issued

Lisa Del Vecchio
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.