



Order under Section 31 Residential Tenancies Act, 2006

File Number: LTB-T-011561-24

In the matter of: 22, 361 DEVONSHIRE AVE
WOODSTOCK ON N4S5P5

Between: Mary L Marshall Tenant

And

Exclusive Rental Landlords
Jason Stern

Mary L Marshall (the 'Tenant') applied for an order determining that Exclusive Rental and Jason Stern (the 'Landlords') did not give the Tenant seventy-two (72) hours to remove their property from the rental unit or from some place close to the rental unit after the Sheriff evicted the Tenant (LTB-T-011561-24; hereafter referred to as the 'T2 Application').

This T2 Application was heard by videoconference on April 20, 2026.

The Tenant, the Tenant's support individuals, Alicia Fawcett and Nancy Oud, the Landlord Jason Stern, and the Landlords' Agent, Dena Fortin, attended the hearing.

Determinations:

Previous Proceedings Involving the Parties

1. On February 6, 2023, the Landlords applied for an order to terminate the tenancy and evict the Tenant, because the Tenant did not pay the rent that the Tenant owes (LTB-L-011926-23; hereafter referred to as the 'L1 Application').
2. The L1 Application was heard on June 19, 2023, and resolved on consent by the order LTB-L-011926-23, issued on June 28, 2023.
3. On August 16, 2023, the Landlords applied for an order to terminate the tenancy and evict the Tenant and for an order to have the Tenant pay the rent they owe because the Tenant did not meet a condition specified in the order LTB-L-011926-23, issued on June 28, 2023 (LTB-L-063974-23; hereafter referred to as the 'L4 Application').
4. The L4 Application was resolved by the order LTB-L-063974-23, issued on August 31, 2023, without a hearing being held.

5. On September 7, 2023, the Tenant filed a motion to set aside the order LTB-L-063974-23, issued on August 31, 2023.
6. The motion to set aside the order LTB-L-063974-23, issued on August 31, 2023, was heard on October 23, 2023.
7. Pursuant to the order LTB-L-063974-23-SA, issued on October 31, 2023, the Tenant's motion to set aside the order LTB-L-063974-23, issued on August 31, 2023, was denied, with the stay being lifted on November 21, 2023.

T2 Application – Procedural History

8. The Tenant filed their T2 Application with the Board on February 6, 2024.
9. The T2 Application was first scheduled to be heard by the Board on February 11, 2025. The matter was adjourned in order to provide the Tenant with an opportunity to duly organize and serve to the Landlords the materials on which they intended to rely upon during the hearing, in addition to providing the Tenant a further opportunity to seek legal advice.¹
10. The T2 Application was then scheduled to be heard on June 19, 2025. The matter was adjourned at the Tenant's behest, as they had expressed difficulties in obtaining legal advice.
11. The parties were advised that the next hearing date would be peremptory on both the Tenant and the Landlords.

April 20, 2026 – Adjournment Request

12. On April 13, 2026, the Tenant submitted a *Request to Reschedule a Hearing*, as they sought for the April 20, 2026, hearing to be rescheduled at a later date.
13. Based on the timing of the Tenant's request, and as the Tenant had failed to obtain the Landlords' consent with respect to the matter being rescheduled, the Tenant was advised by the Board, on April 16, 2026, that they would need to attend the hearing on April 20, 2026.
14. At the start of the hearing on April 20, 2026, the Tenant requested that the matter be adjourned once more, as they had yet to be able to obtain legal advice.
15. The Tenant stated that they periodically sought legal assistance between the months of June 2025, and December 2025, and formally reached out to a legal clinic during the month of January 2026, but never heard back from anyone.
16. The Tenant indicated that they were unsure as to why they were suggested to seek legal assistance, but that they tried to comply with the direction that they were provided.
17. The Landlords sought for the Tenant's adjournment request to be denied.

¹ Interim Order LTB-T-011561-24-IN, issued on February 18, 2025.

18. The Landlords submit that the Tenant has had ample time to seek legal assistance since the application was filed on February 6, 2024, and that the Tenant ought to be ready to present the application they elected to file with the Board.
19. Rule 21.8 of the Board's *Rules of Procedure* and the Board's *Interpretation Guideline 1* outline relevant considerations in determining whether or not an adjournment request should be granted, including:
 - the reason for the adjournment and position of the parties;
 - the issues in the application;
 - any prejudice that may result from granting or denying the request;
 - the history of the proceeding including other adjournments or rescheduling;
 - the LTB's obligation to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter. [Emphasis added]
20. On the basis of the evidence and submissions before me, and having considered the factors outlined in Rule 21.8 of the *Rules of Procedure*, I denied the adjournment request.
21. Indeed, while section 10 of the *Statutory Powers Procedure Act, 1990*, states that a party may be represented by a representative at a hearing, the right to representation is not absolute and an adjournment request based on this ground may be denied. The onus is on the party wishing to be represented to make all reasonable efforts to find a lawyer or paralegal able to represent them at the hearing once they become aware of the hearing. By analogy, I find that the same applies with respect to parties seeking to obtain legal advice prior to a hearing.
22. Moreover, considering the time which has elapsed since the filing of the application (February 6, 2024), the Tenant has had sufficient time to seek legal assistance, and was afforded two (2) further opportunities to do so following the February 11, 2025, and June 19, 2025, adjournments. I do not find that passively waiting for a legal clinic to get back to the Tenant with limited to no follow-ups by the Tenant equates to making all reasonable efforts to obtain legal assistance; especially when taking into consideration that the April 20, 2026, hearing was to be peremptory on both the Tenant and the Landlords.
23. As the Tenant filed the T2 Application themselves, I find that they are aware of the questions arising in the proceedings and therefore had a reasonable opportunity to know issues and respond accordingly. As such, I find that they had an opportunity to be heard on the matter.
24. Accordingly, I find that the adjournment request amounts to little more than an attempt by the Tenant to unduly delay the proceedings. As the Board has an obligation to adopt the most expeditious method of determining the questions arising in a proceeding,² the Tenant's adjournment request was denied, and the T2 Application proceeded to be heard.

² Section 183 of the *Residential Tenancies Act, 2006*.

T2 Application

25. As explained below, the Tenant did not prove the allegations contained in the T2 Application on a balance of probabilities. Therefore, the T2 Application is dismissed.

a) Agreed Facts

26. The Tenant and the Landlords agreed that the tenancy was terminated and that the Tenant was evicted from the rental unit on December 14, 2023, in accordance with the orders LTB-L-063974-23, issued on August 31, 2023, and LTB-L-063974-23-SA, issued on October 31, 2023.

b) Tenant's Evidence

27. The Tenant testified that following the eviction being enforced on December 14, 2023, they contacted the superintendent assigned to the residential complex on December 15, 2023, in order to schedule a time to collect the belongs remaining in the rental unit.

28. The Tenant did not recall the name of the superintendent, nor the means through which they had contacted them.

29. The Tenant stated that they were able to attend the rental unit on December 15, 2023, and proceeded to collect some of their remaining belongings from the premises.

30. The Tenant indicated that they sought assistance in order to pick-up the remainder of their belongings by reaching out to community groups, including their local Church. The Tenant had sought to coordinate a date and time between their support groups and the Landlords in order to not lose their belongings, as it appears from a copy of the email sent by the Tenant to the Landlords on December 18, 2023 (DOC-4972875, pages 36 and 37 of 39, Exhibit 1).

31. The Tenant stated that they sent a follow-up email to the Landlords on December 26, 2023, as they sought to arrange a date and time following the Christmas period to pick up their belongings, as it appears from a copy of the email sent by the Tenant to the Landlords on December 26, 2023 (DOC-4972875, page 35 of 39; Exhibit 2).

32. The Tenant indicated that they sent another email to the Landlords on January 8, 2024, and they were advised that their belongings were still in the rental unit but that their community group had not established any agreements on the Tenant's behalf with the Landlords, as it appears from the exchange in correspondence between the Tenant and the Landlords on January 8, 2024 (DOC-4972875, pages 33 and 34 of 39; Exhibit 3).

33. The Tenant stated that they felt that the Landlords limited their ability to collect their belongings by indicating that the Tenant would need to obtain the assistance of third-party movers to facilitate the removal of the remaining items (Exhibit 3).

34. The Tenant therefore asserts that the Landlords failed to provide them with a period of seventy-two (72) hours prior to disposing of some of their personal belongings which were left in the rental unit following the eviction being enforced on December 14, 2023.

35. Under cross-examination, the Tenant agreed that the Landlords had advised them that, subject to the superintendent's schedule and availability, the Tenant would be provided access to the rental unit for a period of seventy-two (72) hours following the eviction in order to collect their belongings.

c) Landlords' Evidence

36. The Landlords agreed that the superintendent assigned to the residential complex provided access to the rental unit to the Tenant on December 15, 2023, and December 18, 2023. While the Tenant accessed the rental unit on that date, they consider that very little progress was made by the Tenant with respect to packing and removing their belongings, as it appears from a copy of the text messages dated December 15, 2023, and December 18, 2023, between the superintendent and the Landlord Jason Stern (DOC-5797453, pages 1 and 2 of 7; Exhibit 4, *in bundle*).

37. The Landlord Jason Stern (hereafter referred to as 'J.S') testified that, after December 15, 2023, they had had a conversation with the Tenant's pastor in order set up a potential date and time to arrange for the pastor to send someone to the rental unit to collect the Tenant's belongings. Despite the back and forth, J.S stated that no one from the community came to facilitate the pick up of the Tenant's items.

38. J.S indicated that they recognized that the Tenant had limited resources. They therefore elected to delay the removal of the Tenant's belongings to provide them a chance to make arrangements to collect their items.

39. J.S stated that the Landlords kept the Tenant's items in the rental unit until midway through the month of February 2024, as the Landlords had proceeded to re-rent the rental unit as of March 1, 2024.

40. J.S indicated that at no point in time the Tenant and the Landlords came to a clear-cut agreement with respect to extending the deadline the Tenant would have to remove their personal items from the rental unit. In fact, the Landlords had reminded the Tenant that their obligation was to provide the Tenant access to their belongings for a period of seventy-two (72) hours only following the eviction, as it appears from the email sent by the Landlords to the Tenant on December 18, 2023, and January 8, 2024 (Exhibit 3 and DOC-4972875, page 38 of 39, Exhibit 5).

41. The Landlords submit that they met their obligation with respect to the seventy-two-hour deadline, and therefore sought for the Board to dismiss the Tenant's T2 Application.

42. The Tenant did not seek to ask J.S any questions under cross-examination.

d) Analysis

43. Subsection 41(1) to 41(5) of the *Residential Tenancies Act, 2006* (hereafter referred to as the 'Act') read as follows:

41 (1) A landlord may sell, retain for the landlord's own use or otherwise dispose of property in a rental unit or the residential complex if the rental unit has been vacated in accordance with,

- (a) a notice of termination of the landlord or the tenant;
- (b) an agreement between the landlord and the tenant to terminate the tenancy;
- (c) subsection 93 (2); or
- (d) an order of the Board terminating the tenancy or evicting the tenant.

(2) Despite subsection (1), where an order is made to evict a tenant, the landlord shall not sell, retain or otherwise dispose of the tenant's property before 72 hours have elapsed after the enforcement of the eviction order.

(3) A landlord shall make an evicted tenant's property available to be retrieved at a location close to the rental unit during the prescribed hours within the 72 hours after the enforcement of an eviction order.

(4) A landlord is not liable to any person for selling, retaining or otherwise disposing of a tenant's property in accordance with this section.

(5) A landlord and a tenant may agree to terms other than those set out in this section with regard to the disposal of the tenant's property.

44. As reiterated in *Beauge v. Metcap Living Management Inc.*, 2012 ONSC 1160, the Court held that "[the] landlord has a positive obligation to make the tenant's possessions available within the time parameters of the Act (see *Mputu v. Wright*, [2004] CarswellOnt. 8851 (S.C.J.) at paras. 38 and 39)."³

45. On the basis of the evidence and submissions before me, I find that the Landlords did give the Tenant seventy-two (72) hours to remove their property from the rental unit or from some place close to the rental unit after the Sheriff evicted the Tenant.

46. As the parties agreed that the Tenant's eviction was enforced on December 14, 2023, the statutory period of seventy-two (72) hours during which the Landlords were obliged to allow the Tenant to retrieve their property would have ended on December 17, 2023, unless the parties came to an agreement to extend the amount of time that the Tenant would have had to reclaim their belongings.

47. While the Tenant expressed that the Landlords had limited their ability in retrieving by demanding that the Tenant secure the services of third parties to facilitate the removal of the Tenant's remaining items, the Tenant's own testimony made it evident that they required assistance and were unable to proceed in removing the items by themselves. I do not find

³ *Beauge v. Metcap Living Management Inc.*, 2012 ONSC 1160, paragraph 6.

that the Landlords unduly prevented the Tenant from accessing the rental unit in order to collect their belongings.

48. By allowing the Tenant to access the rental unit on December 15, 2023, it is evident that the Landlords allowed the Tenant to retrieve their belongings within the required seventy-two (72) hours period.
49. The question therefore becomes whether or not the Tenant and the Landlords entered into an agreement through which the parties had agreed that the Landlords would refrain selling, retaining or otherwise disposing of the Tenant's property beyond the seventy-two (72) hours period.⁴
50. Although the Landlords refrained from disposing of the Tenant's belongings at the conclusion of the seventy-two (72) hours as the Tenant was in the process of seeking assistance to remove their belongings, the testimony from both the Tenant and J.S and their prior exchanges in correspondence (Exhibits 1, 2, and 3) establish that no formal agreement was ever reached between the Tenant and the Landlords with respect the Tenant having a firm deadline to remove their belongings.
51. While the Tenant may have had difficulties in securing any such assistance in light of the looming holiday season, they ought to have taken reasonable steps to secure the assistance of third parties, and seek to establish an actual agreement with the Landlords with respect to a differed period of time to collect their belongings, as opposed to having third parties contact the Landlords on their behalf and fail to follow up on assurances that they would assist the Tenant.
52. As such, I find that the Tenant failed to establish their claim that the parties had agreed that the Landlords would essentially continue to hold the Tenant's belongings indefinitely, until they found suitable means of retrieving any such item. In fact, the Landlords reminded the Tenant on more than one occasion that they statutory seventy-two (72) hours period had elapsed and that the Landlords therefore met their obligations (Exhibits 3 and 5)
53. I accept the Landlords' evidence that the Tenant's belongings remained in the rental until mid-February 2024, and find, on a balance of probabilities, that the Landlords met their obligation to make the Tenant's belongings available to them within the required seventy-two (72) hours period and beyond.
54. As the Tenant failed to reclaim the entirety of their belongings within the seventy-two (72) hours period following the December 14, 2023, eviction, and as the Tenant and the Landlords did not agree to terms that would see the Landlords refrain from selling, retaining or otherwise disposing of the Tenant's property beyond the month of February 2024, I find that the Landlords met their obligations under subsections 41(2 and 3) of the Act.
55. Accordingly, the Landlords were entitled to sell, retain, or otherwise dispose of the remaining items left in the rental unit by the Tenant following the eviction, and – pursuant to subsection 41(4) of the Act - cannot be held liable for doing so.
56. The Tenant's T2 Application must therefore be dismissed.

⁴ Subsection 41(5) of the *Residential Tenancies Act, 2006*.

It is ordered that:

1. The Tenant's T2 Application, LTB-T-011561-24, is dismissed.

May 27, 2026
Date Issued

Alexandre Traboulsi
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.