

Landlord and Tenant Board's Duty to Accommodate under the *Human Rights Code*

A tenant with mental health issues, including serious depression, attended a hearing into eviction for breach of a mediated agreement at the Landlord and Tenant Board (the Board). Although there was no rent owing by the hearing date, the tenant had not made the payments on time as per the mediated agreement. For this reason the landlord wanted her evicted.

The tenant was extremely distraught through much of the hearing. She told the Adjudicator on several occasions that she was not well and was finding it very difficult to proceed. She explained that her social worker had intended to be at the hearing but had been unable to do so as a result of emergency surgery. A letter from her social worker indicated that their agency was trying to arrange to have the rent paid directly to the landlord but that the landlord was not cooperating. Despite this, an eviction order was issued.

ACTO appealed the eviction order to Divisional Court based on the failure of both the Board and the landlord to accommodate the tenant to the point of undue hardship. The case was heard in January 2009. The Court dismissed the appeal. They found: i) the Board had provided adequate guidance to the tenant; ii) the landlord had no duty to accommodate the tenant as the landlord did not know until the hearing that she suffered from a disability.

ACTO filed a motion asking the Court of Appeal to hear an appeal from the Divisional Court decision. We also argued a motion at the Court of Appeal to stay the eviction until the motion to hear the appeal was decided.

The stay was granted. The Court found that the tenant clearly suffered from serious mental health issues, that an eviction from her home of six years would be extremely difficult, and that any issues of late payment of rent had been resolved as the rent was now being paid directly to the landlord by a social agency.

However, when the motion for leave to appeal was later considered by the Court, they refused to hear the appeal. The tenant was evicted.