

**Order under Subsection 74(14)
Residential Tenancies Act, 2006**

Citation: Luu v Notley, 2024 ONLTB 27601

Date: 2024-04-17

File Number: LTB-L-075125-23-VO-2

In the matter of: 9 ELITE RD
CALEDON VILLAGE ON L7K0L2

Between: Mai huyen trang Luu Landlord

And

Christopher Notley Tenant

Christopher Notley (the 'Tenant') filed a motion to set aside order LTB-L-075125-23 because, before the eviction order was enforced, the Tenant paid the amount required under subsection 74(11) of the *Residential Tenancies Act, 2006* (the 'Act') to void the order.

The Tenant's motion claimed that the Tenant paid to the Landlord \$54,786.00 to void the order. The Board issued order LTB-L-075125-23-VO dated February 21, 2024 voiding order LTB-L-075125-23 issued on February 7, 2024.

On February 21, 2024, the Landlord filed a motion to set aside and order to void claiming that the Tenant did not pay the money the Tenant claimed to have paid in the Tenant's motion.

The Landlord's motion was heard by videoconference on April 9, 2024. The Landlord represented by Reena Basser, and the Tenant, who met with Duty Counsel, attended the hearing.

Preliminary Matters:

The Tenant requested an adjournment. The Tenant testified that his legal representative quit on Saturday, three days prior to the hearing. In consideration of this request the Tenant was asked if rent for March and April have been paid since the Tenant filed the motion to void. The Tenant testified that the rent has been paid. The monthly rent is \$7,995.00. The Landlord's representative argued that these rents have not been paid and that the arrears of rent are currently around \$70,000.00. The Landlord's bank statement, which had been entered as evidence show no rent has been paid. The Tenant did not make any further submissions on this point.

The issue to be determined is whether the Tenant paid the Landlord \$54,786.00 to void the order. The hearing will rely on the evidence submitted and testimony to make this determination. As evidence must be submitted five days before a hearing, and the Tenant had legal representation until three days prior to the hearing, all evidence the Tenant intends to rely on should be

available. I find the prejudice to the Landlord to delay the hearing is significant. As such, the request to adjourn is denied.

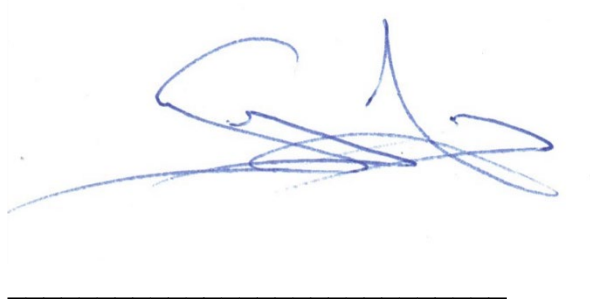
Determinations:

1. The Landlord served an N4 notice on the Tenant on September 6, 2023, because rent for August and September 2023 had not been paid. As a result, the Tenant was aware that there was an issue with rent payments as of that date.
2. The Landlord filed an application which was heard on January 3, 2024. No further rent payments had been made and the arrears of rent were \$46,800.00. The Tenant was to pay the rent by e-transfer directly to the Landlord's account as determined at the January 3rd hearing.
3. The Tenant testified that there was an issue with the payment system he was using that caused the problem. The Tenant's evidence that the payment required to void the order was made is what appears to be a Wells Fargo bank statement that is fully redacted with the exception of one line showing a payment. The document redacts all other information including account information and any other transactions. The second document is a screenshot from a Wells Fargo transaction. The status of this exhibit shows that status of the payment to be pending. There is no evidence the money was successfully transferred. These are the only exhibits the Tenant is relying on to prove proof of payment.
4. The Landlord's evidence are the complete bank records of the Landlord' account from January 31 through March 1, 2024. There are no deposits to the account which would reflect payments from the Tenant.
5. The Tenant has had seven months since the N4 notice was served informing him that rent payments were not being made to the Landlord. As this tenancy commenced in December 2022, it is clear the method of payment had been successful up until that time.
6. Based on the evidence before me, I am not satisfied the Tenant made a \$54,786.00 to void the order. The Tenant has had months to correct what he claims was a bank transfer issue, and the only evidence the Tenant provided was a redacted statement and a pending transfer. In the months since then, could have shown the completed transaction. The Tenant could have provided proof of the balance in the account equaling the payment. None of the evidence supports the Tenant's claim that the money was paid to the Landlord.
7. In addition, the Landlord's evidence shows that money has not been received from the Tenant. The Landlord also submits that she has attempted to contact the Tenant and has had not response.
8. I find the Tenant has not paid the amount required to void order LTB-L-075125-23 issued on February 7, 2024.

It is ordered that:

1. Order LTB-L-075125-23-VO issued on February 21, 2024 is set aside.
2. The Tenant's motion to void LTB-L-075125-23 issued on February 7, 2024 is denied.
3. The stay on order LTB-L-075125-23 is lifted immediately.

April 17, 2024

A handwritten signature in blue ink, appearing to be 'Greg Joy', written over a horizontal line.

Date Issued

Greg Joy
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.

Notes:

- The Tenant cannot make another motion under subsection 74(11) of the Act to set aside an eviction order during the period of the Tenant's tenancy agreement with the Landlord.
- When the LTB directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party(ies) named in this order. The cheque will be in the amount directed plus any interest accrued up to the date of this order.