



## Order under Section 77(8) Residential Tenancies Act, 2006

**Citation:** Lo bianco v Rose, 2024 ONLTB 7016

**Date:** 2024-01-25

**File Number:** LTB-L-084157-23-SA

**In the matter of:** UPPER UNIT A, 47 WALTER AVE  
NEWMARKET ON L3Y2T4

**Between:** Mark Lo bianco

**And**

Crystal Lee Rose

I hereby certify this is a  
true copy of an Order dated

**JAN 25, 2024**

Landlord and Tenant Board

Landlord

Tenant

Mark Lo bianco (the 'Landlord') applied for an order to terminate the tenancy and evict Crystal Lee Rose (the 'Tenant').

The Landlord's application was resolved by order LTB-L-084157-23, issued on September 21, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-084157-23.

The motion was heard by videoconference on January 17, 2024.

### Determinations:

1. After considering all of the circumstances, I find that it would be unfair to set aside order LTB-L-084157-23.

### The Breach

2. The Landlord filed an application because the Tenant did not pay the rent the Tenant owes. The application was resolved by order LTB-L-040048-23. This order included a payment plan to pay down the arrears and required the Tenant pay their rent full and on time until the arrears were paid in full.
3. The order provided that the Landlord could apply to the Board 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 he failed to meet the conditions specified in the order.
4. There is no dispute that the Tenant breached this order by failing to pay the lawful rent as required on October 1, 2023. As a result, the Landlord applied for an ex-parte order terminating the tenancy. The Landlord's request was granted pursuant to order LTB-L-084157-23.

5. This motion is brought pursuant to subsection 78(11) of the Act. As the Tenant acknowledges breaching order LTB-L-040048-23, the only issue before me is whether I am satisfied, having regard to all the circumstances, that it would not be unfair to set aside the order.

*Whether to Set Aside the Order*

6. The Tenant failed to make the rent payment as required. The Tenant cited health issues and a bank holiday as reasons for missing the rent payment.
7. In the present case, the Landlord's effective cross-examination has demonstrated that the Tenant has no good reason for having paid her rent late, has broken promises to pay on time, and has been disingenuous about her reasons for paying late.
8. However, the Act is remedial legislation and the courts have determined that evicting a tenant is a remedy of last resort. In the cases of *Sutherland v. Lamontagne*, [2008] O.J. No. 5763 (Div. Ct.) and *Paderewski Society v. Ficyk*, [1998], the Divisional Court stated,

*"To put somebody out of their home must, in my view, call for clear and compelling circumstances that it's no longer possible for the arrangement to continue."*

9. In other words, eviction should only be ordered if it is not possible to bring a tenancy back into good standing. In the case of the Tenant failing to pay rent, bringing the tenancy back into good standing is a simple matter of the Tenant abiding by a realistic payment plan. Where that is possible, it should be done rather than terminating the tenancy.
10. The Tenant just started a full-time job and is starting a second full time job in the coming days. The Tenant's income will allow the Tenant to pay \$1000.00 a month toward the rent arrears.
11. I acknowledge the Tenant has struggled to pay her rent and full in time. However, once when the Tenant starts being paid on consistent basis, the tenancy will remain viable. Her monthly income will be enough to cover her expenses, including her rent and rent arrears payments.
12. In considering the motion I must balance the prejudices to the parties. I find the Landlord would be minimally prejudiced should I grant the Tenant's motion. The Tenant faces homelessness. Based on the remedial nature of the Act, I find the prejudice to the Tenant would be greater should her motion be denied.
13. I find a conditional order requiring the Tenant to pay the outstanding arrears within nine months and requiring her to pay rent in full and time for a one-year period, sufficiently balances the prejudices to the parties, while maintaining the tenancy.

**It is ordered that:**

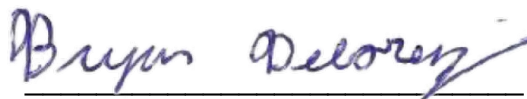
1. The motion to set aside order LTB-L-084157-23, issued on September 21, 2023, is granted.
2. Order LTB-L-084157-23, issued on September 21, 2023, is set aside and cannot be enforced.

- 3. The Tenant shall pay to the Landlord \$8,767.78, which represents the arrears of rent and costs outstanding for the period ending January 31, 2024.
- 4. The Landlord's application for eviction is denied on the condition Tenant shall pay to the Landlord the amount set out in paragraph 3 in accordance with the following schedule:

Date Payment Due	Payment Amount
The 20 <sup>th</sup> day of each month beginning February 20, 2024, and ending September 20, 2024.	\$1000.00
October 20, 2024	\$767.78

- 5. The Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period February 1, 2024 to October 31, 2024, or until the arrears are paid in full, whichever date is earliest.
- 6. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 3 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after January 31, 2024.

**January 25, 2024**  
**Date Issued**

  
Bryan Delorenzi  
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.