



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

Citation: Liu v Ssebadduka, 2023 ONLTB 73700

Date: 2023-11-09

File Number: LTB-L-069418-23-SA

In the matter of: 607, 2212 LAKE SHORE BLVD W
ETOBICOKE ON M8V0C2

Between: Tong Liu

And

Muchwa Ssebadduka

I hereby certify this is a
true copy of an Order dated
NOV 09, 2023
Landlord and Tenant Board

Landlord

Tenant

Tong Liu (the 'Landlord') applied for an order to terminate the tenancy and evict Muchwa Ssebadduka (the 'Tenant').

The Landlord's application was resolved by order LTB-L-069418-23, issued on August 25, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-069418-23.

The motion was heard by videoconference on October 31, 2023.

The Tenant attended the hearing. The Landlord was represented at the hearing by Barrington Lue Sang.

Determinations:

The Breach

1. The Landlord filed an application because the Tenant did not pay the rent the Tenant owes. The Landlord also filed an application because the Tenant was persistently late in paying his rent. This matter was settled by way of a consent order, LTB-L-050369-23 issued on August 25, 2023, which required the Tenant to pay the outstanding arrears by way of a payment plan. The order also required the Tenant to pay his rent in full and on time for a one-year period.
2. 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 consent order.
3. There is no dispute that the Tenant breached the order by failing the lawful rent on or before September 3, 2023. The Tenant also failed to pay \$1,745.00 before August 31,

2023. As a result, the Landlords applied for an ex-parte order terminating the tenancy. The Landlords' request was granted pursuant to LTB-L-069418-23.

4. This motion is brought pursuant to subsection 78(11) of the Act. As the Tenant acknowledges breaching the mediated agreement 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.

Why the Tenant Breached the Previous Order

5. The Tenant claims he failed to make the required payments because someone fraudulently removed \$11,000 from his bank account. I do not find the Tenant's story to be credible. The Tenant's motion makes no mention of money taken from the bank account. The Tenant testified at the hearing that the money was taken from the bank account on September 30, 2023. When asked why he did not make the required payments August 31, 2023, and September 3, 2023, the Tenant changed his story to claim the money was taken August 30, 2023.
6. The Tenant provided the Board a letter from the Bank of Nova Scotia dated September 13, 2023, indicating that the Bank of Nova Scotia was terminating its banking relationship with the Tenant. I do not find this letter to be helpful to the Tenant's claim. The letter is initiated by the bank. This suggests that the banking relationship ended because of misconduct on the Tenant's part. The letter makes no mention that the bank account was terminated because of fraudulent activity.
7. The Tenant was aware of this hearing. It would be expected if the Tenant had \$11,000.00 in his bank account, he would be able to provide the Board with a bank statement, or screenshot from his bank account, showing the money in his account and then removed. I also not \$11,000 is a substantial sum of money. If that amount of money was removed from his account illegally it would be expected that a police report would be filed by either the Tenant or the bank.
8. I have considered the evidence presented by the Tenant, and I do not find his explanation to be credible. I find the Tenant's story to be a fabrication to delay the eviction process.

Whether to Set Aside the Order

9. Since the previous order was issued, August 25, 2023, the Tenant has managed to reduce the arrears owing to \$500.00. The Tenant submits that if I were to deny his motion it would be disproportionately punitive to him.
10. I agree with the Tenant that the arrears outstanding is a small sum. The difficulty with the Tenant's argument is that the Landlord's original application was not just based on rent arrears. The Landlord's original application also alleged the Tenant persistently paid his rent late. As part of the consent order the Tenant agreed to pay his rent in full and in on time for one year. The Tenant has yet to pay his rent on time since he entered into the consent order. Further, the Tenant indicated that he would not be able to pay his rent that is due November 3, 2023, until November 15, 2023.

11. The Tenant told the Board that he makes \$1,500.00 per week driving for Uber. He also has is a 75% shareholder in a marketing business. The Tenant has been driving for Uber for two years. The Tenant's income is substantial, and his expenses are minimal. There was no credible explanation provided as to why he has persistently paid his rent late since entering into the consent order. I find the Tenant's pattern of not paying his rent on time to be a blatant disregard for his obligation as a Tenant.
12. 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.”

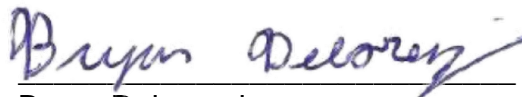
13. I acknowledge eviction is a remedy of last resort, however it must be exercised when the Tenant continually does not pay his rent on time. The Tenant has had an opportunity to preserve the tenancy, yet he continues not to make payments as required. Given the Tenant's track record of missing payments, I am not satisfied the Tenant would comply with another conditional order.
14. After considering all of the circumstances, I find that it would be unfair to set aside order LTB-L-069418-23.
15. The only remaining issue before the Board is when to lift the stay. The Tenant has a substantial income and should be able to find a new place quickly. I find it would be unfair to delay the lifting of the stay.

It is ordered that:

1. The motion to set aside order LTB-L-069418-23, issued on August 25, 2023, is denied.
2. The stay of order LTB-L-069418-23 is lifted immediately.

November 9, 2023

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.