



## Order under Section 78(11) Residential Tenancies Act, 2006

**Citation:** 2817808 Ontario Corporation v Deshane, 2023 ONLTB 68312

**Date:** 2023-10-13

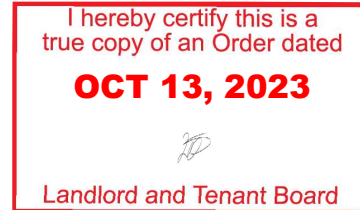
**File Number:** LTB-L-052629-23-SA

**In the matter of:** 1, 598 LANSDOWNE DR  
OSHAWA ON L1G1W4

**Between:** 2817808 Ontario Corporation

**And**

Candice Deshane



Landlord

Tenant

2817808 Ontario Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Candice Deshane (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant failed to meet a condition specified in the order issued by the Board on June 29, 2023 with respect to application LTB-L-015678-23.

The Landlord's application was resolved by order LTB-L-052629-23 issued on July 31, 2023. The Tenant filed a motion to set aside the ex-parte order.

This motion was heard by videoconference on September 21, 2023. The Landlord's agent Maksym Zhuravlov, the Landlord's legal representative Jordan Nieuwhof and the Tenant attended the hearing.

### Determinations:

1. The ex-parte order issued on July 31, 2023 terminates the tenancy as the Board was satisfied that the Tenant breached the prior repayment plan order by failing to pay the lawful rent for July 2023 on or before July 1, 2023.
2. The Tenant does not dispute breaching the prior repayment plan order. The Tenant testified that she underwent surgery in May 2023 and was off work during the summer months. The Tenant paid the July 2023 rent on July 16, 2023.
3. The Tenant also breached the prior order by failing to pay the monthly rent for August and September 2023 on or before the first day of each respective month. The parties did agree however that the amounts were eventually paid by the Tenant, although late. The rent for August 2023 was paid on August 18<sup>th</sup> and the rent for September 2023 was paid in full on September 2, 2023.
4. As of the hearing date, the Tenant was up to date on all payments per the prior order. The Tenant requested that the Board set aside the ex-parte order and that the prior repayment plan order be reinstated.

5. The Landlord opposed any further relief and argued that the motion should be denied as the Tenant has breached the prior order on more than one occasion and that the Tenant has been before the Board on multiple applications, including a recent application for persistent late payment of rent (LTB-L-047570-22).
6. Section 78(11)(b) of the Act provides the Board with the authority to set aside an ex-parte order for eviction if having regard to all the circumstances, that it would not be unfair to do so.
7. Based on the evidence before me, I find that it would not be unfair to set aside the ex-parte order issued on July 31, 2023. The Tenant has provided a reasonable explanation for the breach of the prior order and since the issuance of the ex-parte order, the Tenant has caught up and cured the alleged and any subsequent breaches. The arrears owing as of the hearing date are current with the repayment schedule issued on the prior order.
8. Although the Landlord stated that there is another application for persistent late payment of rent, this application was not before me and not subject to the set aside motion. While the Landlord is free to enforce the order from that application, it should not interfere with this current application and motion before the Board, or the test set out in section 78(11) of the Act.
9. As such, I find that it would not be unfair to set aside the ex-parte eviction order and to reinstate the prior repayment plan order to provide the Tenant with another opportunity to repay the arrears in full.

**It is ordered that:**

1. The motion to set aside Order LTB-L-052629-23, issued on July 31, 2023, is granted.
2. Order LTB-L-052629-23 is set aside and cannot be enforced by the Landlord.
3. The terms and conditions of order LTB-L-015678-23 issued on June 29, 2023 remain in full force and effect.

**October 13, 2023**  
**Date Issued**

  
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Fabio Quattrociocchi  
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.