



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

File Number: LTB-L-012907-23-SA

In the matter of: Upper, 246 Furnival Road
Rodney ON N0L2C0

Between: Kathryn Elizabeth Okolisan

And

Donald Deleary

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

August 9, 2023

Landlord and Tenant Board

Landlord

Tenant

Kathryn Elizabeth Okolisan (the 'Landlord') applied for an order to terminate the tenancy and evict Donald Deleary (the 'Tenant') because the Tenant did not meet a condition specified in the order issued by the LTB on February 9, 2023 with respect to application LTB-L-059510-22.

The Landlord's application was resolved by order LTB-L-012907-23, issued on April 21, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-012907-23.

The motion was heard by videoconference on June 15, 2023.

The Landlord's Legal Representative Gail Kukor-Lang and the Tenant attended the hearing.

Determinations:

1. After considering all of the circumstances, I find that it would be unfair to set aside order LTB-L-012907-23.
2. The parties reached a settlement of the Landlord's arrears application on December 16, 2022 and a consent order was issued. Order LTB-L-059510-22 provided that the Landlord could apply to the LTB 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 the Tenant failed to meet certain condition(s) in the order.
3. The Landlord filed an L4 application (LTB-L-012907-23) to terminate the tenancy, without notice to the Tenant, because the Tenant immediately breached the terms of the order.
4. The Board found that the Tenant failed to pay the full \$100.00 towards arrears on or before February 1, 2023 and the lawful rent of \$800.00 in full and on time, on or before February 1, 2023.
5. Additionally, the Board determined that the Tenant failed to pay the rent January and February 2023. The Tenant was required to make these payments under the agreement. As of the date of the hearing, the Tenant owes over \$11,500.00 in arrears, plus the cost of filing the application.

The Eviction

6. The Landlord proceeded to evict the Tenant on May 15, 2023 pursuant to the exparte order. The Landlord incurred Sheriff's fees for the enforcement.
7. On May 16, 2023, the Board stayed the eviction order upon receiving the Tenant's motion to set aside the order.
8. The Landlord's Legal Representative indicated that the Landlord has preserved the unit pending the hearing of the motion.
9. The Tenant asks to be put back into possession of the rental unit, and to continue making payments to eliminate the arrears pursuant to a new payment plan. He stated that he had missed payments but recently had money to pay the Landlord. He explained that he tried to give the funds to the Landlord but she did not respond.

The Tenant's Circumstances

10. The Tenant submits that the financial challenges he experienced during the Covid-19 pandemic have been long-lasting. He tried to find work but was unsuccessful. He received financial help from his family.
11. He finally reached out to Ontario Works in February 2023 but was refused benefits, he stated, because the Landlord would not provide them with a copy of the lease agreement. As I understand it, Ontario Works offered to provide him with an amount equal to first and last month's rent so that he could catch up on the arrears.
12. The Tenant stated that in mid-March 2023 he was hired for full-time work at a nearby parts factory. He did not submit any objective evidence, such as proof of employment, to the Landlord or to the Board.
13. The Tenant has a young daughter whom he cares for on a week about schedule, with the child's mother caring for the child in alternate weeks. He proposes to pay the rent on time and to make weekly payments to reduce the arrears.

Would it be unfair to set aside the Order?

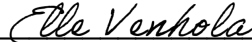
14. The Landlord asserts that the last payment the Tenant made to the Landlord was in May 2022, and that immediately after the agreement was reached in December 2022, the Tenant breached the agreement. Therefore, the Landlord submits, the Tenant cannot be relied upon to follow a new payment plan.
15. I empathize with the Tenant and his difficult circumstances. If the Tenant is correct about the Landlord's lack of response to his requests, and I have no reason to doubt his version of events, I am troubled by the Landlord's lack of engagement with Ontario Works which would have impeded the Tenant's ability to do what the Landlord is requiring him to do.
16. However, the fact remains that the Tenant made no effort to pay even a small amount of rent to the Landlord between May 2022 and December 2022. When he did enter into a payment plan with the Landlord, he immediately breached it. He gained a considerable delay in an eviction by agreeing to an order in December 2022. Had the Tenant wanted the payment agreement to be conditional on the Landlord providing a copy of the lease to Ontario works, he ought to have asked to include that condition in the order at the time.

17. The Tenant now owes the Landlord substantially more arrears than he did when he agreed to the payment plan. I am not persuaded that the Tenant will honour a repayment order. The evidence of the Tenant's employment is lacking and is, therefore, speculative. This means that the Tenant has not proven that he has the income to support the monthly rent and any arrears payments.
18. Although I have no doubt the Tenant is being sincere, his future expectations are not evidence of what will actually happen. The only factual evidence the Board can reasonably rely upon is how the Tenant has conducted himself in the past. It is prejudicial to the Landlord to permit the tenancy to continue.
19. The final issue for the Board is with respect to the timing of the lifting of the stay. The Tenant is no longer residing in the unit and has been living elsewhere since May 15, 2023. There is no reason why the removal of the stay should be delayed.
20. Therefore, the stay of order LTB-L-012907-23 is lifted immediately.

It is ordered that:

1. The motion to set aside Order LTB-L-012907-23, issued on April 21, 2023, is denied.
2. The stay of Order LTB-L-012907-23 is lifted immediately.

August 9, 2023
Date Issued



Elle Venhola
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.