



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

Citation: Uthayakumar v Wilson, 2023 ONLTB 52524

Date: 2023-07-28

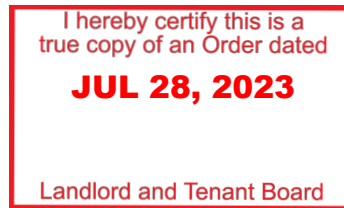
File Number: LTB-L-037279-23-SA

In the matter of: 580 CHARLES ST
SAULT STE. MARIE ON P6C3L9

Between: Suthayaruby Uthayakumar

And

Connie Wilson
Kevin Devoe



Landlord

Tenants

Suthayaruby Uthayakumar (the 'Landlord') applied for an order to terminate the tenancy and evict Connie Wilson and Kevin Devoe (the 'Tenants') and for an order to have the Tenants pay the rent they owe because the Tenants did not meet a condition specified in the order issued by the LTB on May 3, 2023 with respect to application LTB-L-061295-22.

The Landlord's application was resolved by order LTB-L-037279-23, issued on May 31, 2023. On June 8, 2023, the Tenants filed a motion to set aside the order.

This motion was heard by way of videoconference on July 17, 2023. The Landlord's legal representative Nathan Chevalier, the Tenant Connie Wilson and the Tenant's agent Gerard St Jean attended the hearing.

Determinations:

1. The ex-parte order issued on May 31, 2023 is based on a breach of a payment plan consent order for an L1 application for non-payment of rent. There is no dispute that the Tenants breached order LTB-L-061295-22 by failing to pay the lawful rent for May 2023 in full and on time on or before May 8, 2023. There is also no dispute that the Tenants have not made any payments to the Landlord since the issuance of the May 31, 2023 consent order.
2. At the hearing and on the Tenant's set aside motion, the Tenants attempted to justify their non-compliance with the prior order by alleging that the Landlord has breached their maintenance obligations under the Act. I do not accept the Tenant's arguments with respect to these allegations.
3. The prior application before the Board was a landlord's application for non-payment of rent. The prior application was resolved by way of a consent order, which does not include

any determinations respecting the Landlord's failure to meet their maintenance obligations. The consent order and Board's record confirms that the Tenant did not raise maintenance concerns at the prior hearing pursuant to section 82 of the Act.

4. I find that it would be an abuse of process for the Tenants to breach the prior consent order and then attempt to raise maintenance issues on the set aside motion. The Tenants had the right to raise concerns pursuant to section 82 of the Act prior to consenting to the repayment plan order. Further in *Trust Construction Corporation v. McKie, 2017 ONSC 4702* (CanLII) the Divisional Court stated at paragraph 6:

"Section 82 does not permit the re-litigation of an issue that has been earlier determined by the Board. That is the purpose of the review power referred to in s. 209 and those review powers were exercised and exhausted. It is also a matter of concern that parties ought not to be easily able to revisit orders that have been made on consent. The effective resolution of matters that come before the Board will be greatly impaired if parties can continually seek to revisit issues that they have earlier agreed to resolve."

5. As such, I find that the Tenants have breached the repayment plan agreed to in order LTB-L-037279-23, issued on May 31, 2023 and further find that there is no reasonable explanation for the breach in the order.
6. At the hearing, the Tenant testified that they no longer wish to continue the tenancy and have found a new rental unit for August 5, 2023. As such, I find it would not be unfair to lift the stay of the order effective August 5, 2023.

It is ordered that:

1. The motion to set aside order LTB-L-037279-23, issued on May 31, 2023 is denied. The order remains confirmed and unchanged.
2. The stay of the order is lifted August 5, 2023.

July 28, 2023
Date Issued



Fabio Quattrociochi
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.