



May 23, 2023

Landlord and Tenant Board

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

File Number: LTB-L-009074-23-SA

In the matter of: 28 AMHERST DR
AMHERSTVIEW ON K7N0B2

Between: Catherine Neath and Paul (dan) Straat Landlords

And

Devon Jackson Tenant

Catherine Neath and Paul (dan) Straat (the 'Landlords') applied for an order to terminate the tenancy and evict Devon Jackson (the 'Tenant') because the Tenant failed to meet a condition specified in the order issued on January 22, 2023, with respect to application LTB-L-000354-23.

The Landlords' application was resolved by order LTB-L-009074-23, issued on March 31, 2023.

On April 11, 2023, the Tenant filed a motion to set aside the order and that the order be stayed.

The motion was heard by videoconference on April 25, 2023.

The Landlords, the Landlords' Legal Representative Lorrie McCullough and the Tenant attended the hearing.

Determinations:

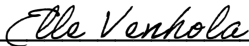
1. After considering all of the circumstances, the motion to set aside order LTB-L-009074-23 is denied.
2. The Landlords' application is mainly about the Tenant's failure to pay the utility costs as required for the rental unit.
3. On January 22, 2023, the parties consented to a conditional order in LTB-L-000354-22, in which the Tenant would take certain steps to ensure the utility bills were paid in full and on time.
4. On January 29, 2023 the Landlords brought an application claiming that the Tenant breached the conditions when the Tenant:
 - Failed to pay the December 2022 utility bill on or before December 31, 2022;
 - Failed to register for e-billing or confirm in writing to the Landlords that e-billing had been successfully set up on or before January 25, 2023; and
 - Failed to pay the utility bill due January 9, 2023 within 10 days of receipt of the e-bill.
5. *Ex parte* order LTB-L-009074-23 was issued by the LTB on March 31, 2023, terminating the tenancy. At the time, the Tenant was in arrears of \$450.76.

6. On April 11, 2023, the Tenant filed this motion to set aside Order LTB-L-009074-23. The Tenant claimed that “during a unit inspection on March 11, 2023, [the Landlords] lead me to believe that all was in order and they were willing to work with me to get the arrears taken care of”. The Landlords deny that this communication ever occurred or would occur.
7. At the hearing, the Tenant did not dispute that she beached the conditions of the order.
8. The Landlords point out that the Tenant has continually failed to make utilities payments or utilities arrears payments since the beginning of the tenancy, despite numerous agreements and having been given every opportunity. The Tenant has made multiple empty promises to them.
9. The Landlord’s Legal Representative submits that the Landlords have been substantially prejudiced by the Tenant’s choice to consistently prioritize other financial commitments over her obligation to comply with the lease terms.
10. The Tenant stated in her motion that she required additional time to secure alternative housing. She has a partner who contributes to the costs of running the household but there have been financial challenges. The Tenant continues to be involved in two expensive family law court cases. Compelling the children, aged 14 yrs. and 9 yrs., to change schools at this time would be detrimental to their mental health. However, she indicated that, if she had to move out, she would be able to vacate the unit by the end of May 2023.
11. It is the Landlords’ position that the Tenant’s circumstances have not changed at all since the hearing was held in December 2022. Neither has the Tenant made any concerted effort to demonstrate that she can be a responsible tenant. In fact, the Tenant almost immediately breached the consent order conditions. The Landlords ask the Board to deny the motion and to lift the stay immediately.
12. I was not persuaded by the Tenant’s explanation about why she could not follow the order, which was made with the Tenant’s consent. Her testimony was vague and the reasons presented did not differ significantly from her explanations to the Board at the previous hearing, relating to breaches that she acknowledged then. I agree with the Landlord’s Legal Representative that the Landlords are, in essence, trapped in a ‘revolving door’ situation. The Tenant presented as someone who does not take her commitments to the Landlords, or to the tenancy, seriously.
13. Based on the submissions before me, I am of the view that the landlord-tenant relationship has irretrievably broken down. The Tenant’s conduct has caused the Landlord ongoing and significant financial hardship which was avoidable had the Tenant done what she agreed to do.
14. I have considered all the circumstances, including the Tenant’s personal circumstances, and find that it would be unfair to the Landlord to set aside the eviction order. Accordingly, the Tenant’s motion to set aside the order is denied.
15. As I am satisfied that the Tenant’s motion to set aside must be denied, the only remaining issue before me is when to lift the stay. Given that the Tenant has indicated that she will move out of the rental unit by May 31, 2023, I see no reason not to lift the stay immediately.

It is ordered that:

1. The motion to set aside Order LTB-L-009074-23, issued on March 31, 2023, is denied.
2. The stay of Order LTB-L-009074-23 is lifted immediately.

May 23, 2023
Date Issued



Elle Venhola
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.