



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

File Number: TSL-26635-22-SA

In the matter of: UPSTARIS, 67 REGENT STREET E
YORK ON M6N3N8

Between: Xiao Qing Hou Landlord

and

Nuno Silva Tenant

Xiao Qing Hou (the 'Landlord') applied for an order to terminate the tenancy and evict Nuno Silva (the 'Tenant') and for an order to have the Tenant pay the rent the Tenant owes because the Tenant failed to meet a condition specified in the order issued by the Board on March 30, 2022 with respect to application TSL-25398-21.

The Landlord's application was resolved by order TSL-26635-22, issued on September 16, 2022. The Tenant filed a motion to set aside order TSL-26635-22.

This motion was heard by videoconference on October 18, 2022.

The Landlord, the Tenant, and the Landlord's Legal Representative, Carla Rodrigues, attended the hearing.

The Tenant's wife, Liliانا, testified on behalf of the Tenant.

Determinations:

1. 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 the Tenant did not meet certain condition(s) specified in the order.
2. I find that the Tenant has not met the following conditions specified in the order:
 - The Tenant did not pay \$1,500.00 towards the arrears on or before July 20, 2022.
 - The Tenant did not pay the monthly rent on the amount of \$2,400.00 on or before July 1, 2022; only \$500.00 was paid on the 9th and \$1, 200.00 on the 16th.
3. The previous application included a request for an order for the payment of arrears of rent. The resulting order required the Tenant to pay rent or some or all of the arrears of

rent. Accordingly, in addition to eviction, the Landlord is entitled to request an order for the payment of arrears of rent and compensation.

4. The Tenant was ordered to pay \$14,036.00 for rent arrears and the costs related to the Landlord's application fee in Order TSL-25398-21. The amount that is still owing from that order is \$9,536.00 and that amount is included in this order. As a result, the previous order TSL-25398-21 is cancelled.
5. Since the date of the order, the Tenant has failed to pay the full rent that became owing for the period from July 1, 2022 to September 30, 2022.
6. The lawful monthly rent is \$2,400.00. the Landlord is not holding a last month rent deposit.
7. After the Landlord went through the very confusing receipts/system he had for the receipts, I accept that the Tenant owes the Landlord \$10,536.00 to October 31, 2022; calculated as follows:
 - June rent \$2,400.00 paid, not part of L4 application.
 - June arrears \$1,500.00 paid (receipt June 25, 2022: June 21, 2022, \$1,000.00; July 9, 2022, \$500.00)
 - July rent \$2,400.00 paid (receipt July 9, 2022: July 9, 2022, \$500.00; July 16, 2022, \$1,200.00; July 31, 2021, \$700.00)
 - July arrears \$1,500.00 paid and \$400.00 paid towards August 2022 rent (receipt undated: August 7, 2022, \$1,200; August 13, 2022, \$700.00)
 - Balance August rent \$2,000.00 paid and August arrears \$1,500.00 paid (receipt August 28, 2022: August 28, 2022, \$1,200; September 4, 2022, \$1000.00; September 19, 2022, \$1,700)
 - Overpayment of \$400.00 towards September 2022 rent.
 - September rent only \$400.00 paid, therefore balance owing \$2,000.00
 - September arrears not paid, therefore balance owing \$1,500.00
 - October rent not paid, therefore balance owing \$2,400.00
 - October arrears not paid, therefore balance owing \$1,500.00

Therefore:

- Total rent paid July through September 2022, is \$2,800.00 (for July, August, and part September 2022)
- Total arrears paid June through August 2022, is \$4,500.00 (nothing paid towards September arrears)
- The amount owing per the original order was \$14,036.00 to March 31, 2022.
- The L4 was filed for a breach starting July 1, 2022, and the receipts include June arrears. Hence, new rent due from April 1 through June 1, 2022 was paid, and the arrears due April 20 through June 20, 2022 (3 X \$1,500.00 = \$4,500.00)
 - $\$14,036.00 - \$4,500.00 = \$9,536.00$ balance from original order
- $\$9,536.00 - \$3,000.00$ arrears (July and August) = \$6,536.00
 - Rent for July and August was paid and does not affect this calculation

- \$6,536.00 - \$400.00 paid towards September rent = \$6,136.00
 - \$6,136.00 + balance September rent \$2000.00 + October rent \$2,400.00 =
\$10,536.00 owing to October 31, 2022
8. The Tenant testified that he got behind in the payments because he was ill, plus the receipts were very confusing so he became confused as to what was owed versus what was paid. The Tenant requested that the set aside be granted, and they be given another chance to pay everything off.
 9. The Landlord testified that he was seeking the standard 11-day eviction order; he does not believe the Tenant can afford the unit, the sporadic payments point to this. Plus he already gave them a chance, he accepted payments outside of the dates they were ordered to pay, otherwise he could have filed for the breach much sooner. Even after giving them this chance, payments were not made properly plus the arrears payments for September and October remain outstanding as well as all of October rent and \$2,000.00 of September's rent.
 10. For the reasons that follow, I find that pursuant to my discretion under section 79(11)(b) of the *Residential Tenancies Act, 2006* (the 'Act'), having regard to all the circumstances it would not be unfair to set aside order SWL-58530-22 dated September 20, 2022. The Landlord accepted payments not in accordance with the repayment plan basically from its onset, and the Landlord's computing system, as illustrated by the receipts, was very confusing; I accept that the Tenant could have been confused as to what was or was not outstanding. However, even though payments have been made since the L4 application was filed, the Tenant is behind part September and all of October rent, and the arrears payments due both of those months. As such I do not find it would be reasonable or fair to put back in place the initial repayment plan and extend length of the plan accordingly. The Tenants shall be order to pay the monthly rent in full and on time, plus pay the arrears at the same rate, \$1,500.00 per month on the 20th of the month November 2022 through January 2023; a lump sum payment for the balance shall be due February 20, 2023. This gives the Tenant just over 3-months to make the necessary arrangements for the final arrears payment to be paid in full and preserve the tenancy.
 11. This order contains all the reasons for the decision within it. No further reasons shall be issued.


It is ordered that:

1. Order TSL-26635-22, issued on September 20, 2022, is set aside. Order TSL-25398-21 is cancelled and replaced with the following.
2. The Tenant shall pay to the Landlord \$10, 536.00, which represents the arrears of rent (\$10,350.00), and costs (\$186.00) outstanding for the period ending October 31, 2022.
3. The Landlord's application for eviction of the Tenant is denied on the condition that:
 - (a) The Tenant shall make the following payments to the Landlord in respect of the monies owing under paragraph 2 of this order:

Date Payment Due	Amount of Payment
November 20, 2022	\$1,500.00 (costs and arrears)
December 20, 2022 through January 20, 2023	\$1,500.00 each month (arrears)
February 20, 2023	\$6,036.00 (balance of arrears)

- (b) The Tenant shall also pay the Landlord the lawful monthly rent for the months of November 1, 2022 up to and including February 1, 2023 in full, on or before the first day of each corresponding month.
4. If the Tenant fails to make any of the payments in accordance with paragraph 2, and by the dates required, then:
- (a) The Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant, and for the payment of any new arrears of rent and NSF charges not already ordered under paragraph 1 of this order. The Landlord must make the application within 30 days of a breach of a condition set out in paragraph 2 of this order.
- (b) The balance owing under paragraph 1 of this order shall become payable on the day following the date of default. The monies owing shall bear interest at the post-judgment interest rate determined under subsection 207(7) of the Act.

October 26, 2022
Date Issued



Diane Wade
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.