



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

File Number: TEL-21891-22-SA

In the matter of: 82, 389 BEECHGROVE DRIVE
SCARBOROUGH ON M1E2R1

Between: Priyantha Gunaratne
Kalyani Rajapaksha

Landlords

and

Joey Condo

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

NOV 14, 2022

Landlord and Tenant Board

Tenant

Priyantha Gunaratne and Kalyani Rajapaksha (the 'Landlords') applied for an order to terminate the tenancy and evict Joey Condo (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 July 7, 2022, with respect to application LTB-L-012149-22.

The Landlords' application was resolved by order TEL-21891-22, issued on August 29, 2022. The Tenant filed a motion to set aside order TEL-21891-22.

This motion was heard via video conference on November 3, 2022.

The Landlords, the Landlords' legal representative, Thirusenthuran Sivapatham, and the Tenant attended the hearing.

Determinations:

1. The Landlords filed an L1 application for non-payment of rent which was resolved by conditional order LTB-L-012149-22 issued on July 7, 2022. The order provided that the Landlords 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 they failed to make the arrears and rental payments specified in the order.

The Breach of the Order

2. There is no dispute that the Tenant breached order by failing to pay July's rent in the amount of \$2,200.00 on or before July 1, 2022.

The Tenant's Motion

3. This motion is brought pursuant to subsection 78(11) of the Act. As I am satisfied that the Tenant breached the order issued on July 7, 2022, the only issue before me is whether I am "satisfied, having regard to all the circumstances, that it would not be unfair to set aside the order".
4. The circumstances here very concerning. First, there is no dispute that the conditional order issued on July 7, 2022, contains a payment plan that was the Tenant's suggestion. At the time of the hearing for the L1 application, the outstanding arrears were \$11,600.00 and the Tenant failed to adhere to the payment plan as soon as the order was issued. This suggests to me that the Tenant proposed a payment plan at the last hearing which he knew or ought to have known was unrealistic.
5. Second, although there is some dispute regarding the payments the Tenant has made, the Tenant admits that the arrears have increased to at least \$18,500.00. The Tenant not only admits that he failed to make any of the arrears payments as outlined in the conditional order, but he failed to make many of the monthly rent payments as well. Once again, the Tenant admits and the order clearly sets out that the conditional order was issued based on the payment plan suggested by the Tenant and this means the Tenant requested a payment plan which he could not adhere to.
6. Finally, the Tenant is requesting that his motion be granted and the conditional order be replaced with yet another, much more aggressive payment plan. I asked the Tenant why I should find his suggestion to be more feasible than his last suggested payment plan and the Tenant explained that three factors had allegedly changed since the last hearing. First, the funeral expenses for his deceased spouse were now completely paid off. Second, his two adult children were now working and contributing \$1,000.00 towards the household monthly income. And lastly, he has returned to work, he has gotten a promotion and he is now making \$5,200.00 each month at his job. For the following reasons, I am not persuaded by the Tenant's testimony regarding these allegedly changes since the last hearing and I not satisfied regarding the feasibility of his suggested payment plan.
7. I say this because the Tenant admits that his spouse passed away in February 2022. This means that at the time of the first hearing in June 2022, the Tenant knew or ought to have known that he was facing significant funeral expenses and yet he proposed a payment plan which was not realistic. Second, even though it may be true that the Tenant's grown children are now contributing income to the household, their contribution is very limited and will have little impact on the Tenant's ability to adhere to his very aggressive payment plan. Finally, I do not find the Tenant credible when he says he has, not only returned to work, but somehow obtained a promotion even though he has allegedly been off work for the last several months. The Tenant's testimony regarding his alleged new high-paying position was extremely vague and lacked any detail and is in stark contrast to the findings in the Member's previous decision when the Tenant told him he was "not working" and was "receiving disability benefits". In short, I do not find the Tenant to be credible when he says he has returned to work, obtained a promotion and is now making \$5,200.00 per month at his job.

8. In short, the circumstances before me are that the Tenant suggested a payment plan which he knew he could not adhere to, he failed to make many of the payments in that plan and he is now requesting a more aggressive payment plant which will likely fail. As the outstanding arrears are now quite substantial and I am not satisfied that the Tenant can pay these arrears while also paying the monthly rent, I find that this tenancy is no longer sustainable and the Tenant's motion to set aside the eviction order must be denied.

The Lifting of the Stay

9. As I am satisfied that the Tenant's motion should be denied, the next issue before me is when to lift the stay of the eviction order. The issue of when to lift the stay is entirely discretionary and, in this matter, I find that the Tenant has disintitiled himself from any discretionary relief. I say this because the Tenant lacked overall credibility at the hearing and I find that he attempted to mislead the Board by providing false or fraudulent documents.
10. First, the Tenant was asked to provide documentation to confirm that he made rental payments in August 2022 and in November 2022. The Landlords deny receiving any money at all from the Tenant since the last hearing in June 2022. After standing the matter down and giving the Tenant more than sufficient time to find evidence of the two e-transfers, the Tenant was only able to provide three pieces of a screen shot which had clearly been tampered with and altered. The first part of the screen shot showed an e-transfer to the Landlords' email address in the amount of \$2,200.00 but there was no banking information on the screen, no date and no confirmation of deposit. The second part of the screen shot was a security question, but it was not connected to any amount or date. The final part of the screen shot was simply a date of "November 3, 2022" but was not connected to any banking information, amount, email address or confirmation of deposit. If the Tenant did send two e-transfers to the Landlords, an email confirmation of those e-transfers could have easily been supplied to the Board within a few minutes. The fact that the Tenant failed to provide this information and instead provided highly altered screen shots suggests to me that the Tenant was attempting to mislead the Board by providing fraudulent documentation.
11. This happened a second time at the hearing when the Tenant said that he was unable to find confirmation of his second e-transfer because he was at the hospital during the hearing and was not at home. The Tenant repeatedly said that he was in the lobby of the hospital during the hearing while his daughter was undergoing surgery. However, the Tenant failed to provide any medical documentation to confirm that he was at a hospital. When I asked him to take a picture of his surroundings and send it to the Board, the Tenant took a very long time to send a picture of himself. When the Tenant finally did send a picture of himself, it was not clear that he was actually at a hospital and the clock behind him in the picture was the completely wrong time. For these reasons, I find that the Tenant was once again attempting to mislead the Board by providing false information supported by a fraudulent document.
12. As the Tenant's testimony on both of these points was not credible and as I am satisfied that the Tenant repeatedly attempted to mislead the Board by providing false information

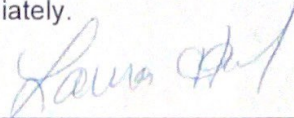
and fraudulent documentation, I find that the Tenant has disintitiled himself from any discretionary relief in the form of a delay in lifting the stay. For all of these reasons, I find that the stay should be lifted immediately.

13. This order contains all the reasons within it and no further reasons will be issued.

It is ordered that:

1. The Tenant's motion to set aside Order TEL-21891-22, issued on August 29, 2022, is denied.
2. The stay of order TEL-21891-22 is lifted immediately.

November 14, 2022
Date Issued



Laura Hartsliof
Member, Landlord and Tenant Board

Toronto East-RO
2275 Midland Avenue, Unit 2
Toronto ON M1P3E7

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



Tribunals Ontario
Landlord and Tenant Board

(Disponible en français)
File Number: TEL-21891-22-SA

NOTICE OF HEARING AND STAY OF ORDER

Under section 174 and subsection 74(13), 77(7) or 78(10) of
the *Residential Tenancies Act, 2006*

The LTB has scheduled a hearing
between: PRIYANTHA GUNARATNE, KALYANI RAJAPAKSHA
and JOEY CONDO
concerning the rental unit located at:
 82, 389 BEECHGROVE DRIVE SCARBOROUGH ON M1E 2R1

The original order is stayed:

Order number TEL-21891-22 issued on August 29, 2022 is stayed. This means that the landlord cannot enforce the order until the attached motion is decided. The tenant should give a copy of this notice and the motion to the Court Enforcement Office (Sheriff) as quickly as possible to ensure that the order is not enforced before the LTB makes a decision.

Purpose of the Hearing:

The tenant has filed a motion to set aside order TEL-21891-22. A hearing has been scheduled to consider the issues raised in the attached motion.

HEARING TIME AND INSTRUCTIONS FOR VIDEO CONFERENCE:

When: Tuesday, October 04, 2022 9:00 AM EST
 • Join the Video Hearing or call the toll-free number at 8:45 am
 to confirm your attendance for your virtual hearing.

**How to join
Video
Hearing:** <https://bit.ly/ZLTBVideo111>,
 Toll Free: 1-855-703-8985 or Local: 647-374-4685
 Passcode: 931 5789 1669#
 You may join a Video Hearing by clicking on the link above OR
 by typing that link into your internet browser. IF you do not have
 access to the internet you can call the toll free number instead.

It is very important for you to attend the hearing. If you are late, or if you do not attend your hearing, it may take place without you.



Order under Section 78(6)
Residential Tenancies Act, 2006

File Number: TEL-21891-22

In the matter of: 82, 389 BEECHGROVE DRIVE
SCARBOROUGH ON M1E2R1

Between: Priyantha Gunaratne
Kalyani Rajapaksha

Landlords

and

Joey Condo

Tenant

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

AUG 29 2022

Landlord and Tenant Board

Priyantha Gunaratne and Kalyani Rajapaksha (the 'Landlords') applied for an order to terminate the tenancy and evict Joey Condo (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 July 7, 2022 with respect to application LTB-L-012149-22.

Determinations:

1. The order provided that the Landlords 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 conditions specified in the order.
2. I find that the Tenant has not met the following conditions specified in the order: The Tenant failed to pay the monthly rent in the amount of \$2,200.00 on or before July 1, 2022.
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 Landlords are entitled to request an order for the payment of arrears of rent and compensation.
4. The Tenant was ordered to pay \$13,986.00 for rent arrears and the costs related to the Landlord's application fee in Order LTB-L-012149-22. The amount that is still owing from that order is \$13,986.00 and that amount is included in this order. As a result, the previous order LTB-L-012149-22 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 August 31, 2022.

It is ordered that:

1. Order LTB-L-012149-22 is cancelled.
2. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before September 9, 2022.
3. The Tenant shall pay to the Landlords \$13,986.00*. This amount represents the rent owing up to August 29, 2022 and the costs related to the application fee for the previous application.
4. The Tenant shall also pay to the Landlords \$72.33 per day for compensation for the use of the unit starting August 30, 2022 to the date the Tenant moves out of the unit.
5. If the Tenant does not pay the Landlords the full amount owing* on or before September 9, 2022, the Tenant will start to owe interest. This will be simple interest calculated from September 10, 2022 at 3.00% annually on the balance outstanding.
6. If the unit is not vacated on or before September 9, 2022, then starting September 10, 2022, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after September 10, 2022.

August 29, 2022
Date Issued


Kimberly Parish
Member, Landlord and Tenant Board

Toronto East-RO
2275 Midland Avenue, Unit 2
Toronto ON M1P3E7

The tenant has until September 8, 2022 to file a motion with the Board to set aside the order under s. 78(9) of the Act. If the tenant files the motion by September 8, 2022 the order will be stayed and the Board will schedule a hearing.

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

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on March 10, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

* Refer to the attached Summary of Calculations.

Summary of Calculations

File Number: TEL-21891-22

Amount the Tenant must pay

Reason for amount owing	Period	Amount
Amount owing from previous order or settlement plus New Arrears and New NSF cheque charges and related administration charges		\$13,986.00
Less the rent deposit:		-\$0.00
Less the interest owing on the rent deposit		-\$0.00
Plus daily compensation owing for each day of occupation starting August 30, 2022		\$72.33 (per day)

Total the Tenant must pay the Landlord:

\$13,986.00, + \$72.33 per day starting August 30, 2022