



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

File Number: TNL-31316-21-SA

In the matter of: 1108, 21 RICHGROVE DRIVE
TORONTO ON M9R2L2

Between: Minto Apartment Limited Partnership Landlord

and

Nora Farah Tenant

Minto Apartment Limited Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Nora Farah (the 'Tenant') because the Tenant failed to meet a condition specified in the order issued by the Board on October 30, 2020 with respect to application TNL-24172-20.

The Landlord's application was resolved by order TNL-31316-21, issued on March 17, 2021. The Tenant filed a motion to set aside order TNL-31316-21.

This motion was heard via video conference on April 28, 2021.

Linda Nuzzo, the Landlord's regional manager, Rowena Tadeo, the Landlord's service co-ordinator, and the Landlord's legal representative, Faith McGregor attended the hearing. The Tenant attended the hearing and consulted with Tenant Duty Counsel, prior to the hearing.

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. The first issue on a motion to set aside such as this one is whether or not the Tenant breached the order.
3. There was no dispute that the Tenant failed to pay the rent for March 2021 on or before March 1, 2021.
4. Therefore, I find that the Tenant breached the order by not paying the rent for March 2021 when due.
5. When there has been a breach to an order, the next issue to determine is whether or not I am "satisfied, having regard to all the circumstances, that it would not be unfair to set aside the order".

6. It was the evidence of the Tenant that on March 1, 2021 she learned from her ex-sister in law that the Tenant's ex husband and family were looking to move into the same building where the Tenant resides. The Tenant was in a panic and spoke to the Landlord's staff, and advised that if the Tenant's ex-husband moved in, the Tenant would have to move out. The Tenant told the Landlord's staff that she would not pay the rent until then. On March 10, 2021 the Tenant learned that her ex-husband was not moving in and she paid March 2021 rent. The Tenant also testified that all the arrears are paid up to date.
7. The Landlord opposed the Tenant's set aside motion and also stated that the Tenant did not pay the rent for April 2021 when due. The rent for April 2021 was paid, albeit, late. At the hearing, I pointed out to the Landlord that the original application was an L1 for arrears of rent and all the arrears have been paid in full around mid March 2021. As a result, I would not be considering the allegation that April 2021 rent was paid late.
8. The Landlord stated that the parties consented that the Tenant to pay the rent on time from November 2020 to October 2021. The Landlord requested that the Tenant's motion be denied and the stay lifted. In the alternative, the Landlord asked that a new order issue that the Tenant pay the rent when due for the next 12 months.
9. As I stated at the hearing, the Tenant breached the order by not paying the rent for March 2021 when due. However, I am of the view that it is appropriate to use my discretion under subsection 78(11) of the Act, to grant the Tenant's motion to set aside the order. I say this because all the arrears have been paid in full and at that time of the hearing, the Tenant was no longer in arrears of rent.
10. The Landlord should be mindful of section 78 of the Act, which states that the Landlord could apply under section 78 to terminate the tenancy without notice to the Tenant if it meets the requirement of section 78(2)(i) which imposed conditions on the Tenant that, if not met by the Tenant, would give rise to the **same grounds for terminating the tenancy as were claimed in the previous application. (Emphasis added)**.
11. What this means is that I am unable to grant the Landlord's request to issue a new order that the Tenant pays the rent when due, as the original application was not based on persistent late payment, rather it was based on arrears of rent. Moreover, the arrears have been paid in full.
12. Furthermore, pursuant to subsection 78(12) of the Act, the Board may amend a settlement mediated under section 194 or an order made with respect to the previous application if it considers it appropriate to do so. In this case, an order will issue to amend Order TNL-24172-20, dated October 30, 2020 regarding payment of the monthly rent.

It is ordered that:

1. The Tenant's motion to set aside order TNL-31316-21 is granted.
2. Order TNL-31316-21, issued on March 17, 2021 is set aside and is of no force or effect.

3. Order TNL-24172-20, dated October 30, 2020, paragraph 2(b) is varied as follows: The Tenant shall also pay the Landlord the rent for the months of November 2020 up to and including March 2021 in full, on or before the first day of each corresponding month.

May 12, 2021
Date Issued

Debbie Mosaheb
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.