



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

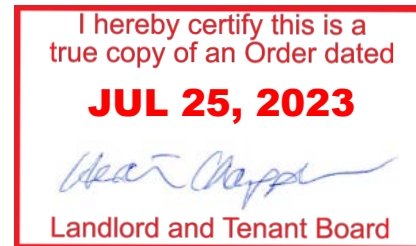
File Number: LTB-L-035474-23-SA

In the matter of: 61 WRIGHT AVENUE
BELLEVILLE, ON K8P 4E6

Between: JASON ATTWOOD

And

LEAH GUY



Landlord

Tenant

JASON ATTWOOD (the 'Landlord') applied for an order to terminate the tenancy and evict LEAH GUY (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant did not meet a condition specified in the order issued by the Board on April 13, 2023 with respect to application LTB-L-023437-23.

The Landlord's application was resolved by order LTB-L-035474-23, issued on May 29, 2023. This order was issued without a hearing being held.

The Tenants filed a motion to set aside order LTB-L-035474-23.

This motion was heard by videoconference on July 11, 2023.

The Landlord and the Tenant attended at the motion. Prior to the commencing of this motion, the Tenant spoke with Tenant Duty Counsel.

Determinations:

1. Order LTB-L-023437-23 issued April 13, 2023 stated that the Tenant was to pay to the Landlord "full rent on or before the first day of each month for the period from May, 2023, up to and including November 2024 or until all arrears in paragraph 1 have been paid, whichever is sooner".
2. The Landlord submits that the Tenant has breached Order LTB-L-023437-23 issued April 13, 2023 as they have not paid the lawful rent on or before May 1, 2023. The Landlord states that rent is due on the first day of every month in the amount of \$1,647.95.
3. The Tenant acknowledges that May's rent was not paid on or before May 1, 2023 because the Tenant's employer changed payroll companies and she was therefore

unable to receive her expected full pay to pay the rent. The Tenant's roommate/husband also had his Ontario Works benefits suspended so he was unable to be able to pay his half of the rent.

4. The Tenant testified that she paid \$875.00 towards May rent on May 9, 2023 and has not paid any rent for June or July, 2023. The Tenant stated that she offered to pay some monies to the Landlord on June 19, 2023 but was told to contact the Landlord to find out if she would be evicted instead. The Tenant stated that she then chose to not pay any monies to the Landlord and used the monies to pay utilities. The Tenant submits that she lost her job in July and has applied for EI benefits but has not received any monies as at the date of the hearing.
5. The Tenant does not wish to preserve her tenancy and requests that she be given to August 31, 2023 to vacate the rental unit.
6. The first issue for the Board to determine is whether or not there was a breach of order LTB-L-023437-23 issued April 13, 2023. It is undisputed that the Tenant breached the order. The Tenant failed to pay rent to the Landlord on time.
7. The second issue is whether the Board is satisfied, having regard to all the circumstances, that it would not be unfair to set aside the eviction order. The Tenant seeks to preserve the tenancy until the end of August, 2023 at which time they would vacate the rental unit as the Tenant has been residing in the rental unit for approximately 6 years with her son and is having a difficult time finding another apartment.
8. The Landlord opposes the Tenant's motion to set aside the *ex parte* order, submits that the motion be denied and that the stay be lifted at the end of July, 2023. The Landlord states that the Tenant has no ability to pay rent, should not be permitted to reside in the rental unit any longer as she is just prolonging her eviction and arrears are accumulating. The Landlord testified that he is experiencing financial hardship as he also lost his job two weeks ago and the Tenant's non-payment of rent has been "crippling" upon him.

Analysis:

9. The Board's expectation is that orders on consent will be complied with by the parties. The purpose of subsection 78(11)(b) of the *Residential Tenancies Act*, 2006 is to provide for the possibility of relief from eviction where there has been a breach of a mediated agreement or order but there are extenuating circumstances to consider. The Board is usually interested in knowing whether or not the breach was unavoidable, or a result of events beyond the tenant's control. It is also interested in whether or not the tenancy is viable as there is no point in continuing a tenancy where future breaches are inevitable.
10. At the hearing, the Tenant has still not paid full rent for May, June or July, 2023. The Tenant continues to breach the consent order terms and the arrears have continued to grow.
11. Given all of the above and based on the evidence and submissions before me, I am satisfied, on a balance of probabilities, that it would be unfair to set aside the eviction

order. The evidence is insufficient to establish that the Tenant's ongoing defaults were reasonable.

12. With respect to the Tenant's request for relief in the form of a delay of lifting of the stay until the end of August, 2023, the Tenant states that she has limited funds as she is now unemployed. No evidence was provided as to what efforts the Tenant has made to find alternative accommodations or if she has any family or friends to support her. In all of the circumstances, I believe a delay to August 18, 2023 is reasonable in order to provide the Tenant with additional time to locate alternative accommodations for her and her son.
13. This order contains all of the reasons for my decision within it. No further reasons shall be issued.

It is ordered that:

1. The motion to set aside Order LTB-L-035474-23 issued on May 29, 2023, is denied.
2. The stay of order LTB-L-035474-23 is lifted August 18, 2023.

July 25, 2023
Date Issued


Heather Chapple
Member, Landlord and Tenant Board

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