

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

File Number: SOL-22269-21-SA

In the matter of: LOWER UNIT 1, 296 EMERALD STREET NORTH
HAMILTON ON L8L5L3

Between: Harriston Properties Landlord

and

Coady Lebarron Tenants
Kayla Graves

Harriston Properties (the 'Landlord') applied for an order to terminate the tenancy and evict Coady Lebarron and Kayla Graves (the 'Tenants') because the Tenants failed to meet a condition specified in the mediated settlement issued by the Board on September 23, 2020 with respect to application SOL-15607-20.

The Landlord's application was resolved by order SOL-22269-21, issued on June 11, 2021. The Tenants filed a motion to set aside order SOL-22269-21.

This motion was heard by videoconference on August 4, 2021.

The Landlord and the first-named Tenant attended the hearing. The Landlord was represented by Francesco Gomez. The Tenant spoke to Tenant Duty Counsel prior to the hearing.

Also in attendance was the Landlord's witness, Jonathan Benitez.

Determinations:

PRELIMINARY MOTION TO DISMISS

1. At the beginning of the hearing, the Landlord made a preliminary motion to dismiss the Tenant's motion to set aside the order; while the motion particulars submitted to the Board sought an extended amount of time to vacate the premises, at the hearing, the Tenant sought to preserve his tenancy.
2. The Tenant explained that due to a change in his personal circumstances – including the pandemic and its effects, his position had altered.
3. This motion was filed on June 14, 2021, approximately two months ago; it is not unreasonable, especially given the current health and economic climate, for a person's situation to change. In general, in situations such as these, the Board may find credibility

issues against the applicant, however, I find the Tenant's explanation to be reasonable for the change in his position. The Landlord's preliminary motion to dismiss was denied. I proceeded to hear the Tenant's motion.

MOTION TO SET ASIDE ORDER

4. The first issue before the Board is whether or not there was a breach of order SOL-15607-20 as alleged by the Landlord. The Tenant "is not disputing the breach" on May 25, 2021 as alleged by the Landlord on the L4 application and subsequent order.
5. 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. (See: s. 78(11)(b) of the Residential Tenancies Act, 2006 (the 'Act').)
6. This tenancy began ten years ago. The monthly rent is \$1,300.00 and is due on the first of each month.
7. The Tenant testified that the past two years have been hard given the pandemic which has resulted in many disputes between the two Tenants – this is why they fought on May 25, 2021. However, the Tenant seeks a chance to preserve his tenancy and is confident he would be able to comply with the original order issued on September 23, 2020.
8. The Tenant testified that he has taken a 5-week course on anger management, is able to leave the house now given the stay-at-home order has been lifted; when asked if another such order would be imposed whether the Tenant would still be able to comply with the agreement, the Tenant's response was yes as he was also seeing a therapist.
9. In the alternative, the Tenant seeks a delay of 90 days to secure alternative housing as the Tenant is currently receiving benefits from the Ontario Disability Support Program.
10. On cross-examination, the Tenant denied assaulting his partner or that there was any screaming, sobbing or banging; the Tenant confirmed that the incident outlined in the ex parte order did take place and that police were called.
11. The Landlord's witness, JB who is an employee of the Landlord, testified that the residential complex consists of four rental unit; the tenants at the property have been affected by the behaviour of the Tenants. The tenant above and the tenant beside the Tenants have even moved out because of the concerns they had with the Tenants.
12. On cross-examination, JB confirmed that there were no further incidents since May 25, 2021.
13. The Landlord submits that the initial application itself was based on serious impairment of safety, namely an assault for which relief was granted by the adjudicator; the assault has recurred so the Landlord has no faith in the Tenant's ability to comply with the order going forward.

ANALYSIS

14. Based on the evidence before me, I am satisfied that the Tenant breached order SOL-15607-20 on May 25, 2021. This is undisputed by the parties.
15. While I commend the Tenant for taking steps to better himself by taking an anger management course and seeing a therapist, I am not convinced that the behaviour will not recur; I say this based on the Tenant's initial acceptance of the incident and then his attempt to downplay it; thus, it is unclear whether the Tenant recognizes the issues with his behaviour from May 25, 2021. I also say this as the original hearing date took place six months after the first lockdown ended.
16. I find that the Tenant knew or ought to have known the consequences of not complying with the original order – especially since the original adjudicator indicated that it would be “one more chance to save their tenancy”. By assaulting his partner on May 25, 2021, the Tenant repeated the behaviour that led to the need to file the original application. Conditional relief is appropriate where tenants acknowledge the behaviour and are willing to take steps to change that behaviour, so the same problems do not re-occur in the future. Here, this does not seem to be the case.
17. Given all the above, I find that it would be unfair to set aside the eviction order. The evidence is insufficient to establish the Tenant's default was reasonable. Rather the evidence supports the conclusion that the Tenant is unwilling to co-operate.
18. As I am denying the motion the third and final issue I must consider is when to lift the stay of the order so the eviction can proceed.
19. The Tenant seeks a delay in the lifting of the stay of 90 days to allow him to find alternative living arrangements. The Landlord is agreeable to a delay to August 31, 2021. I find that the time requested by the Tenants is excessive in length, however, given the length of this tenancy, I find a short delay to September 20, 2021 is reasonable.
20. This order contains all the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The motion to set aside Order SOL-22269-21, issued on June 11, 2021, is denied.
2. The stay of order SOL-22269-21 is lifted September 20, 2021.



Sonia Anwar-Ali
Member, Landlord and Tenant Board

August 31, 2021
Date Issued

Southern-RO
119 King Street West, 6th Floor
Hamilton ON L8P4Y7

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