



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

Citation: Cao v Desousa, 2024 ONLTB 16767

Date: 2024-03-11 **File Number:**
LTB-L-098892-23-SA

In the matter of: 155 LAKERIDGE DR
SCARBOROUGH ON M1C5K3

Between: Xiaoyan Cao Landlords
Jiwen Zhao

And

Manuel E Desousa Tenants Carla M Desousa

Xiaoyan Cao and Jiwen Zhao (the 'Landlords') applied for an order to terminate the tenancy and evict Manuel E Desousa and Carla M Desousa (the 'Tenants'), and also applied for an order to have the Tenants pay the rent they owe because the Tenants did not meet a condition specified in the order issued by the LTB on August 31, 2023 with respect to application LTB-L-047532-22.

The Landlords' application was resolved by order LTB-L-098892-23, issued on January 12, 2024. This order was issued without a hearing being held.

The Tenants filed a motion to set aside order LTB-L-098892-23.

This motion was heard by videoconference on February 27, 2024. The Landlords and the Tenants attended the hearing. The Tenants received Tenant Duty Counsel services before the hearing.

Determinations:

There was a breach of the previous order.

1. The Tenants failed to meet a condition specified in the order issued by the LTB on August 31, 2023 with respect to application LTB-L-047532-22.

The surrounding circumstances

2. After considering all of the circumstances, I find that it would be unfair to set aside order LTB-L-098892-23.
3. The Tenants testified that they breached order LTB-L-047532-22 as a result of financial difficulties from fluctuating self-employment business income. The Tenants stated that their current combined monthly income is \$2,500.00 to \$3,000.00, and their monthly expenses,

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not including rent, are approximately \$2,500.00. The Tenants confirmed that their rent arrears are currently \$22,571.63, and their monthly rent is \$3,125.00. The Tenants requested a new payment plan to pay their arrears; however, they acknowledged that they could not make any payments towards the arrears until their family income increases.

4. The Tenants testified further that they want to retain their tenancy, given that their children enjoy the neighbourhood and their nearby school, and the entire family appreciates the close proximity of the unit to the GO train station. The Tenants stated that they are unable to find an alternate affordable unit. The Tenants noted that if their motion is not granted, they would like a two-month delay in the lifting of the stay to reduce their children's moving anxiety.
5. The Landlords testified that with arrears of \$22,571.63, this tenancy is a difficult financial burden for them, and this causes them considerable stress and adverse health. The Landlords testified further that the Tenants can not afford the unit, and accordingly, they do not seek another payment plan, but rather an immediate lifting of the stay of order LTB-L-098892-23.
6. On the basis of the evidence provided, I find that the Tenants did not establish that their circumstances, since order LTB-L-047532-22 was issued on August 31, 2023, were sufficient grounds for them to breach the order. I am not satisfied that the Tenants' monthly income is sufficient for the Tenants to pay for their monthly expenses, rent, and arrears. I am not satisfied that this tenancy is financially viable for the Tenants, and that a new payment plan would succeed without further breaches. I find that permitting the tenancy to continue would be unfair to the Landlords.

The stay is lifted immediately, but enforcement is postponed.

7. I accept that the Tenants' current financial circumstances are difficult, and that finding an alternate rental unit takes time, especially with a constrained budget. However, I also accept that an extension of this tenancy would cause the Landlords prejudice. In these circumstances, I find it appropriate to lift the stay immediately, but to postpone enforcement until April 15, 2024. This will provide the Tenants some time to find a new, affordable place

to live, and it will avoid any further prejudice the Landlords would experience by having to wait to file the order with the Sheriff.

It is ordered that:

1. The motion to set aside Order LTB-L-098892-23, issued on January 12, 2024, is denied.
2. The stay of order LTB-L-098892-23 is lifted immediately, with enforcement delayed to April 15, 2024 to give vacant possession of the unit to the Landlords on or after April 15, 2024.
3. 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 April 15, 2024. The Sheriff shall not enforce this order before April 15, 2024.

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**March 11, 2024 Date
Issued**

Frank Ebner
Member, Landlord and Tenant Board

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