



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

**Citation:** 1212763 Ontario Ltd. v Millar, 2024 ONLTB 26384

**Date:** 2024-04-15 **File Number:**  
LTB-L-096621-23-SA2

**In the matter of:** 0102, 190 EXBURY RD TORONTO  
ON M3M1R8

**Between:** 1212763 Ontario Ltd. Landlord

### **And**

Marylou Millar Tenant

1212763 Ontario Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Marylou Millar (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 LTB on November 30, 2023 with respect to application LTB-L-071347-23 SA.

The Landlord's application was resolved by order LTB-L-096621-23, issued on . This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-096621-23.

This motion was heard by videoconference on April 3, 2024.

The Landlord's legal representative Sharon Harris, the Tenant, the Tenant's legal representative Oriel Varga, the Tenant's witnesses Tammy Brown, Jennifer Brown and the Tenant's support Niki Armenis attended the hearing.

### **Determinations:**

#### Procedural Background

1. On November 20, 2023, the Landlord's legal representative, the Tenant, her daughter Jennifer Brown and the Tenant's legal representative Hanson Sone attended a hearing to

determine the Tenant's set aside motion for LTB-L-066751-22, order issued August 28, 2023.

2. At the hearing, the presiding Member, following party submissions, exercised discretion under s.78(11)(b) of the *Residential Tenancies Act, 2006* (the 'Act') and granted relief from eviction subject to payment conditions.
3. At the hearing, Jennifer Brown testified that she had moved into the rental unit and is "committed to provide financial assistance to the Tenant to meet the conditions of a payment plan to preserve this tenancy."
4. The payment plan was negotiated and agreed upon at the hearing and the Tenant had support of her legal representative. This order was issued November 30, 2023.

#### The Second Set Aside Motion

5. The Landlord's L1 application was resolved by way of order LTB-L-071347-23 SA issued on November 30, 2023. 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 they failed to make any of the ordered payments.
6. The types of order the Board can make with respect to this type of motion are set out subsection 78(11) of the Act.
7. First, the Board must determine whether the Tenant breached the consent order. If the Board finds that there was no breach by the Tenant, then the motion must be granted and the eviction order set aside. Second, if the Board finds that the Tenant did breach the hearing order then it must decide whether to grant discretionary relief pursuant to paragraph 78(11)(b) of the Act. That provision states that the Board must decide whether or not "in all the circumstances" it would be "unfair to set aside" the eviction order. If the Board determines that it would not be unfair to set aside the eviction order then Tenant's set aside motion is granted. If the Board determines that it would be unfair to set aside the eviction order then the motion must be denied. Third, if the motion is denied, the Board must then consider when to lift the stay of the eviction order.

#### The Breach

8. The Landlord claims the Tenant breached the consent agreement when she failed to pay the lawful rent on time and in full on or before December 1, 2023.
9. There is no dispute that the Tenant failed to pay the rent on time and in full for December 2023.

The Tenant's Motion

10. This motion is brought pursuant to subsection 78(11) of the Act. As I am satisfied that the Tenant breached the order issued on November 30, 2023, 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".
11. The Tenant takes the position that she was confused by the payment plan negotiated and agreed upon at the last hearing. She also claims that she was unaware of the loss of her subsidy after the hearing. The Tenant states that she is a senior citizen and she has lived in the rental unit for 16 years.
12. The Landlord's legal representative opposed the Tenant's motion and said that the presiding Member made the terms of the order very clear at the last hearing, the Tenant's daughter participated and understood the terms she agreed to and the Tenant had legal representation.
13. I note, the Tenant did not request a review of the November 30, 2023 order.
14. The Landlord also takes the position that this tenancy has been the subject of multiple applications before the Board and the Tenant relies on are similar circumstances to avoid eviction. This has resulted in excessive administration and costs to the Landlord. The Landlord has attempted, over the duration of this tenancy, to work with the Tenant but the Tenant fails to adhere to any agreements. Knowing the Tenant has challenges paying the rent, the Tenant waited until this hearing to attempt to secure funding support with no guarantee of approval.
15. The Tenant's legal representative argued that the Tenant's circumstances are significantly different than the last hearing, financial support is in process and the Tenant should be able to reach a zero balance by September 2024 which is significantly earlier than the terms of the November 30, 2024 order.
16. The Tenant's support Niki Armenis, is an EPIC case worker. She testified that the Tenant has applied for various funding support and is eligible. However, she confirmed that the Tenant's applications have not been approved.
17. At the hearing, I explained the challenges with the Tenant's proposal in light of the fact that the funding, although may be eligible, has not been guaranteed as of the date of the hearing.
18. Accordingly, I conducted a close examination of the Tenant's financial circumstances to determine if this is a viable tenancy. I also considered the fact that the arrears have grown from the last hearing from \$13,111.40 to \$16,091.04 to the period ending April 30, 2024.

The Landlord has also incurred non refundable costs related the enforcing the order with the Sheriff.

19. Based on the evidence before the Board and on a balance of probabilities, I find this tenancy is no longer viable and in light of the circumstances, I find it would be unfair to set aside the eviction order.
20. I also considered the fact that, although the Tenant may be eligible for funding support, it is not guaranteed and without that support, the Tenant is not able to meet their financial obligations. I am further satisfied that the Tenant and her daughter Jennifer Brown were well aware of the conditions of the previous order yet continued to breach the payment terms provided under relief.
21. I also disagree with the Tenant representative's position that the circumstances now are different than the last hearing. She stated that the Tenant is a vulnerable senior with disabilities, and now has support from family and other funding sources.
22. I note, and as explained at the hearing, the November 30, 2023 order at paragraph 2, the Member provides a very detailed analysis of the Tenant's circumstances which included the duration of the tenancy, the Tenant is a vulnerable senior, her daughter moved and will provide financial support.
23. For all these reasons, the Member used her discretion to grant further relief via a very clear and detailed payment plan. Had the Tenant been confused by the payment plan, the Tenant ought to have filed a review of the order. The Tenant did not. Rather, the Tenant is seeking further relief from eviction on the basis of similar arguments as in the previous set aside motion.
24. I acknowledge that the Tenant has sought third party financial support. However, there are no guarantees that the Tenant's applications will be approved which leaves with me with the Tenant's current financial circumstances.
25. Based on the evidence before the Board and on a balance of probabilities, I find this tenancy is no longer viable and in light of circumstances, I find that it would be unfair to set aside the eviction order.

#### Lifting the Stay

26. The next issue before me is when to lift the stay of the eviction order.
27. I have considered that the Tenant has lived in the rental unit for approximately 16 years. The Tenant said that she has her children and grandchildren living with her and will have difficulty securing a new home. The Tenant seeks a delay to July 31, 2024.

28. I have also considered the Landlord's circumstances with this tenancy and the fact that the Landlord has made multiple attempts to work with the Tenant to preserve the tenancy, without success. The Landlord seeks immediate lifting of the stay.
29. Given all of the above, and considering all of the circumstances, I find it would not be unfair to delay the lifting of the stay to May 24, 2024 to allow the Tenant sufficient time to find a new place to live. I am granting this delay in recognition of the Tenant's limited financial resources and her lengthy tenancy.
30. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

**It is ordered that:**

1. The motion to set aside Order LTB-L-096621-23, issued on January 10, 2024 is denied.
2. The stay of order LTB-L-096621-23 is lifted on May 24, 2024.

**April 15, 2024**

**Date Issued**

15 Grosvenor Street, Ground Floor Toronto  
ON M7A 2G6

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Dana Wren

Member, Landlord and Tenant Board

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

