



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

Citation: Cityhousing Hamilton Corporation v Abdirahman, 2024 ONLTB 4599
Date: 2024-02-28 **File Number:** LTB-L-089516-23-SA

In the matter of: 2110, 181 JACKSON ST W HAMILTON ON
L8P1L8

Between: Cityhousing Hamilton Corporation Landlord

And

Saeed Abdirahman Tenant

Cityhousing Hamilton Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Saeed Abdirahman (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 September 19, 2023 mediated settlement signed by the parties on September 19, 2023 with respect to application LTB-L-018013-23-RV.

The Landlord's application was resolved by order LTB-L-089516-23, issued on November 30, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-089516-23 resulting in interim order LTB-L-089516-23 was issued on January 9, 2024.

This motion was heard by videoconference on February 23, 2024. The Landlord's Legal Representative, V. Molatchenko, and the Tenant attended the hearing.

Determinations:

1. The Tenant failed to pay \$375.50 in arrears to the Landlord on November 1, 2023, in breach of a condition specified in order LTB-L-018013-23-RV issued by the Board on September 19, 2023, following a hearing on September 12, 2023.
2. The Tenant, who participated in the hearing from jail on September 12, 2023, testified that his friend was expected to pay the rent and arrears on his behalf. Although they paid the arrears on October 1, 2023, they were unable to make the payment on November 1, 2023.
3. The Tenant, released on January 1, 2024, is in receipt of income from the Ontario Disability Support Program and has resided in the unit since 2017.

4. Order LTB-L-089516-23 was enforced by the Court Enforcement Office (Sheriff) on January 3, 2024, and the Tenant claimed that he has been homeless since then. The Tenant requested reinstatement of the tenancy and another repayment agreement.

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5. The Landlord opposed the Tenant's motion because the Tenant was given a chance previously and he failed to comply with the terms of the agreement as reflected in order LTBL-018013-23-RV.
6. The lawful rent is \$139.00. It is due on the first day of each month.
7. Having paid \$934.00 since the application was filed, the amount outstanding to February 29, 2024, inclusive of rent arrears and costs, is \$2,014.00.
8. Although the Tenant breached order LTB-L-089516-23, section 78(11)(b) of the *Residential Tenancies Act, 2006* provides that the Board shall set aside the eviction order if the Board is satisfied, having regard to all the circumstances, that it would not be unfair to set aside the order.
9. The Tenant, although incarcerated attended the hearing on September 12, 2023 which resulted in order LTB-L-018013-23-RV. The Tenant arranged with a friend to make the payments to the Landlord and was hindered by his confinement. As the unit is also rentgeared-to-income, I find that it would not be unfair to set aside order LTB-L-089516-23.
10. The Tenant will be given an opportunity to pay \$400.00 monthly in arrears, as proposed by him, until the arrears are completely paid.
11. The Landlord incurred \$319.00 in costs to the Sheriff in July 2023 for the enforcement of order LTB-L-018013-23 issued on July 4, 2023. The Tenant will be ordered to pay this amount to the Landlord on September 1, 2024.
12. The Landlord also incurred \$319.00 in costs to the Sheriff in December 2023 for the enforcement of order LTB-L-089516-23 issued on November 30, 2023. The Tenant will also be ordered to pay this amount to the Landlord on October 1, 2024.
13. The tenancy is reinstated and as discussed at the hearing, the keys to the rental unit will be provided to the Tenant on February 23, 2024.

It is ordered that:

1. The motion to set aside Order LTB-L-089516-23, issued on November 30, 2024 is granted. The order cannot be enforced by the Landlord.
2. The interim order issued on January 9, 2024, is cancelled, and replaced with this order.

- 3. The Tenant shall pay to the Landlord \$2,014.00, which represents the amount outstanding for the period ending February 29, 2024.
- 4. The Landlord’s application for eviction of the Tenant is denied on the condition that:
 - (a) The Tenant shall make the following payments to the Landlord in respect of the monies owing under paragraph 3 of this order:

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Date Payment Due	Amount of Payment
From March 2024 to July 2024	\$400.00 on the 1 st day of each consecutive month (arrears)
On or before August 1, 2024	\$14.00 (balance of arrears)

- (b) The Tenant shall also pay the Landlord the rent for the months of March 2024 up to and including August 2024 in full, on or before the first day of each corresponding month.
- 5. If the Tenant fails to make any of the payments in accordance with paragraph 4, and by the dates required, then:
 - (a) The Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the ‘Act’) for an order terminating the tenancy and evicting the Tenants, and for the payment of any new arrears of rent and NSF charges not already ordered under paragraph 3 of this order. The Landlord must make the application within 30 days of a breach of a condition set out in paragraph 4 of this order.
 - (b) The balance owing under paragraph 3 of this order shall become payable on the day following the date of default. The monies owing shall bear interest at the post-judgment interest rate determined under subsection 207(7) of the Act.
- 6. The Tenant shall also pay to the Landlord, \$319.00 on or before September 1, 2024 for the costs to the sheriff in July 2023.
- 7. If the Tenant does not pay the Landlord the full amount owing on or before September 1, 2024, the Tenant will start to owe interest. This will be simple interest calculated from September 2, 2024 at 7% annually on the balance outstanding.
- 8. The Tenant shall also pay to the Landlord, \$319.00 on or before October 1, 2024 for the costs to the sheriff in December 2023.

9. If the Tenant does not pay the Landlord the full amount owing on or before October 1, 2024, the Tenant will start to owe interest. This will be simple interest calculated from October 2, 2024 at 7% annually on the balance outstanding.

10. The Landlord shall immediately give possession of the rental unit to the Tenant.

February 28, 2024

Date Issued

15 Grosvenor Street, Ground Floor Toronto ON
M7A 2G6

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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.