



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

Citation: VILLA OTTHON (LAMBTON) v Aliberti, 2024 ONLTB 34477

Date: 2024-05-10 **File Number:**
LTB-L-012157-24-SA

In the matter of: 608, 4049 DUNDAS ST W
YORK ON M6S4Z5

Between: Villa Otthon (Lambton) Landlord

And

Deborah Aliberti Tenant

Villa Otthon (Lambton) (the 'Landlord') applied for an order to terminate the tenancy and evict Deborah Aliberti (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 July 27, 2023, with respect to application LTB-L-023517-23.

The Landlord's application was resolved by order LTB-L-012157-24, issued on March 1, 2024. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-012157-24.

This motion was heard by videoconference on May 2, 2024.

The Landlord's legal representative, Marie Galevski, the Tenant, the Tenant's legal representative, Sheila Warner, and the Tenant's witness, Robert Barkley, attended the hearing.

Determinations:

The Breach of the Order

1. There is no dispute that the Tenant breached the order issued on July 27, 2023, by failing to pay February's rent in full by February 1, 2024, and by failing to pay \$300.00 towards the arrears by February 1, 2024.

Relief from Eviction

2. As I am satisfied that the Tenant breached the order, the next issue before me is whether it would be unfair in all the circumstances to set aside the eviction order. For the following reasons, I find that it would not be unfair to grant the Tenant's motion.
3. The circumstances here are somewhat complicated. The Tenant is an Indigenous woman who admittedly does not make any income at all. The Tenant's husband lives with her in the rental unit and he receives ODSP benefits because of his various disabilities. The Tenant is listed as a dependant on her husband's benefits but does not have any other monthly income. The Tenant has lived in the rental unit for 16 years since 2008, which means this is a long-term tenancy.
4. There is no dispute that the Tenant breached the order issued on July 27, 2023, because her mother-in-law was seriously ill beginning in January 2024 and the Tenant's husband took approximately 8 trips to Kingston between January and April to see her. These trips were sometimes by train, ride share vehicles or by bus. It was these unexpected travel expenses that caused the Tenant to miss the arrears payment for February 2024.
5. Also, the Tenant failed to pay February's rent in full because ODSP was unaware of a rent increase that had previously occurred in December 2023. The Tenant says that, with the assistance of her legal representative, she has communicated this rent increase to ODSP and they have made the necessary adjustments to the Tenant's housing benefit and will pay to the Landlord the missing months of rent increases.
6. I have also considered that ODSP pays the monthly rent directly to the Landlord and the Tenant's legal representative says that, if a conditional order is put in place, ODSP will also make any arrears payments directly to the Landlord.
7. The difficulty here is that the Landlord says they have brought the Tenant to the Board five times over the years and they have repeatedly dealt with the Tenant's inability to pay their rent in full. The second difficulty is the very tight financial situation in which the Tenant finds herself as a person who is relying completely on her husband's very limited income.
8. However, after a very detailed examination of the Tenant's household finances, and with assurances from the Tenant's legal representative who is from a local legal aid clinic, I am satisfied that the Tenant is able to pay the ongoing monthly rent in full and pay the outstanding arrears with the help of a payment plan.
9. I say this because I discussed in detail with the Tenant and her husband the kinds of financial sacrifices they will have to make in order to adhere to a payment plan. These sacrifices include stopping smoking (which will save them about \$100.00 per month), removing one bus pass (which will save them about \$250.00 per month) and removing one cell phone (which will save them about \$60.00 per month). If the Tenant is able to make

these financial adjustments, she will save approximately \$410.00 each month. Both the Tenant and her husband appeared to understand what is required of them and they both seemed eager to do whatever is necessary to save this long-term tenancy.

10. I have also considered that the Tenant's legal representative is assisting the Tenant with finding additional financial support including an amount from the housing stabilization fund. The Tenant's legal representative has also arranged for ODSP to pay the monthly rent in full directly to the Landlord as well as any arrears payments. This arrangement with ODSP greatly reduces the likelihood that the Tenant will breach the conditions of any payment plan which is put in place.
11. Based on the information provided to me at the hearing, I find that the current outstanding arrears for the period ending May 31, 2024, and costs are \$6,931.00. However, the Tenant's legal representative says that she has secured a \$1,600.00 payment from the housing stabilization fund, and a \$135.00 payment from ODSP which represents the rent increases from December to May 2024. The Tenant's legal representative also confirmed that ODSP will pay May's rent in the amount of \$1,108.00 within 5 days from the date of the hearing. After all of these payments are made, the remaining arrears will be \$4,088.00.
12. Also, based on my examination of the Tenant's household finances, including the financial adjustments discussed above, I am satisfied that the Tenant can afford to pay \$300.00 per month towards the arrears. If the Tenant adheres to this payment schedule, the outstanding arrears will be paid in approximately 14 months and I am satisfied that this reduces any ongoing prejudice to the Landlord.
13. Finally, in order to make the payment plan as achievable as possible, I am delaying the start of the payment plan including the larger payments until July 1, 2024. This should give the Tenant's legal representative the necessary time to acquire the \$1,600.00 housing stabilization payment, the \$135.00 ODSP payment as well as the \$1,108.00 ODSP payment for May's rent. This should also give the Tenant time to make the necessary financial adjustments including having her husband stop smoking, cancelling one bus pass and cancelling one cell phone. Even with this short delay in the onset of the payment plan, I find that any ongoing prejudice to the Landlord is reduced because ODSP will continue to pay May's rent and June's rent directly to the Landlord.
14. Based on all of the evidence before me, and after considering all of the circumstance, I find that it would not be unfair to grant the Tenant's motion to set aside the eviction order. Also, an order will issue replacing the previous consent order issued on July 27, 2023, with a payment plan.
15. This order contains all of the reasons within it and no further reasons will be issued.

It is ordered that:

1. The motion to set aside Order LTB-L-012157-24, issued on March 1, 2024, is granted.

2. Order LTB-L-012157-24, issued on March 1, 2024, is set aside and cannot be enforced.
3. The previous order issued on July 27, 2023, with respect to LTB-L-023517-23 is cancelled and replaced with the following order.
4. The Tenant shall pay to the Landlord **\$6,931.00** for arrears of rent for the period ending May 31, 2024, and costs.
5. The Tenant shall pay to the Landlord the amount set out in paragraph 4 of this order in accordance with the following schedule:
 - a) \$1,108.00 (for May's rent) on or before May 17, 2024;
 - b) \$2,035.00 (\$1,600.00 from housing stabilization, \$135.00 from ODSP for the rent increases and \$300.00 towards the arrears) on or before July 1, 2024;
 - c) \$300.00 on or before August 1, 2024;
 - d) \$300.00 on or before September 1, 2024;
 - e) \$300.00 on or before October 1, 2024;
 - f) \$300.00 on or before November 1, 2024;
 - g) \$300.00 on or before December 1, 2024;
 - h) \$300.00 on or before January 1, 2025;
 - i) \$300.00 on or before February 1, 2025;
 - j) \$300.00 on or before March 1, 2025;
 - k) \$300.00 on or before April 1, 2025;
 - l) \$300.00 on or before May 1, 2025;
 - m) \$300.00 on or before June 1, 2025;
 - n) \$300.00 on or before July 1, 2025; and
 - o) \$188.00 on or before August 1, 2025.
6. The Tenant shall also pay the monthly rent in full on or before the first day of each month for the period of June 1, 2024, to August 31, 2025, or until the arrears are paid in full, whichever is earlier.
7. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears or rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 4 of this order shall immediately become due and owing and the Landlord may, without notice to the Tenant, apply to the Board pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after May 31, 2024. The Landlord must make this application no later than 30 days after the Tenant's failure to make a payment.

May 10, 2024

Date Issued

Laura Hartsliel

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor Toronto
ON M7A 2G6

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