



Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: Rooprai v Kostrzewa, 2024 ONLTB 21068

Date: 2024-03-28

File Number: LTB-L-076078-23-SA-RV

In the matter of: 1425 BRIDGE RD
OAKVILLE ON L6L2C9

Between: Rajinder Rooprai Landlord

And

Thomas Kostrzewa Tenant
Peter Kostrzewa

Review Order

When the capitalized word “Landlord” is used in this order, it refers to all persons or companies identified as a Landlord at the top of the order. When the capitalized word “Tenant” is used in this order, it refers to all persons identified as a Tenant at the top of the order.

Rajinder Rooprai (the 'Landlord') applied for an order to terminate the tenancy and evict Thomas Kostrzewa and Peter Kostrzewa (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant failed to meet a condition specified in the order issued by the Board on May 23, 2023 and amended on January 30, 2024 with respect to application LTB-L-056614-22.

This application was resolved by *ex parte* order LTB-L-076078-23 issued on October 20, 2023.2024.

On November 11, 2023, the Tenant brought a motion to set aside the *ex parte* order issued on October 20, 2023.

The motion was heard by videoconference on December 19, 2023 and resolved by order LTB-L-076078-23-SA issued on January 11, 2024.

On January 18, 2024, the Tenant requested a review of the order issued January 11, 2024 and that the order be stayed until the request to review the order is resolved.

On January 19, 2024 interim order LTB-L-076078-23-RV-IN was issued, staying the order issued on January 11, 2024.

This request to review was heard in by videoconference on March 12, 2024.

The Landlord and the Tenant, Thomas Kostrzewa ('TK'), attended the hearing.

Determinations:Request to Review

1. The issue before me on the review request was whether it was a serious error for the Member hearing the motion to rely on an incorrect finding of fact with respect to rent arrears payments in May 2023 flowing from a clerical error in order LTB-L-056614-22 issued on May 23, 2023.
2. LTB-L-056614-22 was a rent arrears application that was resolved by a consent order which implemented a payment plan for the Tenant to repay the rent arrears.
3. The clerical error in the order was that the agreement was for the Tenant to pay \$500.00 toward the rent arrears by the 15th day of each month from May 15, 2023 to April 15, 2025, and for the balance of \$681.00 to be paid by May 15, **2025**. Prior to being amended, the order incorrectly stated that the \$681.00 was to be paid by May 15, **2023**.
4. The parties agreed that the \$500.00 rent arrears payment for May 2023 was made. In the January 11, 2024 order, the Member incorrectly determined that the Tenant had failed to make this payment. The determination about this failure to pay was then a factor in the Member deciding to refuse to exercise his discretion to grant the motion. This fact was an integral part of the Member's analysis as to whether it would be unfair in all the circumstances to grant the motion pursuant to subsection 78(11)(b).
5. I find that it was a serious error for the Member to rely, at least in part, on this incorrect finding of fact as part of the factual matrix in determining whether to exercise his discretion.
6. This was a palpable and overriding error because it was not grounded in the evidence that was before the LTB and it may have changed the outcome of the hearing.
7. The request to review is therefore granted.

Merits of the Motion to Set Aside

8. The Tenant's motion to set aside the eviction order is granted for the following reasons.

There was a breach of the previous order

9. In the L4 application, the Landlord alleged that the Tenant paid the rent arrears payment due September 15, 2023 late. The parties both acknowledged this payment was made late, on September 16, 2023.
10. TK said that the Landlord had agreed to accept this payment late, but the Landlord denied any such agreement. To prove a fact on a balance of probabilities, there must be sufficient clear, convincing, and cogent evidence of the fact: *FH v. McDougall*, 2008 SCC 53 (CanLII), para 46. There was not sufficient clear, convincing, and cogent evidence for the Tenant to prove the existence of such an agreement.
11. The Tenant therefore breached a condition of order LTB-L-056614-22.

The surrounding circumstances

12. The question before me is therefore whether it would be unfair in all the circumstances to grant the motion.
13. At the time the application in LTB-L-056614-22 was heard on April 13, 2023, the Tenant owed the Landlord rent arrears of \$12,681.00. As described below, several payments in addition to the September 15, 2023 payment have been made late, but the late payments have been made within 1-3 days of the due date, with one exception.
14. All the payments for rent and toward rent arrears have been made in the amounts required by order LTB-L-056614-22. As of March 12, 2024, the rent arrears have been reduced by \$5,000.00, to \$7,681.00.
15. TK said he has a 6-year-old son who lives with him and attends school in the area. He said the child has lacked stability to this point in his life, and he wishes to provide stability which includes maintaining his current housing and school.
16. TK said he is able to comply with the payment plan as is in place in LTB-L-056614-22-AM moving forward.
17. The Landlord said that while all of the payments for rent and arrears have been made since May 15, 2023, and he agreed that the rent arrears have been reduced to \$7,671.00, he said that the Tenant has made some of the payments late which has caused hardship for the Landlord.
18. The evidence was that for the months of August and November 2023, \$225.00 of the rent was paid one day late. The Landlord said the payment was also late in July 2023, but he had agreed to accept that payment late.
19. The January 15, 2024 arrears payment was not paid until January 31, 2024. TK said this was because he wrote a cheque for this payment and left it in the mailbox, but the Landlord refused to pick it up. The Landlord denied that the Tenant advised him of a cheque in the mailbox. TK asserted that the other late payments were late with the Landlord's permission. The Landlord denied that he agreed to accept any late payments, except for the July 2023 rent payment.
20. The Landlord said the mortgage payments come due on the first and 15th of each month, and late rent payments cause him hardship because it can result in missed or late mortgage payments.
21. The Landlord also said that on September 14, 2022, utility bills that the Tenant was supposed to pay but didn't were transferred to the property tax bill in the amount of \$1,274.00, and this happened again on February 23, 2024, in the amount of \$877.00. The Tenant said he does not know why this would have happened because he has been paying the utility bills.
22. The Landlord said his credit rating has suffered because of the Tenant's non-payment of rent. He said he has two children, and is going through some treatments. He said the Tenant's late payments have caused significant stress that has impacted him physically and emotionally. He also said the Tenant communicates in an unkind manner, and he just wants a peaceful life and to be out of this landlord and tenant relationship.

23. In all of the circumstances, I find that it is not unfair to grant the Tenant's motion, and set aside the *ex parte* eviction order. I accept the Tenant's evidence that he will be able to fully comply with the remainder of the payment plan as set out in LTB-L-056614-22-AM by paying the full amounts due on or before the due dates.
24. The payments being made on time should alleviate the financial, and therefore also the emotional, stress on the Landlord.
25. I considered the Landlord's personal difficulties and the manner in which he said TK speaks to him. I must emphasize that while relationships between residential landlords and tenants may sometimes become acrimonious, it is imperative for such relationships to always be marked by mutual civility and respect. It is expected that the parties will conduct themselves in such a manner moving forward.
26. After considering all of the circumstances, I find that it would not be unfair to set aside order LTB-L-076078-23 issued October 20, 2023.

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It is ordered that:

1. The request to review order LTB-L-076078-23-SA issued on January 11, 2024 is granted. Order LTB-L-076078-23-SA issued on January 11, 2024 is cancelled.
2. The motion to set aside order LTB-L-076078-23 issued on October 20, 2023 is granted.
3. Order LTB-L-076078-23 issued on October 20, 2023 is set aside and cannot be enforced.
4. Amended order LTB-L-056614-22-AM issued January 30, 2024 is confirmed and remains unchanged.

March 28, 2024

Date Issued

Mark Melchers

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.