



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

Citation: Westwood Management International v Sandhya, 2024 ONLTB 22776

Date: 2024-03-26

File Number: LTB-L-001664-24-SA

In the matter of: 304, 3400 RIVERSPRAY CRES
MISSISSAUGA ON L4Y3M5

Between: Westwood Management International Landlord

And

Parvathy Murali Sandhya Tenants
Pradeep Surendra Nair

Westwood Management International (the 'Landlord') applied for an order to terminate the tenancy and evict Parvathy Murali Sandhya and Pradeep Surendra Nair (the 'Tenants') and 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 November 2, 2023 with respect to application LTB-L-059488-23-SA.

The Landlord's application was resolved by order LTB-L-001664-24, issued on January 23, 2024. This order was issued without a hearing being held.

On February 6, 2024, the Tenants filed a motion to set aside order LTB-L-001664-24.

This motion was heard by videoconference on March 21, 2024.

The Landlord's Legal Representative Nicole Ruby and the Tenants attended the hearing.

Determinations:

1. This motion is before the Board because the Landlord obtained the eviction order without notice to the Tenants under s.78 of the *Residential Tenancies Act, 2006* ("the Act") based upon an allegation that the Tenants breached the original order. The Tenants do not want to be evicted and asks that the eviction order be set aside.
2. Order LTB-L-001664-24 found the Tenants breached order LTB-L-059488-23-SA by failing to pay the Landlord the arrears payment required by December 20, 2023. However, this payment was made by the Tenants on December 14, 2023 and is therefore not a breach of order LTB-L-059488-23-SA.
3. Order LTB-L-00164-24 also found the Tenants breached order LTB-L-059488-23-SA by failing to pay the monthly rent for January 2024 on January 1, 2024, the date it was due. The Tenants agreed this breach did occur.

4. The only issues before me are:
 1. whether or not, pursuant to s.78(11)(b) of the *Residential Tenancies Act, 2006* (“the Act”) having regard to all of the circumstances, it would not be unfair to set aside Order LTB-L-001664-24, issued on January 23, 2024.
 2. if the answer to a) is no; when the stay imposed on the Order LTB-L-001664-24 should be lifted - immediately or on a future date.
5. Pursuant to subsection 78(11)(b) of the Act, the Board may make an order setting aside the original order if the Board is satisfied that having regard to all of the circumstances, that it would not be unfair to set aside the order.

6. Pursuant to this provision, I have the discretion to grant relief to the Tenants by setting aside the original order notwithstanding the Tenants have breached conditions required in it.

Tenants' Position

7. The previous set aside motion for Board file LTB-L-059488-23 was heard on October 11, 2023. The Tenant, Parvathy Murali Sandhya, testified that at the hearing on October 11, 2023, she was hopeful of securing employment and confident the Tenants could pay the rent arrears and the monthly rent going forward.
8. The Board granted the Tenants' set aside motion and issued a conditional payment plan based on the proposal made by the Tenants at the hearing on October 11, 2023. The arrears of rent as of October 11, 2023 were \$15,328.43 for the period ending October 31, 2023.
9. The Tenant explained that after the hearing on October 11, 2023, she did not secure a job and applied to Ontario Works for assistance. The process with Ontario Works was delayed over the holiday season and payment for the monthly rent for January 2024 was not issued until January 8, 2024.
10. The Tenants acknowledged they have made no payments to the Landlord since Ontario Works issued the payment on January 8, 2024. The Tenants agreed the rent arrears are currently \$20,494.31 for the period ending March 31, 2024.
11. The Tenants submitted an email from their case worker at the Region of Peel that was received the day before the hearing of this motion. The email states two cheques, totalling \$7,500.00, have been issued to the Landlord. The email states the cheques were mailed and should be received by the Landlord in 3-5 business days. The Landlord had not received these cheques by the hearing date which is not surprising since they were only mailed the day before the hearing.
12. The Tenant testified that once these payments are received by the Landlord, the outstanding rent arrears will be \$12,994.31 for the period ending March 31, 2024. This amount was not disputed by the Landlord.

13. The Tenants requested a new conditional order, proposing to pay the Landlord \$800.00 per month towards the rent arrears as well as timely payments of the monthly rent. However, the Tenants did not want the required payments to begin until May of 2024. The Tenant also stated they cannot afford to pay the monthly rent for April 2024.
14. The Tenant testified that she has obtained employment that is to begin on April 8, 2024. She stated she will be earning \$95,000.00 per year. Since the Tenants have previously been granted a conditional order based on future employment, I asked the Tenant if she had any evidence showing she had been offered employment and the amount she would be earning. The Tenant stated she did not have any supporting evidence because the offer of employment was a verbal offer and not in writing. She testified her references had been contacted and she was awaiting confirmation.
15. I canvassed the current household income of the Tenants to determine if the tenancy was sustainable. The monthly rent is \$1,535.04 and the household income is \$1,885.00. The Tenants are married and live with their five-year-old child. The Tenants have not paid the monthly rent for February or March 2024 and as stated earlier, cannot afford the monthly rent for April 2024.

Landlord's Position

16. The Landlord submitted that this set aside motion is the third time the parties have been before the Board for these rent arrears. They submitted the Board issued a conditional order on January 13, 2023 with respect to application LTB-L-023590-22. The Tenants did not attend the hearing for this file. The arrears of rent at the time order LTB-L-023590-22 was issued were \$9,732.77 for the period ending January 31, 2023.
17. The Landlord submitted the Tenants breached this order. The Landlord filed an L4 application under Board file LTB-L-059488-23 and an ex-parte order was issued on August 21, 2023 terminating the tenancy. The Tenants filed a motion to set aside this order and the Tenants' motion was granted on November 2, 2023 in order LTB-L-059488-23-SA. As stated earlier, the Tenants were granted the conditional order they requested and breached the order by failing to pay the monthly rent on January 1, 2024 as required.
18. The Landlord filed another L4 application under Board file LTB-L-001664-23 and the Board issued the ex-parte order this motion seeks to have set aside.
19. The Landlord submitted that over the course of these proceedings the rent arrears have more than doubled. Their position was the lack of rental revenue and multiple appearances before the Board have resulted in prejudice to them. The Landlord submitted it would be unfair to set aside order LTB-L-001664-24 submitting the Tenants' circumstances are unchanged since the previous set aside motion for file LTB-L-059488-23 was heard on October 11, 2023.

Discretionary Relief Under s. 78(11)(b)

20. I have considered all of the submissions and evidence presented. Section 78(11)(b) of the Act provides discretion to set aside an order where to do so would not be unfair.

21. I am satisfied the reason for the Tenants' breach was reasonably explained. The monthly rent for January 2024 was paid 7 days late because of a delay with Ontario Works issuing payment to the Landlord. Clearly, the Tenants do not have control over when Ontario Works issues and sends cheques to the Landlord. However, the analysis does not end here.
22. While the Tenant testified she has secured employment that is to begin on April 8, 2024, no supporting evidence was presented showing this is the case. No letter confirming an offer of employment was submitted. No one from the company offering employment to the Tenant attended the hearing to testify. No evidence was submitted showing the amount the Tenant would be earning.
23. As mentioned above, since the Tenants sought and were granted a previous conditional order based in part on future employment, I found this case required some verifiable evidence supporting the Tenant's claims. In the absence of any supporting evidence, I was not convinced on a balance of probabilities the Tenant has a confirmed position due to start in less than three weeks from the date of the hearing.
24. The Tenants submitted no evidence showing an amount of ongoing financial support they will receive from Peel Region or Ontario Works. While the Tenant testified financial support would not continue once she begins working, as stated above, I was not convinced the Tenant has shown she has confirmed employment.
25. The current household income after the monthly rent is considered, leaves the Tenants with approximately \$350.00 for all of the other monthly expenses a family of three would have. The Tenant's own evidence was they cannot afford the monthly rent for April 2024 and did not want to be required to make payments to the Landlord until May of 2024. I do not find the Tenants have shown on a balance of probabilities they can afford the monthly rent and a reasonable payment towards the outstanding rent arrears, even after the \$7,500.00 payment from Peel Region is considered. Based on the evidence and submissions of the Tenants, I am not convinced this tenancy is sustainable. For these reasons, I do not find a new conditional order is appropriate in this case.
26. The Tenants current income cannot support the tenancy. The Tenants have breached two previous Board orders requiring payment to the Landlord. As a result, the Landlord has had to commence additional proceedings and return before the Board. When I consider all of the circumstances, I find setting aside order LTB-L-001664-24 and allowing an unsustainable tenancy to continue would be unfair and unduly prejudicial to the Landlord. For these reasons the Tenants' motion to set aside order LTB-L-001664-24 is denied.

Discretionary Relief under s. 78(11)(c)

27. I do believe that a delay in lifting the stay of order LTB-L-001664-24 is appropriate in the circumstances.
28. One of the Tenants, Pradeep Surendra Nair continues to recover from a workplace injury suffered in late 2022 and is not working. The Tenants also have a five-year-old child. The Board recognizes it will take the Tenants some time to find alternate living arrangements

that are suitable for their family in the current rental market, particularly when I consider the Tenants' limited income.

29. As such, I am exercising my discretion under section 78(11)(c) to delay the lifting of the stay of order LTB-L-001664-24 until April 30, 2024.

It is ordered that:

1. The motion to set aside Order LTB-L-001664-24, issued on January 23, 2024, is denied.
2. The stay of order LTB-L-001664-24 is lifted on April 30, 2024.
3. Order LTB-L-001664-24, issued on January 23, 2024, is unchanged.

March 26, 2024

Date Issued

John Cashmore

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.