



## **Order under Section 21.2 of the Statutory Powers Procedure Act and 78(11) of the Residential Tenancies Act, 2006**

**Citation:** 20 Hillisborough Holdings Ltd. v Barlow, 2024 ONLTB 16594

**Date:** 2024-03-05

**File Number:** LTB-L-073394-23-SA-RV

**In the matter of:** 17, 20 HILLSBOROUGH RD  
LONDON ON N6J2E8

**Between:** 20 Hillisborough Holdings Ltd. Landlord

**And**

David Barlow Tenant

### **Review Order**

20 Hillisborough Holdings Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict David Barlow (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 August 23, 2023 with respect to application LTB-L-019755-23.

The Landlord's application was resolved by order LTB-L-073394-23, issued on October 3, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-073394-23. The motion was heard by videoconference on November 21, 2023 and resolved by order LTB-L-073394-23-SA issued on November 28, 2023.

On December 15, 2023 the Tenant requested a review of the order issued on November 28, 2023 and that the order be stayed until the request to review the order is resolved.

On December 19, 2023 interim order LTB-L-073394-23-RV-IN was issued, staying the order issued on November 28, 2023.

This review request was heard by videoconference on February 15, 2024. The Landlord's legal representative Nicole Ruby and the Tenant attended the hearing.

**Determinations:**

Review Request:

1. The order issued on November 28, 2023 dismissed the Tenant's motion as abandoned as the Tenant did not attend the hearing. The Tenant's request for review asserts that the Tenant was not reasonably able to participate in the proceedings.
2. The Tenant testified that he did not receive notice of hearing from the Board and as such, was unaware that there was a hearing scheduled for his motion. The Tenant stated that he checks his mailbox and emails every few days and that he only received the Board's order on November 28, 2023.
3. The Landlord's representative opposed the review request and stated that the Landlord's property manager served the Tenant with a copy of the Landlord's evidence and the Board's notice of hearing seven days prior to the hearing date. The Tenant disputed this statement and the Landlord's property manager was not present at the hearing to provide testimony on this alleged service.
4. Based on the evidence and submissions before the Board, I am satisfied on a balance of probabilities that the Tenant was not reasonably able to participate in the hearing held on November 21, 2023 because they did not receive notice of hearing.
5. The Board's records confirm that the Tenant had attended the initial hearing before the Board on July 5, 2023 when the parties consented to the repayment plan order and as such it is clear that the Tenant has had an interest in participating in these proceedings. Although the Landlord's representative argued that the Tenant was served with notice of hearing by the Landlord's property manager, this evidence was hearsay and was disputed by the Tenant.
6. Therefore, the Tenant's request for review was granted at the hearing and the matter proceeded to be heard de novo (anew) on its merits.

Set Aside Motion:

7. The ex-parte order issued on October 3, 2023 terminates the tenancy because the Tenant failed to pay the lawful rent for September 2023 on or before September 1, 2023 as required by the consent repayment plan order issued on August 23, 2023.
8. The Tenant does not dispute breaching the prior repayment plan order and stated that when he received order LTB-L-019755-23 (the payment plan order), he panicked and assumed he was being evicted and as such, withheld his funds to pay for a storage locker and/or new rental unit.
9. Since the initial breach on September 1, 2023, the Tenant has also failed to pay the lawful rent for the months of November 2023 to February 2024. The Tenant also failed to pay the arrears payments for the period of September 20, 2023 to January 20, 2024.

10. As of the hearing date, the Tenant owes to the Landlord \$11,050.48. At the time of entering into the repayment plan, the Tenant owed to the Landlord \$6,928.00.
11. The Tenant stated that he had not made any payments to the Landlord since October 4, 2023 as he was unsure if he was going to be evicted and was further advised by his local legal aid clinic to not make any payments until the motion was heard.
12. The Tenant's monthly income is approximately \$1,300.00 per month and is received through ODSP. The Tenant acknowledged that his current income is insufficient to comply with the payment plan outlined in the consent order issued, but stated that he is actively searching for full-time employment and that he could pay \$6,000.00 to the Landlord immediately.
13. The Landlord's representative opposed the Tenant's motion and argued that the tenancy is not viable given the Tenant's current income and inability to comply with the repayment plan order.
14. Section 78(11)(b) of the *Residential Tenancies Act, 2006* (the Act) states that the Board may set aside an ex-parte order if satisfied that having regard to all of the circumstances that it would not be unfair to do so.
15. Based on the evidence and submissions before Board, I find that it would be unfair to grant the Tenant's motion and set aside the ex-parte order issued on October 3, 2023. Therefore, the motion is denied, and the stay of order LTB-L-073394-23 is lifted.
16. Since the initial breach of the prior order, the Tenant has since committed nine additional breaches of the repayment plan and the arrears owing have doubled since the parties consented to a payment plan before the Board.
17. Under the Act, the general intention is that the Board has an obligation to uphold and enforce the agreements into which landlords and tenants enter into. If it does not do so, then there is little incentive for parties to attempt negotiation. Board orders and mediated agreements are not mere suggestions with respect to conduct, but legally binding orders. If the Board does not uphold and enforce its own orders, disrespect for the Board's processes will inevitably ensue.
18. There was insufficient evidence before me to suggest that the Tenants circumstances have changed since the prior repayment order was issued and I do not accept the Tenant's reasons for the initial breach. The prior order issued clearly set out the repayment plan terms and at no point makes reference to the tenancy terminating. Therefore, it is unclear to me as to why the Tenant believed he was being evicted when receiving an order accurately reflecting the terms that he consented to.
19. I further note that the evidence at this hearing confirms that the Tenants current income is insufficient to comply with the prior repayment plan order issued even if the Board was satisfied that it would not be unfair to set aside the ex-parte order.
20. Given the pattern of events that led to this motion hearing, I find that setting aside the order would only result in a further breach and that any further delay would only result in

additional arrears owing to the Landlord. Therefore, I find that it would also be unfair to delay the lifting of the stay on the October 3, 2023 order.

**It is ordered that:**

1. The request to review order LTB-L-073394-23-SA issued on November 28, 2023 is granted. The order is cancelled and replaced with the following.
2. The motion to set aside Order LTB-L-073394-23, issued on October 3, 2023 is denied.
3. The stay of order LTB-L-073394-23 is lifted immediately.

**March 5, 2024**

**Date Issued**

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Fabio Quattrociochi

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.