



**Order under Section 77(8)
Residential Tenancies Act, 2006**

Citation: Zhao v Atwater, 2023 ONLTB 81703

Date: 2023-12-22 **File Number:**
LTB-L-078430-23-SA

In the matter of: Back, 70 COURTWRIGHT ST FORT
ERIE ON L2A2R7

Between: Xiu Yan Zhao and Hui Chen Landlords

And

Bradly Atwater Tenant

Xiu Yan Zhao and Hui Chen (the 'Landlords') applied for an order to terminate the tenancy and evict Bradly Atwater (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 September 20, 2023 with respect to application LTB-L-053270-23.

The Landlords' application was resolved by order LTB-L-078430-23, issued on October 25, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-078430-23.

The motion was heard by videoconference on December 11, 2023. The Landlords' representative Virginia Guo, and the Tenant, attended the hearing.

Determinations:

1. The Tenant owed the Landlord \$12,763.00 in arrears and costs to the end of September 2023. Rent is due on the 24th day of each month. The Landlords and the Tenant consented to an order requiring the Tenant to pay the lawful monthly rent in full and on time plus \$500.00 toward arrears.
2. The Tenant claims he thought the first arrears payment was not due until October 24th.
3. The Landlords' ledger shows that the rent for September, which was due September 24th, was paid in installments on September 29th and 30th, October 7th, 17th with a final payment on October 20th which covered the arrears payment as well.

4. For October the rent was paid on October 31st and the arrears payment was not made until November 18th.
5. For November \$500.00 of the rent was paid on November 28th and \$500.00 on November 30th. No further payments have been made.
6. The Landlords' representative submitted correspondence to the Tenant's legal representative he had at the original mediation that gave rise to the order showing that the Landlords' representative had contacted the Tenant's representative informing her that her client was in breach of the order. The Tenant's legal representative informed The Landlord's representative that she had informed the Tenant.
7. I do not accept the Tenant's testimony and submission on the set aside motion that he missed the September payment because he thought the repayment did not start until October. The Tenant received the order and was informed by the legal representative yet did not make up for the missed payment. In addition, the Tenant continued to miss payments and the amount the Tenant owes continues to increase.
8. I find the Tenant has breached the conditions set out in the consent order.
9. In the one-year period the Tenant lived in the unit at the time the parties entered into the consent agreement resulting in order LTB-L-053270-23 the Tenant was 8 ½ months in arrears of rent.
10. The Tenant claims that in December 2022 there was an issue with a gas leak in the home. As a result, the Tenant testified that he was forced to turn off the gas which affected the heat in the home. There was no evidence submitted prior to the hearing to support the assertion that there is a gas leak.
11. Considering how much of the rent that was due to the Landlord, the fact the Tenant now owes more to the Landlords than when the order was issued, as well as the length of the tenancy, I find that it would be unfair to set aside order LTB-L-078430-23.

It is ordered that:

1. The motion to set aside Order LTB-L-078430-23, issued on October 25, 2023, is denied.
2. The stay of Order LTB-L-078430-23 is lifted immediately.
3. Order LTB-L-078430-23 is unchanged.

December 22, 2023

Date Issued

Greg Joy

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.