



**Amended Order  
Order under Section 78(11)  
Residential Tenancies Act, 2006  
And section 21.1 of the Statutory Powers Procedure Act.**

**Citation:** Kouchak v Hasmani, 2023 ONLTB 81044  
**Date:** 2023-12-13  
**File Number:** LTB-L-063996-23-SA-AM

**In the matter of:** 2106, 715 DON MILLS RD  
NORTH YORK ON M3C1S4

**Between:** Mahnaz Kouchak Landlord

**And**

Amin Hasmani Tenant

**This order is issued to correct clerical errors in the original order issued December 13, 2023. For ease of reference and convenience the corrections have been bolded and underlined.**

Mahnaz Kouchak (the 'Landlord') applied for an order to terminate the tenancy and evict Amin Hasmani (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 June 2, 2023 with respect to application LTB-L-078529-22.

The Landlord's application was resolved by order LTB-L-063996-23, issued on August 31, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-063996-23.

The motion was heard by videoconference on October 24, 2023. The Landlord, the Landlord's legal representative, S. Ursino, the Tenant, and the Tenant's legal representative, G. Lasner signed in at the commencement of the hearing block- however, was not present when I called the matter.

**Determinations:**

Adjournment Request:

1. The Tenant requested an adjournment of the hearing due to his legal representative not being available for the hearing. For the following reasons, I declined to grant the Tenant's request for an adjournment.

2. As already mentioned, the Tenant's legal representative did sign in at the beginning of the block. However, based on the submissions of the Tenant the representative had another trial, in another court jurisdiction.
3. The Landlord contested the adjournment request as the arrears are accruing and he submitted that while having discussions with the Tenant and their representative outside of the hearing the representative indicated that the Tenant would be representing themselves at the hearing.
4. I canvassed with the Tenant with respect to some events that lead up to the hearing, for example when did the Tenant attempt to retain his representative, I also requested for the Tenant's representative to appear at the hearing to get submissions, however they were unable to do so.
5. The right to representation is not an absolute one. The Tenant submitted that they paid the required retainer for their representative the day before the hearing, their motion was filed by them on September 8, 2023, and so they had over a month to prepare for the hearing or retain someone with suitable availability. The issues to be decided on a set aside motion are narrow in nature, which the Tenant had full knowledge of and could testify to the specifics needed. I accept the Landlord's concern with respect to the amounting arrears and so the adjournment request was denied.

Motion to Set Aside:

6. For the following reasons, the Tenant's motion to set aside is denied and the stay of the order is lifted January 4, 2023.
7. The order provides that the Landlord can apply to the LTB under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenant to terminate the tenancy and evict the Tenant if the Tenant does not meet certain conditions in the order.
8. The Landlord filed an L4 application alleging that the Tenant failed to pay \$1,440.50 towards the arrears on or before August 1, 2023 and that the Tenant failed to pay the monthly rent on or before August 1, 2023.
9. On September 8, 2023, the Tenant filed a motion to set aside the ex-parte order. The Tenant acknowledges the breach and also acknowledges that he has failed to pay anything towards the rent after August 2023. The Tenant also acknowledges that as of the date of the hearing the arrears were \$20,318.00.
10. This application was originally resolved by way of a consent. The parties agreed that the rent arrears and costs owing to May 31, 2023 are \$17,286.00, the payment plan outlined that the Landlord would be made whole 11 months from July 1, 2023. At the hearing for the set aside motion the Tenant requested to cancel that original payment plan and impose a new payment plan that was essentially a 25-month plan.
11. The Tenant says that the reason for the arrears is due to what can be characterized as a poor business venture. The Tenant is a jeweller and opened up a secondary storefront location in the past year that did not do so well. The Tenant is having to pay rent for the store front of his business as well as rent for his rental unit and is having a hard time covering both business and personal expenses.

12. The Landlord is an individual who testified that the property is not a mortgage free one and that by the Tenant not paying the monthly rent or the arrears is causing him financial hardship as he is having to cover the expenses of the rental unit as well as his own living accommodations.
13. The Tenant's circumstances are relatively the same from the original hearing date. I say this because the Tenant had the second store front at the time of the original consent and so, the Tenants financial circumstances were considered when the parties entered into the consent. The Board has an interest in upholding their consent orders as well as upholding section 78 of the Act. Essentially the Tenant is asking the Landlord to finance his personal business decisions and has requested to at least double the repayment plan, while still not making any payments to the Landlord since the original breach. I find this to be prejudicial on the Landlord. After considering all of the circumstances, I find that it would be unfair to set aside the order. I must now consider when to lift the stay.
14. The Tenant is an elderly man and given the upcoming holiday season I am inclined to grant him some additional time to vacate the rental unit. I find January 4, 2023, to be appropriate given the circumstances.
15. The Tenant has had since the hearing date to find alternative accommodation and will have some additional time due to the inevitable delay due to the upcoming holiday season and enforcing this order through the Sheriff's office. This delay is not so extensive that shall severely prejudice the Landlord.

**It is ordered that:**

1. The motion to set aside LTB-L-063996-23 issued on August 31, 2023, is denied. This order remains unchanged.
2. The stay of order LTB-L-063996-23 is lifted January 4, **2024**.

**December 13, 2023**

**Date Issued**

**December 20, 2023**

**Date Amended**

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Curtis Begg

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.