



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

**Citation:** Victoria Park Community Homes v Marks, 2023 ONLTB 80182

**Date:** 2023-12-12 **File Number:**  
LTB-L-072683-23-SA

**In the matter of:** 4, 80 GILCREST ST  
HAMILTON ON L9C7L9

**Between:** Victoria Park Community Homes Landlord

**And**

Chantellee Marks Tenant

Victoria Park Community Homes (the 'Landlord') applied for an order to terminate the tenancy and evict Chantellee Marks (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-049665-22-AM.

The Landlord's application was resolved without a hearing by way of order LTB-L-072683-23 issued on October 3, 2023. The Tenant filed a motion to set aside the ex-parte order.

This motion was heard by videoconference on November 28, 2023. The Landlord's legal representative Karolina Pocrnick and the Tenant attended the hearing.

### **Determinations:**

1. The prior order issued on August 23, 2023 was a consent repayment plan for arrears of rent. The ex-parte order issued on October 3, 2023 terminates the tenancy because the Tenant failed to pay \$250.00 towards the arrears on or before August 25, 2023 and because the Tenant failed to pay the lawful rent for September 2023 on or before September 1, 2023.
2. The Tenant did not dispute breaching the repayment plan, as such, the only issue to determine is whether or not it would be unfair in all of the circumstances to set aside the ex-parte order.

3. The Tenant testified that during the month of August 2023 her cell phone broke and that she believed she paid the Landlord the \$250.00 arrears payment. The Tenant was unable to confirm this payment with her online banking app. The Tenant stated that she had also experienced reduced hours with her employment which impacted her ability to pay her September rent on time.
4. Since the initial breach, the Tenant has subsequently paid the rent for September 2023 and further paid the monthly rent for October and November 2023, plus the required arrears payments for each month. The Tenant did agree however that these payments were made late and not on time.
5. The Tenant requested that the Board allow her another opportunity to preserve her tenancy and to continue with the original repayment plan. The Tenant also stated that she would pay the missed arrears payment for August 2023 on or before December 15, 2023.
6. The Landlord opposed the Tenant's motion, but offered no submissions with respect to the Landlord's circumstances or to suggest that setting aside the ex-parte order would be prejudicial to the Landlord.
7. Based on the evidence before me, I find that it would not be unfair to set aside the ex-parte order and to allow the Tenant another opportunity to preserve the tenancy by way of a repayment plan. Although the Tenant breached the prior order, the Tenant provided a reasonable explanation for the breach and has continued to pay both rent and arrears payments to the Landlord per the prior order. The Tenant has shown a good-faith intention to preserve the tenancy.
8. As of the hearing date, the Tenant owes to the Landlord \$3,233.00, which is less than what was previously owing at the time the August 23, 2023 payment plan order was issued.
9. As such, the motion to set aside is granted and the Tenant will be ordered to repay the arrears in accordance with the repayment plan ordered below. The Tenant was advised at the hearing that her obligation to pay her December 2023 rent on time remains despite the issuance date of this order.

**It is ordered that:**

1. The motion to set aside Order LTB-L-072683-23 issued on October 3, 2023 is granted. The order is cancelled and replaced with the following.
2. The Tenant shall pay to the Landlord \$3,233.00 for arrears of rent and costs owing to November 30, 2023.

- 3. The Tenant shall pay the amount set out in paragraph 2 in accordance with the following schedule:
  - a) \$250.00 on or before December 15, 2023
  - b) \$250.00 on or before the 25<sup>th</sup> day of each month commencing December 25, 2023 and continuing through to October 25, 2024.
  - c) \$233.00 on or before November 25, 2024.
- 4. The Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period December 1, 2023 to November 1, 2024, or until the arrears are paid in full, whichever date is earliest.
- 5. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 2 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after November 30, 2023.

**December 12, 2023**

**Date Issued**

15 Grosvenor Street, Ground Floor  
Toronto ON M7A 2G6

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Fabio Quattrociochi  
Member, Landlord and Tenant Board

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.