



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

Citation: Teecon Corporation v Dawson, 2023 ONLTB 79598

Date: 2023-12-07

File Number: LTB-L-073587-23-SA

In the matter of: Unit B, 297 MAIN ST E
GRIMSBY ON L3M1R1

Between: Teecon Corporation

Landlord

And

Catharine Dawson

Tenant

Teecon Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Catharine Dawson (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 July 18, 2023 with respect to application LTB-L-008413-23.

The Landlord's application was resolved without a hearing by order LTB-L-073587-23 issued on October 5, 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 agents Mark Conte and Tania Conte, the Tenant and the Tenant's legal representative attended the hearing.

Determinations:

Motion:

1. The prior order issued by the Board on July 18, 2023 was a consent repayment for arrears of rent owing up to June 30, 2023.
2. The ex-parte order issued on October 5, 2023 terminates the tenancy as the Board was satisfied that the Tenant breached the repayment plan order by failing to pay \$500.00 towards the arrears of rent on or before September 1, 2023.
3. The Tenant does not dispute breaching the prior order, therefore the only issue for the Board to consider is whether or not it would be unfair in all of the circumstances to set aside the ex-parte order pursuant to section 78(11)(b) of the Act.
4. The Tenant testified that after paying her monthly rent for September 1, 2023, she was unable to send a second e-transfer to the Landlord as she had reached her daily e-transfer limit. On the following day, the Tenant was locked out of her bank account and was informed by her Bank that there was suspected fraudulent Acts occurring on her

account. The Tenant's account was frozen for approximately 14 days and as such, she was unable to log into her account or send E-transfers to the Landlord.

5. The Tenant agrees that since the breach, she has also failed to pay her lawful monthly rent for October and November 2023 nor has she paid the ordered amount for the arrears during the months of September to November 2023. The Tenant stated that after being advised that the Landlord filed their L4 order to terminate the tenancy, she was unsure of what to do as she received an order terminating her tenancy.
6. The Tenant has resided in the rental unit for approximately 7 years and suffers from Multiple Sclerosis (MS), Post Traumatic Stress Disorder (PTSD), Complex Trauma Disorder and severe anxiety.
7. The Tenant testified that she could rectify the breach and get caught up on the repayment plan by December 7, 2023 (9 days after the hearing). The Tenant stated that she could pay to the Landlord the missed rent and arrears payments for the period of September to November 2023 (\$5,211.10) on or before December 1, 2023 and pay the lawful rent and \$500.00 arrears payment for the month of December 2023 on or before December 7, 2023 (\$2,355.55).
8. The Landlord opposed further relief arguing that they held off on filing the L4 application until September 18, 2023, which provided the Tenant with sufficient time to make the arrears payment due on September 1, 2023.
9. The Landlord also disputed that the Tenant's bank account was frozen and relied on the Tenant's bank statements attached to their set-aside motion showing that funds were being withdrawn the Tenant's account during the period of September 7 – 22, 2023.
10. Based on the evidence before the Board, I find that it would not be unfair to set-aside the ex-parte order and allow the Tenant another opportunity to preserve the tenancy. While the reasons for the breach and subsequent breaches may be unclear and disputed between the parties, the Tenant's proposal to get caught up and back on track for the repayment plan is relatively short.
11. The Tenant was advised at the hearing that she is still required to make the payments proposed on December 1 and 7, 2023 despite the issuance date of this order.
12. In order to preserve the rights of the Landlord, the new order will also include a section 78 clause to provide the Landlord with a remedy should the Tenant breach this new repayment plan.

Costs against Landlord:

13. At the end of the hearing, the Tenant's representative requested that the Board order the Landlord to pay \$200.00 in costs. The Tenant's representative argued that she reached out to the Landlord prior to the motion hearing in an attempt to resolve the matter without a hearing, to which the Landlord allegedly declined.
14. In my view and in consideration of the Board's Interpretation Guideline 3, costs are not warranted in this situation. The Tenant did not dispute breaching the prior repayment

plan order and the Landlord has the lawful right under the Act and the prior order to file an L4 application as a remedy to the Tenants breach. Further, this hearing was to consider a motion that was filed by the Tenant themselves and in accordance with the Act, this is the lawful way to address the ex-parte issued.

15. I do not find that the Landlord's actions were frivolous in any way, and I find that it would be inappropriate to order costs against a party for enforcing their lawful rights and properly addressing a matter before the Board. The request for costs is therefore denied.

It is ordered that:

1. The motion to set aside Order LTB-L-073587-23, issued on October 5, 2023, is granted. The order is cancelled and replaced with the following.
2. The Tenant shall pay to the Landlord \$13,983.13 which represents arrears of rent and the costs of the original application owing to December 31, 2023.
3. The Tenant shall pay the amount set out in paragraph 2 above in accordance with the following schedule:
 - a) \$5,211.10 on or before December 1, 2023
 - b) \$2,355.55 on or before December 7, 2023
 - c) \$500.00 on or before the first day of each month commencing January 1, 2024 and continuing through to December 1, 2024.
 - d) \$416.48 on or before January 1, 2025.
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 January 1, 2024 to January 1, 2025, 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 December 31, 2023.

December 7, 2023
Date Issued

Fabio Quattrociochi
Member, Landlord and Tenant Board

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