



**Order under Subsection 74(14)
Residential Tenancies Act, 2006**

Citation: Daniels Gateway Rental Communities v Hong, 2023 ONLTB 77723

Date: 2023-11-22

File Number: LTB-L-080187-22-VO

In the matter of: 092, 3035 ARTESIAN DR
MISSISSAUGA ON L5M7S7

Between: Daniels Gateway Rental Communities Landlord

And

Yue Yang Rainman Hong Tenants
Yan Chen

Yue Yang Rainman Hong and Yan Chen (the 'Tenants') filed a motion to set aside order LTB-L080187-22 because, before the eviction order was enforced, the Tenants paid the amount required under subsection 74(11) of the *Residential Tenancies Act, 2006* (the 'Act') to void the order.

This motion was heard by videoconference on October 26, 2023. The Landlord's legal agent, G. Chessie, the Landlord's legal representative, L. Corsetti, and the Tenant, Y. Hong (YH), attended the hearing. YH stated that he was attending on behalf of the Tenants. Y. Chen was not present

although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing.

Determinations:

1. Before the Tenants filed this motion, the Tenants paid \$12,000.00 to the Landlord and \$6,720.81 to the LTB in Trust on September 14, 2023. The amount paid represents all the rent that is in arrears under the tenancy agreement, all additional rent that would have been due under the tenancy agreement up to September 30, 2023, all NSF and related administration fees the Landlord incurred and the filing fee for this application. This payment is at least the amount required under subsection 74(11) to void the eviction order.

Timing of 74(11) Motion

2. The Landlord submitted that the Tenants did not file the set aside motion within the time required. It was uncontested that the Tenants filed the set aside motion on the evening of September 14, 2023. On September 15, 2023 at approximately 12:00 pm, the Sheriff attended the unit and enforced the eviction order. At 3:28 pm, the Tenants had a copy of the LTB order staying the eviction. The Landlord's position was that the Tenants did not file the set aside motion after the order became enforceable and before it was executed as required by section 74(11).

File Number: LTB-L-080187-22-VO

3. YH's response was that he attended the Landlord's office on September 14, 2023 to pay off the outstanding arrears. An agent of the Landlord accepted a \$12,000.00 payment via credit card. However, the Landlord did not allow the Tenants to pay the remaining balance. As such, the Tenants were forced to pay the remaining balance to LTB in Trust. The Tenants' position was that they filed the motion within the time required.

4. Section 74(11) of the *Residential Tenancies Act, 2006* (the 'Act') states that:

(11) A tenant may make a motion to the Board, on notice to the landlord, to set aside an eviction order referred to in subsection (3) if, after the order becomes enforceable but before it is executed, the tenant pays an amount to the landlord or to the Board and files an affidavit sworn by the tenant stating that the amount, together with any amounts previously paid to the landlord or to the Board, is at least the sum of the following amounts:

1. The amount of rent that is in arrears under the tenancy agreement.
2. The amount of additional rent that would have been due under the tenancy agreement as at the date of payment by the tenant had notice of termination not been given.

3. The amount of NSF cheque charges charged by financial institutions to the landlord in respect of cheques tendered to the landlord by or on behalf of the tenant, as allowed by the Board in an application by the landlord under section 87.
 4. The amount of administration charges payable by the tenant for the NSF cheques, as allowed by the Board in an application by the landlord under section 87.
 5. The costs ordered by the Board. 2006, c. 17, s. 74 (11); 2009, c. 33, Sched. 21, s. 11 (1).
5. Based on the wording of subsection 74(11), reproduced above, the Tenants filed the set aside motion within the time required. I find that the Tenants paid the arrears, additional rent, NSF fees, administrative charges, and costs after the order became enforceable, on September 14, 2023, but before it was executed on September 15, 2023. As such, while it was unfortunate that the Board issued the stay a few hours after enforcement, the Tenants' motion was already in effect prior to enforcement.

Previous Motions

6. The Landlord submitted that the Tenants had previously filed a request to review and set aside motion during the tenancy and therefore, the Tenants were not entitled to file this motion.
7. Section 74(12) of the Act specifies that subsection (11) does not apply if the tenant has previously made a motion under that subsection during the period of the tenant's tenancy agreement with the landlord.
8. I do not find a request to review or set aside motion meets the requirements of a subsection 74(11) motion. As specified in 74(11), there are certain criteria to be met to file this type of motion. A set aside motion and request to review do not meet these criteria.
9. As such, I find that the Tenants have not previously made a motion under subsection 74(11) of the Act to set aside an eviction order during this tenancy.

File Number: LTB-L-080187-22-VO

10. The Landlord paid \$341.20 to the Court Enforcement Office (Sheriff) for the purpose of enforcing the eviction and this amount is non-refundable.

It is ordered that:

1. Order LTB-L-080187-22 is void and cannot be enforced by the Landlord if the condition set out in paragraph 2 of this order is met.
2. The Tenants shall pay \$341.20 to the LTB on or before December 4, 2023. This amount represents the non-refundable enforcement costs the Landlord incurred.

3. If the Tenants pay the amount set out in paragraph 2 on or before December 4, 2023, then an employee of the LTB will issue a notice acknowledging that the eviction order related to arrears is void.
4. If the Tenants do not pay the amount set out in paragraph 2 on or before December 4, 2023, then an employee of the LTB will issue a notice acknowledging that the eviction order related to arrears is not void and the eviction order becomes enforceable.
5. The amount of \$6,720.81 paid into the LTB by the Tenants shall be paid out to the Landlord.
6. If the Tenants pay \$341.20 into the LTB, the amount shall be paid out to the Landlord.

November 22, 2023

Date Issued

Camille Tancioco

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.

Notes:

- The Tenants cannot make another motion under subsection 74(11) of the Act to set aside an eviction order during the period of the Tenants' tenancy agreement with the Landlord.
- When the LTB directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party(ies) named in this order. The cheque will be in the amount directed plus any interest accrued up to the date of this order.