



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

**Citation:** Picton Heights Ltd. v Atcheson, 2023 ONLTB 76897

**Date:** 2023-11-22

**File Number:** LTB-L-070355-23-SA

**In the matter of:** 8 NERY AVE  
PICTON ON K0K2T0

**Between:** Picton Heights Ltd. Landlord

**And**

Sean Atcheson Tenant

Picton Heights Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Sean Atcheson (the 'Tenant').

The Landlord's application was resolved by order LTB-L-070355-23, issued on September 25, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-070355-23.

The motion was heard by videoconference on November 15, 2023.

The Landlord's agent James Heaps and the Tenant attended the hearing.

The Tenant spoke with Tenant Duty Counsel.

### **Determinations:**

1. After considering all of the circumstances, I find that it would be unfair to set aside order LTB-L-070355-23.
2. The Landlord filed an L1 application which was resolved by way of conditional order LTB-L-029595-23 issued on August 23, 2023. The order provided that the Landlord could apply to the Board under section 78 of the Act without notice to the Tenant to terminate the tenancy and evict the Tenant if they failed to make the payments specified in the order.

### The Breach of the Order

3. There is no dispute that the Tenant breached the order issued August 23, 2023 when he failed to pay rent on or before September 1, 2023 and arrears of \$500.00 on or before September 1, 2023.

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The Tenant's Motion

4. This motion is brought pursuant to subsection 78(11) of the Act. As I am satisfied that the Tenant breached the order issued on August 23, 2023, the only issue before me is whether I am "satisfied, having regard to all the circumstances, that it would not be unfair to set aside the order".
5. The Tenant claims that he did not pay the amounts set out in the original order as he believed the order contained a serious error; that he did not agree to pay \$5,000.00 on or before September 21, 2023. However, the Tenant did not request a review of that order. I also note that the payment in question followed the payments he was required to pay on or before September 1, 2023 as alleged in the Landlord's application. The Tenant said that he opted not to pay any amounts as a result of the alleged error and waited for this hearing.
6. The Tenant confirmed he did not speak with Tenant Duty Counsel prior to entering into the agreement and payment schedule.
7. The Tenant said he would never have agreed to pay such a large amount for September 21, 2023.
8. The Landlord opposed the Tenant's motion and states that at the original hearing, the Dispute Resolution Officer reviewed, in detail, the payment schedule and the Tenant confirmed the amounts and said that he could sell his car to make the September 21, 2023 payment if necessary.
9. Further, the Landlord claims that the Tenant has failed to pay rent since the beginning of the year, and following the order has made no additional payments. The Landlord takes the position that the Tenant has no intention to pay the arrears and rent, as no good faith payment has been made since the application was filed. The Landlord claims the Tenant now owes around \$24,092.32 for arrears of rent which has increased substantially since the last hearing. The order provided that the Tenant pay the Landlord \$18,393.28 for rent owing and costs.
10. The issue for the Board is whether or not it would be unfair in all the circumstances to set aside the eviction order.
11. Based on the evidence before the Board, the Tenant has failed to make any payments to the Landlord. His claim of non-payment since the original order due to a serious error, in my view, is unreasonable. The Tenant failed to take further steps to appeal the order. Rather, the Tenant opted to not make any payments at all.
12. People have the right to use their income as they see fit but choosing not to pay rent has consequences. The Tenant, despite an opportunity to preserve the tenancy, chose not to make any good faith payments to the Landlord. In my view, the Tenant is either unwilling or unable to comply with any repayment plan.
13. The Landlord said the amount of arrears has had a negative financial impact; that cash flow has been difficult and they have had to arrange financial resources from outside sources.

14. In my view, granting this motion and putting in place a new payment plan will almost certainly result in additional breaches and additional legal proceedings. As such, that would be unfair to the Landlord.
15. Based on the evidence before the Board and on a balance of probabilities, I find this tenancy is no longer viable and in light of circumstances, I find that it would be unfair to set aside the eviction order.

Lifting the Stay

16. The next issue before me is when to lift the stay of the eviction order.
17. With respect to the Tenant's request for relief in the form of a delay of the lifting of the stay of 60 days, I find this request to be unreasonable, particularly where the Tenant has a history of non-payment of rent and the significant amount of arrears owed to the Landlord.
18. I have considered the Tenant's claims of a housing shortage and the fact that the Landlord is holding a last month rent deposit that may assist with the timing of the move and associated costs.
19. I have also considered the financial impact on the Landlord should a delay be granted.
20. Based on the circumstance, I find it reasonable to lift the stay immediately.
21. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

**It is ordered that:**

1. The motion to set aside Order LTB-L-070355-23, issued on September 25, 2023, is denied.
2. The stay of Order LTB-L-070355-23 is lifted immediately.

**November 22, 2023**  
**Date Issued**

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Dana Wren  
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.