



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

Citation: Libunao v McDonald, 2023 ONLTB 75860

Date: 2023-11-21

File Number: LTB-L-071724-23-SA

In the matter of: 8, 31 Mather St
Perth ON K7H3K7

Between: George Libunao Landlord

And

Karen McDonald Tenant

George Libunao (the 'Landlord') applied for an order to terminate the tenancy and evict Karen McDonald (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 21, 2023 with respect to application LTB-L-025781-22-RV.

The Landlord's application was resolved by Board order LTB-L-071724-23, issued on September 26, 2023. The Tenant filed a motion to set aside order LTBL-071724-23 on September 26, 2023

The motion was heard videoconference on November 9, 2023.

The Landlord Geroge Libunao and the Tenant Karen McDonald and the Tenant's Legal Representative Linda Tranter attended the hearing.

Determinations:

1. This motion is before the Board because the Landlord obtained the eviction order without notice to the Tenant under s.78 of *the Residential Tenancies Act, 2006* ("the Act") based upon an allegation that the Tenant breached the original order. The Tenant does not want to be evicted and asks that the eviction order be set aside.
2. At the hearing, the Tenant conceded she breached the ordered settlement by not paying the monthly rent that became due and owing on September 1, 2023. It was agreed by the parties the monthly rent for September 2023 was received by the Landlord on September 7, 2023.
3. The only issues before me are:

- a) whether or not, pursuant to s.78(11)(b) of the *Residential Tenancies Act, 2006* ("the Act") having regard to all of the circumstances, it would not be unfair to set aside order LTB-L-071724-23, issued on September 26, 2023.
 - b) if the answer to a) is no; when the stay imposed on the Order LTB-L-071724-23 should be lifted - immediately or on a future date.
4. Pursuant to subsection 78(11)(b) of the Act, the Board may make an order setting aside the original order if the Board is satisfied that having regard to all of the circumstances, that it would not be unfair to set aside the order.
 5. Pursuant to this provision, I have the discretion to grant relief to the Tenant by setting aside the original order notwithstanding that the Tenant has breached conditions required in it.

Tenant's Position

6. The Tenant testified that her rent is paid directly to the Landlord through ODSP. She explained that a delay in processing on the part of ODSP led to the rent for September 2023 being received late by the Landlord. Since this time, all of the other payments required by order LTB-L-025781-RV have been on time. The Landlord agreed this was the case.
7. The Tenant submitted the late payment was not within her control and sought to have Board order LTB-L-025781-RV reinstated. There are three rent arrears payments remaining on this order and it scheduled to conclude on February 1, 2024.
8. The Tenant testified she lives alone and that based on her monthly income she would not be able to find anywhere else to live. It was submitted there is a year's long wait for rental that are geared to income.

Landlord's Position

9. The Landlord urged me to apply a strict application of section 78(1) of the Act. It was his position that a breach was admitted to and the Tenant's motion should be denied.
10. The Landlord also stated that he has had ongoing issues with the Tenant in relation to the number of items she has in the rental unit and the number of pets she has. He also stated the Tenant has refused him access to the unit to conduct inspections.

Discretionary Relief Under s.78(11)(b)

11. I have considered all of the submissions and evidence presented. Section 78(11)(b) of the Act provides discretion to set aside an order where to do so would not be unfair.
12. I am not satisfied in this case that setting aside order LTB-L-071724-23 would be unfair to the Landlord. Apart from one late payment due to a processing delay by ODSP, the Landlord has received precisely what he agreed with the Tenant when the original order was issued. The issues he claims to have with the Tenant existed then also as the Landlord stated they had been going on for years. I also did not find it would be fair in the circumstances to hear allegations that the Tenant had absolutely no notice of particularly

when her tenancy is at stake. Lastly, I heard no submissions the Landlord was suffering financially as a result of the Tenant making timely payments on all but one of the required dates.

13. Based on all of the circumstances, I do not find the Landlord would be prejudiced in any way if the tenancy were permitted to continue. I am satisfied that while the Tenant did breach the original order, the impact on the Landlord was insignificant. For these reasons, I do not find it would be unfair to grant the Tenant's motion and allow the tenancy to continue subject to the original terms of Board order LTB-L-0257891-22-RV.

It is ordered that:

1. The Tenant's motion to set aside order LTB-L-071724-23 is granted.
2. Order LTB-L-071724-23, issued on September 26, 2023, is cancelled and cannot be enforced by the Landlord.
3. Order LTB-L-025781-22-RV, issued on August 21, 2023, remains in force.

November 21, 2023
Date Issued

John Cashmore
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.