



**Order under Section 78(6)
Residential Tenancies Act, 2006**

Citation: Vincent v Dickensen, 2023 ONLTB 75215

Date: 2023-11-20 **File Number:**
LTB-L-052162-23-SA

In the matter of: 1, 330 HYLAND DR
SUDBURY ON P3E1S4

Between: Jean -Robert Vincent Landlord

And

Chelsea Dickensen Tenants
Johnathan Bromby Dequanne

Jean-Robert Vincent (the 'Landlord') applied for an order to terminate the tenancy and evict Chelsea Dickensen and Johnathan Bromby Dequanne (the 'Tenants') and for an order to have the Tenants pay compensation for damage they owe because the Tenant failed to meet a condition specified in the order issued by the Board on February 13, 2023 with respect to application LTB-L-002201-23.

The application was resolved by order LTB-L-052162-23, issued on July 19, 2023.

The Tenants filed a motion to set aside order LTB-L-052162.

A hearing was held by videoconference on September 5, 2023.

The Landlord and the Tenant, Chelsea Dickensen, attended the hearing. The Tenant confirmed she has the authority to speak on behalf of the other Tenant. The Tenant spoke to Tenant Duty Counsel prior to the hearing.

Determinations:

1. For the reasons below, the Tenants' motion is denied.

The Tenants breached order LTB-L-002201-23

2. Order LTB-L-002201-23 dated February 13, 2023, established that for the period of March 2023 to February 2024, the Tenants are required to pay the lawful monthly rent in full and on time. The order provided that the Landlord could apply to the Board under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenants to terminate the tenancy and evict the Tenants if the Tenants did not meet certain conditions specified in the order.

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3. The Landlord met the criteria set out in subsection 78(1) of the Act for obtaining *the ex parte* order.
4. The parties do not dispute that the Tenants did not pay the lawful monthly rent in full and on time for July 2023. In fact, the lawful monthly rent for August 2023 and September 2023 was also not paid in full and on time.
5. In her testimony, the Tenant stated part of their monthly income is sourced from Ontario Works and because they have a new case worker, their income statement was not received by their new worker with sufficient time to ensure the July rent was paid in full and on time. The Tenant stated the other Tenant recently started new employment however he has been unable to pay his portion of the rent on or before the first of each month. She further stated the rent for August was paid in full and on time but the rent for September has not been paid.
6. In his testimony, the Landlord stated the Tenants did not pay the July rent in full until July 5, 2023. He stated the Tenants did not pay the August rent in full until August 31, 2023 and only \$105.70 was received for September's rent.

Set Aside Considerations: Discretionary Relief Under Subsection 78(11)(b)

7. Pursuant to subsection 78(11)(b) of the Act, the Board has discretion to set aside an eviction order even where the tenant has breached an order if having regard to all the circumstances, it would not be unfair to set aside the order.
8. The Tenant testified that they have lived in the rental unit for approximately eighteen months. They have three children, aged 17, 15, and 11. She stated she is not employed and as the other Tenant has just started a new job. She stated she understands the monthly rent is due on the first of each month and must be paid in full. She added, going forward, they will ensure she adheres to the order and will contact Ontario Works should they need assistance.

9. The Landlord testified he is a small landlord. The Tenants persistently late rent payments have caused financial and emotional stress and they have had to use their personal credit to make the mortgage payments. He further stated the Tenants are now in arrears with their rent payments causing further financial hardship. The Landlord is seeking that the stay of the order be lifted immediately.
10. Having considered the evidence and submissions of the parties, I am not satisfied on a balance of probabilities that if the *ex parte* order were to be set aside, the Tenants would abide by paying the rent in full and on time. I further find, based on the evidence, the Tenants are currently in breach of the order as the rent for September 2023 has not been paid in full. For these reasons, setting aside the *ex parte* order, in my view, would be unfair to the Landlord.
11. Having carefully considered all of the submissions and evidence presented by both parties, I am not satisfied that setting aside the *ex parte* order in this case would not be unfair having regard to all the circumstances. The Tenants' motion is therefore dismissed.

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Lifting the Stay

12. In consideration of the circumstances of both parties, I am not satisfied that a delay in lifting the stay is warranted. I considered the length of the tenancy which is 18 months. This is not a lengthy tenancy and the Tenants provided no evidence to support why eviction should be delayed. Moreover, the Landlord testified to the financial and emotional stress being suffered by the late payments. I also considered that the Tenants are now in rent arrears as the Tenants have not paid the rent for September 2023. As such, there shall be no delay in lifting the stay.

It is ordered that:

1. The Tenants' motion to set aside Order LTB-L-052162-23, issued on July 19, 2023, is denied.
2. The stay of Order LTB-L-052162-23 is lifted immediately.

November 20, 2023

Date Issued

Susan Priest

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.