



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

Citation: Homestead Land Holdings Limited v Eway, 2023 ONLTB 76590

Date: 2023-11-17

File Number: LTB-L-051672-23-SA

In the matter of: 211, 1000 MOUNT PLEASANT ROAD
TORONTO ON M4P2M2

Between: Homestead Land Holdings Limited Landlord

And

Carlster Eway Tenant
Esteria Eway

Homestead Land Holdings Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Carlster Eway and Esteria Eway (the 'Tenants') and for an order to have the Tenants pay the rent they owe because the Tenants failed to meet a condition specified in the order issued by the Board on February 7, 2023 with respect to application LTB-L-035984-22.

The Landlord's application was resolved by order LTB-L-051672-23, issued on July 14, 2023. This order was issued without a hearing being held.

The Tenants filed a motion to set aside order LTB-L-051672-23.

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

The Landlord's Legal Representative, Lee-Anne Thibert, and the Tenant, Carlster Eway, attended the hearing. The Tenant spoke to Tenant Duty Counsel prior to the hearing. The Tenant also confirmed he has the authority to speak on behalf of the other Tenant.

Determinations:

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

The Tenants breached order LTB-L-035984-22

2. Order LTB-L-035984-22 dated February 7, 2022, established a payment plan requiring the Tenants to make scheduled payments to the Landlord and that the Tenant pay the rent owing for March 2023 through to February 1, 2024 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.

3. The Landlord met the criteria set out in subsection 78(1) of the Act for obtaining an *ex parte* order.
4. The parties do not dispute that the Tenants did not make the ordered payment due on June 20, 2023. It was also undisputed that the Tenants have continued to breach the order as the ordered payments due on July 20, 2023 and August 20, 2023 have not been paid by the Tenants nor has the monthly rent due on July 1, 2023, August 1, 2023 and September 1, 2023 been paid by the Tenants.

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

5. 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.
6. In his testimony, the Tenant stated that they had a change in circumstances since the repayment plan was agreed to. The Tenant testified they had a death in the family and in June 2023, they lost their business which, at the time, was their only source of income. He stated he has been able to secure part-time employment and earns approximately \$2,800.00 monthly. He stated the other Tenant, his spouse, is currently employed and earns approximately \$1,500.00 monthly. They also receive the Child Tax Benefit each month in the amount of \$500.00 for their 4 year old child.
7. The Tenant testified that they would like the opportunity to preserve the tenancy and proposed a new repayment plan. He stated they would pay the Landlord an additional \$1,000.00 toward the current rent arrears and the monthly rent will be paid in full and on the first day of each month. The Tenant stated they qualify for \$4,000.00 through the local rent bank however they have not applied for this benefit.
8. The Landlord's Legal Representative submitted the Landlord is opposed to the Tenants' proposed repayment plan as the Tenants failed to meet the past payment plan and the rent arrears are now higher than the initial payment plan. She submitted that despite the Tenant's testimony of their monthly income, they have made no payments to the Landlord since June 20, 2023 and the Tenants cannot recover from the current debt owed to the Landlord which exceeds \$12,000.00. She further submitted that given the substantial arrears owing, a new repayment plan would be highly prejudicial to the Landlord.
9. 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 any future order for payments for the very substantial arrears. I further find that the Tenants' repayment plan is unrealistic as their income cannot support an additional \$1,000.00 monthly payment and although they may qualify for a lump sum payment from the local rent bank, they have not yet applied thus this is speculative. For these reasons, setting aside the *ex-parte* order, in my view, would be unfair to the Landlord.
10. 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.
11. The Tenants' motion is therefore dismissed.

Lifting of the Stay

12. Having considered the circumstances of the parties, I find that it would not be unfair to postpone the lifting of the stay on the order to November 30, 2023. I find that this is a reasonable amount of time for the Tenants to move as they have been aware of the order terminating their tenancy since the *ex parte* order was issued on July 14, 2023, and they have had time since then to seek alternative housing. I find that although the arrears are substantial, and the potential for additional arrears may exist, there is greater prejudice to the Tenants as they must seek alternative house with limited finances

It is ordered that:

1. The motion to set aside Order LTB-L-051672-23, issued on July 14, 2023, is denied.
2. The stay of Order LTB-L-051672-23 is lifted on November 30, 2023.

November 17, 2023
Date Issued

Susan Priest
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.