



Tribunals Ontario
Landlord and Tenant Board

Tribunaux décisionnels Ontario
Commission de la location immobilière

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

Citation: Meijaard v Clark, 2023 ONLTB 75906

Date: 2023-11-17

File Number: LTB-L-067829-23-SA

In the matter of: 234 CONCESSION 10 TOWNSEND ROAD
WATERFORD ON N0E1Y0

Between: Hetty Meijaard Landlord

And

Brittany Clark and Daniel Kris Grigsby Tenant

Hetty Meijaard (the 'Landlord') applied for an order to terminate the tenancy and evict Brittany Clark and Daniel Kris Grigsby (the 'Tenant').

The Landlord's application was resolved by order LTB-L-067829-23, issued on September 19, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-067829-23.

The motion was heard by videoconference on November 8, 2023.

The Landlord, the Landlord's legal representative Courtney Boyd, the second named Tenant and their legal representative Kurt Shmuir attended the hearing. Daniel Kris Grigsby confirmed he has authorization to speak on behalf of Brittany Clark.

Determinations:

Preliminary Issue

1. At the hearing, the Landlord states there were multiple L4 applications filed with the Board for various breaches of the original order. LTB-L-059692-23 was an L4 applications sent to hearing on September 27, 2023. At that hearing, the Member determined that due to the timing of the filing of that L4 application and the resolution from the matter now before the Board, the previous L4 application was dismissed having regard for the doctrine of issue estoppel.

The Breach

2. This motion is before the Board because the Landlord has obtained an *ex parte* eviction order based on the allegation that the Tenants breached a Board order dated July 20, 2023. The Tenants do not want to be evicted and asks the Board to set aside the eviction order.

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3. Pursuant to subsection 78(11) of the Residential Tenancies Act, 2006 (the 'Act') the issues on a set aside motion like this one are:
 - Did the Tenants breach the conditional order? If the answer to that question is no, then the motion must be granted and the eviction order set aside.
 - If the Tenants did breach the conditional order, is the Board satisfied, having regard to all the circumstances, that it would not be unfair to set aside the eviction order? If the Board determines it would not be unfair to set aside the eviction order, the motion must be granted and the eviction order set aside. Pursuant to subsection 78(12) the Board may then amend the previous mediated agreement if that would appropriate.
4. There is no dispute between the parties that the Tenants breached the July 20, 2023 order as alleged by the Landlord, by failing to pay \$250.00 toward storage by August 15, 2023. That means, the next issue to be determined is whether or not it would be unfair in all the circumstances to set aside the eviction order.
5. After considering all of the circumstances, I find that it would be unfair to set aside order LTB-L-067829-23.

The Circumstances

6. The tenancy began around April 1, 2017. The rental unit is a single family home on commercial farmland property.
7. The Tenants claim financial hardship as the reason for the breach. The Tenant said that he was laid off work around July 2023 with significant delay in receiving his EI benefits. At that time, Brittany Clark was a student with no guaranteed income. The Tenant said he was indebted to family and friends and chose to pay those debts instead of the debts to the Landlord.
8. The Tenant said that he was in a motorcycle accident around October 24, 2023 and is partially incapacitated and has not been able to meet all the conditions of the original conditional order. He said he believes they are back on track and will be able to make all payments to the Landlord and comply with the terms of the order. The Tenants ask that the order be set aside but in the event the Board denies the Tenants' motion, they seek a minimum of 60 days to find alternative accommodations.
9. The Landlord opposes the Tenants' motion stating the Tenants have failed to meet the majority of the terms in the original order including, proof of insurance, provision of keys, issues with the firepit and impeding the Landlord's access to the property.
10. The Landlord's disclosure included several photographs and various documents.
11. Although this order does not specifically address each piece of evidence individually or reference all of the testimony, I have considered all of the evidence and oral testimony when making my determination
12. It is the position of the Landlord that the Tenants have failed to meet most of the terms of the original order with blatant disregard. The continued breaches have a negative impact on the daily operation of the farm and the Tenants consciously chose to pay debts to friends and family over the Landlord. The Landlord asks the Board to deny the Tenants' motion.
13. Given all of the above, I am not satisfied that it would not be unfair to set aside the eviction order. As a result, the motion must be denied.

Lifting of the Stay

14. The Tenants ask that the lifting of the stay be delayed. He said they have 3 minor children and due to the accident, has limited mobility.

15. The Landlord seeks an immediate lifting of the stay, claiming the Tenant has been seen moving around the property and should be able to prepare to move with limited difficulty. The Landlord believes the minor children do not reside at the property on a full time basis.
16. Based on the submissions of the parties, and after considering all of the circumstances, I find that it would not be unfair to delay lifting the stay December 15, 2023 to allow the Tenants sufficient time to find a new place to live. I am granting this extra delay in recognition of the Tenants' limited financial resources and the physical limitations.
17. 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-067829-23, issued on July 20, 2023, is denied.
2. The stay of Order LTB-L-067829-23, is lifted December 15, 2023.
3. Order LTB-L-067829-23 is unchanged.

November 17, 2023

Date Issued

Dana Wren

Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.