



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

Citation: Dai v Dalton, 2023 ONLTB 74673

Date: 2023-11-14

File Numbers: LTB-L-065272-23-RV
LTB-L-067578-23-SA

In the matter of: 349 Highland Rd W
Stoney Creek ON L8J2S2

Between: Tiefeng Dai Landlord

And

Larry Dalton, Silvana Dalton and Diane Dalton Tenant

Tiefeng Dai (the 'Landlord') applied for an order to terminate the tenancy and evict Larry Dalton, Silvana Dalton and Diane Dalton (the 'Tenant') because the Tenant failed to meet a condition of Order LTB-L-060463-22 issued on August 14, 2023.

Procedural History:

The Landlord filed two applications for the same breach.

The first application was filed on **August 20, 2023**, which was directed to a hearing heard, uncontested, on October 5, 2023. This application was resolved by order LTB-L-065272-23 issued on **October 16, 2023**.

The second application was filed on **August 28, 2023**, which was resolved by order LTB-L-067578-23-EX issued on **September 19, 2023**. This Order was issued without a hearing being held.

The Tenant filed a motion to set aside LTB-L-067578-23-EX on **September 21, 2023**.

Subsequent to receipt of LTB-L-065272-23 issued on October 16, 2023, the Tenant Larry Dalton filed a Request to Review LTB-L-065272-23 on **October 23, 2023**, citing the reason they did not attend the October 5, 2023, hearing as they believed the decision would have been set aside in conjunction with LTB-L-067578-23-EX.

Following receipt of the Tenant's Request to Review the Board issued Interim Review Order LTB-L-065272-23-RV-IN which resulted in a stay of LTB-L-065272-23.

The Tenant's set aside motion of LTB-L-067578-23-EX and review of LTB-L-065272-23 were heard by videoconference on November 2, 2023, at 1:00 pm.

The Landlord and the Tenants Larry Dalton attended the hearing.

Determinations:

The Review of LTB-L-065272-23

1. The Landlord testified that she filed the second application on August 28, 2023 following receipt that it had been directed to a hearing due to an accounting error which she thought she could correct with submitting a new application with the correct figures.
2. Filing two applications for the same alleged breach constitutes an abuse of process. Accordingly, although I am not satisfied on the balance of probabilities that the Landlord was actively seeking to abuse the Board processes, I am satisfied that Order LTB-L-067578-23-EX issued on September 19, 2023, should be set aside.
3. Further, I am also satisfied that 067578-23-EX issued on September 19, 2023, caused the Tenant's confusion and precipitated their failure to attend the October 5, 2023, hearing. Accordingly, for this reason LTB-L-065272-23 issued on October 16, 2023, should be cancelled as the Tenants could not reasonably attend the hearing. At the hearing, I directed a de novo hearing of the Landlord's application be held before me.

De Novo Hearing LTB-L-065272-23

4. It was the Landlord's testimony that in addition to the breach as alleged in their August 28, 2023, application, the Tenants had continued to breach the conditions of order LTB-L-060463-22 and the arrears had increased to \$8,720.00.
5. The Landlord collected a rent deposit of \$2,350.00 on June 1, 2018, and interest is owing on the deposit to September 30, 2023.
6. In response the Tenant acknowledged the breaches and didn't dispute the amount of arrears owing. It was his testimony that he stopped paying rent out of anger over the Landlord failing to address ongoing maintenance issues. He also testified that his mother, the Tenant Diane Dalton had already moved out of the rental unit and was now living with his brother. He also testified that he and his wife, Silvana, intended to move out as well but required an additional 30 days as they were delayed in finding a new rental property owing to assisting his mother.
7. I am satisfied that the Tenants breached the conditions contained in Board Order LTB-L-060463-22 given the Tenant openly admitted to it as noted above.
8. The Tenants owe the Landlord \$8,720.00 to November 30, 2023.

Relief from eviction

9. Having given consideration to all the circumstances and in accordance with section 83(1) (b) of the *Residential Tenancies Act, 2006* (the "Act") I am satisfied that brief postponement to allow the Tenants time to arrange for and move into their new rental property is warranted. Specifically, given that the Tenant Diane Dalton has already moved and the Tenant Larry Dalton didn't dispute the breaches or that they owe the arrears as

alleged I am satisfied that a brief postponement to facilitate their move is warranted and will not unduly prejudice the Landlord.

It is ordered that:

1. LTB-L-067578-23-EX issued on September 19, 2023, is set aside.
2. LTB-L-065272-23 issued on October 16, 2023, is cancelled, and replaced by the following:
3. The Tenancy between the Landlord and Tenants is terminated. The Tenants must move out of the rental unit on or before November 30, 2023.
4. If the unit is not vacated on or before November 30, 2023, then starting December 1, 2023, the Landlord may file this order with the Court Enforcement Officer (Sheriff) so that the eviction may be enforced.
5. Upon receipt of this order, the Court Enforcement Officer (Sheriff) is directed to give vacant possession on or after December 1, 2023.
6. The Tenants shall pay to the Landlords, \$6,323.00. This amount represents the rent owing up to and the cost of filing the previous application, less the rent deposit and interest the Landlord owes on the rent deposit to September 30, 2023.
7. The Tenants shall pay to the Landlord \$83.18 for each day the Tenants remain in the rental unit commencing December 1, 2023, until the Landlord regains possession.
8. If the Tenants do not pay the full amount owing on or before November 30, 2023, the Tenants will start to owe interest. This will be simple interest calculated from December 1, 2023, at 7.00% annually on the balance outstanding.

November 14, 2023
Date Issued

Kelly Delaney
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.

