



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

**Citation:** Willstar Management Ltd. v Woldegabriel, 2023 ONLTB 73064

**Date:** 2023-11-08

**File Number:** LTB-L-076586-22-SA

**In the matter of:** 2801, 24 Mabelle Avenue  
Toronto Ontario M9A4X8

**Between:** Willstar Management Ltd. Landlord

**And**

Yohanned Woldegabriel Tenant

Willstar Management Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Yohanned Woldegabriel (the 'Tenant') because the Tenant did not meet a condition specified in Board order issued April 7, 2021 with respect to application TSL-16299-20.

The Landlord's application was resolved by order LTB-L-076586-22, issued on February 2, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-076586-22.

The motion was heard by videoconference on March 6, 2023 and continued on June 26, 2023.

The Landlord's legal representative Debbesha Morris, Landlord's witness Ryan Gibson, Landlord's witness J. Drakes, the Tenant's Legal representative Kavaine Mighty, and the Tenant attended the hearing.

### **Determinations:**

1. After considering all of the circumstances, I find that it would not be unfair to set aside order LTB-L-076586-22.

### The breach

2. Order TSL-16299-20 issued April 7, 2021 from the Landlord's L2 application filing based on a N8 notice for persistent late payment of rent. The Tenant contested the Landlord's allegation that he had breached the order by failing to make the November 2022 rent on time, that is on November 1, 2022.
3. The Landlord met the criteria set out in subsection 78(1) of the *Residential Tenancies Act, 2006* (the 'Act') for obtaining the *ex parte* order. On the basis of the breach of order TSL-16299-20 the Landlord obtained an *ex parte* order LTB-L-076586-22.

4. Based on the evidence before me, I am satisfied that the Tenant breached order TSL-16299-20.

Set Aside Considerations

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. The Tenant testified that he made the payment for November rent on November 1, 2022 by cheque and that the Landlord has filed the L4 application as a means of conspiring to evict him. He said that the rental office is sometimes closed and that is the reason the Landlord is not receiving some cheques on time as by the time someone is there or picks them up there could be a delay.
7. The Tenant requested that his housing be preserved, he has lived in the rental unit for over 30 years and is a cancer survivor.
8. The Landlord's representative submitted that the Tenant has breached the prior order. That he paid November rent on November 3, 2022 at approximately 11:07 p.m. as it is in seen in the Landlord's video footage and that the Tenant had not paid his rent on time for any month after the application filing. The Landlord requested that the motion be denied.

Evidence

9. The Landlord's witness Ryan Gibson submitted that the majority of tenants pay rent via the resident portal but there are a few that still pay by cheque like the Tenant. That the Landlord's staff pick up cheques on a daily basis for the first 5 days of the month, once the cheques are received, they are processed by accounts receivable and deposited into the Landlord's bank.
10. The Landlord became aware that the Tenant was late in making his rent payment for November 1, 2022 when the deposited cheques were reviewed on a daily basis for the period of November 1 through November 3, 2022 and there was no cheque from the Tenant.
11. On November 4, 2023 the Tenant's cheque was finally accounted for, footage of the camera recording obtained from the camera facing the Landlord's office within the rental complex was reviewed and showed the Tenant depositing a folded up piece of paper that appeared to be the cheque into the office drop off slot.
12. The video was reviewed at the time of the hearing, the Tenant still maintained that he was 110% sure he paid his rent on time, that is on November 1, 2022 and what was seen could have been him making a request for having something painted or another type of request of the Landlord.

13. It is the Landlord's position that the video footage shows that the Tenant deposited the cheque on November 3, 2022 and that this is definitive proof that the Tenant failed to meet the requirements of the prior board order. Given the Tenant's pattern of persistent late payment of rent, the Landlord requested that the motion be denied.

#### Analysis

14. Despite the Tenant's adamant submission that he paid rent on November 1, 2022, given the Landlord's video footage evidence, and testimony of ongoing pattern of late rent payments beyond November 1, 2022, on a balance of probabilities, it is more likely than not that the November rent payment was paid late. As of the time of the hearing the Tenant was in arrears for \$4,785.74 for which an N4 notice was served.

#### Discretionary Relief Under Subsection 78(11)(b)

15. I have carefully considered all of the submissions and evidence presented. Subsection 78(11)(b) provides discretion to set aside an order where to do so would not be unfair.
16. The Tenant has testified that he is seeking the opportunity to preserve his housing as he has lived in the rental unit for 30 years, has some health issues, is a cancer survivor and wants to stay in the area.
17. Given the Act's remedial purpose, I find that it would not be unfair to give the Tenant a final opportunity to preserve his tenancy with the Landlord, taking into account his very long standing tenancy and health considerations. I have also considered the prejudice to the Landlord caused by the Tenant's breach and find that the section 78 clause in the order will alleviate prejudice to the Landlord as it will permit the Landlord to seek a termination of the tenancy if the Tenant fails comply with the terms of the order.
18. Accordingly, I am satisfied that it would not be unfair to the Landlord to grant a set aside of the ex parte order.
19. The Tenant's motion is therefore granted.

#### **It is ordered that:**

1. The motion to set aside Order LTB-L-076586-22, issued on February 2, 2023, is granted.
2. Order LTB-L-076586-22, issued on February 2, 2023, is set aside and cannot be enforced.
3. Order TSL-16299-20 issued on April 7, 2021, is cancelled and replaced with the following order.

4. The Tenant shall pay to the Landlord the lawful rent in full and on or before the first day of each month for the period commencing December 1, 2023 through November 2024.
5. If the Tenant fails to make any payments in accordance with paragraph 4, the Landlord may apply under section 78 of the Residential Tenancies Act, 2006 (the 'Act') for an order terminating the tenancy and evicting the Tenant, The Landlord must make the application within 30 days of a breach of a condition set out in paragraph 4 of this order,

**November 8, 2023**  
**Date Issued**

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Alicia Johnson  
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.