



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

Citation: Rana v Cooper, 2023 ONLTB 73113

Date: 2023-11-06

File Number: LTB-L-000462-23-SA

In the matter of: 77 Ashgrove Avenue
Brantford Ontario N3R6E6

Between: Mohammed Rana Landlord

And

Braderick Cooper Tenants
Casendra Wagenaar

Mohammed Rana (the 'Landlord') applied for an order to terminate the tenancy and evict Braderick Cooper and Casendra Wagenaar (the 'Tenants') and for an order to have the Tenants pay the rent they owe because the Tenants did not meet a condition specified in the set aside order issued on October 11, 2022 with respect to application SOL-27502-22-SA.

The Landlord's application was resolved by order LTB-L-000462-23, issued on February 17, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-000462-23.

The motion was heard by videoconference on April 4, 2023.

The Landlord's legal representative Edwin Alexander and the second named Tenant attended the hearing.

1. For the reasons that follow, the Tenant's motion to set aside order LTB-L-000462-23 is granted.

The Tenant breached order SOL-27502-22-SA

2. Order SOL-27502-22-SA issued October 11, 2022 arose from the parties entering into a consent agreement for the repayment of arrears and for the payment of rent on time. It was uncontested that this order was breached as the Tenant failed to make the November 2022 rent on time.
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 the consent set aside order SOL-27502-22-SA the Landlord obtained an *ex parte* order LTB-L-000462-23.

4. Based on the evidence before me, I am satisfied that the Tenant breached order SOL-27502-22-SA.

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 submitted that she breached the prior order by not paying November rent on November 1, 2022 as her ex-partner became abusive, moved out and left her with the arrears to repay. As a result of not filing their taxes with the Canada Revenue Agency (CRA) she became ineligible for the Canada Child Tax Benefit (CCTB) which she relied upon for repayment of the arrears as owed to the Landlord from the previous order.
7. She said that she has now rectified her tax filing, is fully employed as a PSW and is now able to continue to pay the Landlord the arrears as outstanding and pay her lawful rent on time on the first of the month. Through her employment and CCTB she earns an approximate \$3,700.00 before tax and as of July 1, 2023 her CCTB will increase to \$1,075.00, for a estimated total of \$4,775.00 of pre-tax household monthly income and that she also expects \$400.00 per month in child support payments.
8. The Tenant was additionally expecting a monetary adjustment from the CRA for past periods of CCTB for which she was entitled to and did not receive as a result of late tax filings, she submits that she was prepared to provide the Landlord a lump sum amount towards the arrears.
9. The Tenant requested that her housing be preserved for her and her 2 children aged 13 and 7 and for the Board to consider that she has resided in the rental unit for over 9 years and she has always been diligent in paying the Landlord rent owed in cash. If not for her personal circumstances changing with the separation from her partner, she would not be facing this situation. She asks that she be provided with an amended repayment plan of \$350.00 per month to allow her to get caught up and will ensure the rent payments and arrears are paid in full and on time in the future.
10. The Landlord's representative submitted that this is a second set aside motion as filed by the Tenant, the prior order for repayment of the arrears of rent was on consent and the Tenant breached that order. The Landlord has provided instruction to request that the motion be denied.

Discretionary Relief Under Subsection 78(11)(b)

11. 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.

12. The Tenant has testified that she is seeking the opportunity to preserve her housing, wants to stay in the area and that it would be difficult to find alternative housing. She testified that she feels extremely bad about the situation arising, that she is now in a better situation with gainful employment and additional sources of income and that she will abide by the terms of the payment order.
13. Given the Act's remedial purpose, I find that it would not be unfair to give the Tenant a final opportunity to preserve her tenancy with the Landlord, taking into account her long term tenancy and housing insecurity she and her younger children would face if evicted. I believe that given the amount of her current household monthly income, she is able to repay the Landlord the arrears and maintain her obligation to pay the lawful rent on time and in full. 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.
14. Accordingly, I am satisfied that it would not be unfair to the Landlord to grant a set aside of the ex parte order.
15. The Tenant's motion is therefore granted.

It is ordered that:

1. The Tenant's motion is granted. Order LTB-L-000462-23, issued on February 17, 2023, is set aside and cannot be enforced.
2. Order SOL-27502-22-SA issued on October 11, 2022, is cancelled and replaced with the following order.
3. The Tenants shall pay to the Landlord \$15,359.00 for arrears of rent up to March 31, 2023 and filing cost. The Landlord is required to provide the Tenants any credit of payments as received towards the outstanding at March 31, 2023.
4. The Tenants shall pay to the Landlord the amount set out in paragraph 3 of this order in accordance with the following schedule, less any amounts paid:
 - a) \$5,000.00 on or before November 15, 2023;
 - b) \$575.50 on or before December 15, 2023;
 - c) \$575.50 on or before January 15, 2024;
 - d) \$575.50 on or before February 15, 2024.
 - e) \$575.50 on or before March 15, 2024;
 - f) \$575.50 on or before April 15, 2024;
 - g) \$575.50 on or before May 15, 2024;
 - h) \$575.50 on or before June 15, 2024;
 - i) \$575.50 on or before July 15, 2024;
 - j) \$575.50 on or before August 15, 2024;
 - k) 575.50 on or before September 15, 2024

- l) \$575.50 on or before October 15, 2024;
 - m) \$575.50 on or before November 15, 2024;
 - n) \$575.50 on or before December 15, 2024;
 - o) \$575.50 on or before January 15, 2025;
 - p) \$575.50 on or before February 15, 2025;
 - q) \$575.50 on or before March 15, 2025;
 - r) \$575.50 on or before April 15, 2025; and
 - s) \$575.50 on or before May 15, 2025.
5. The Tenants shall also pay to the Landlord new rent in full on or before the first day of each month for the period commencing December 1, 2023 to May 15, 2025, or until the arrears of rent are paid in full.
 6. If the Tenants have not paid rent for the period of April 1, 2023 to November 1, 2023, the Tenants shall do so on or before December 31, 2023.
 7. If the Tenants fail to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenants to the Landlord pursuant to paragraphs 4-6 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenants, apply to the Board pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenants and requiring that the Tenants pay any new arrears, NSF fees and related charges that became owing after March 31, 2023. The Landlord must make this application no later than 30 days after the Tenants' failure to make a payment.

November 6, 2023
Date Issued

 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.