



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

Citation: Havcare Investments Inc v Mwesigye, 2023 ONLTB 71382

Date: 2023-11-02

File Number: LTB-L-043607-23-SA

In the matter of: 1221, 500 DAWES RD
Toronto ON M4B2G1

Between: Havcare Investments Inc

Landlord

And

Fred Mwesigye

Tenant

Havcare Investments Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Fred Mwesigye (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant did not meet a condition specified in the order issued by the LTB on March 30, 2023 with respect to application LTB-L-011026-22.

The Landlord's application was resolved by order LTB-L-043607-23, issued on June 21, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-043607-23.

This motion was heard by videoconference on August 8, 2023.

The Landlord Carolyn Krebs, the Tenant and the Tenant's support person Margaret Arnason attended the hearing.

Determinations:

1. For the reasons that follow, the Tenant's motion to set aside order LTB-L-043607-23 is granted.

The Breach

1. Order LTB-L-011026-22 issued March 30, 2023 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 that order was breached as the Tenant failed to pay to the Landlord the lawful rent of \$1,182.18 in full and on time, on or before May 1, 2023.

File Number: LTB-L-043607-23

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 consent order LTB-L-011026-22, the Landlord obtained an *ex parte* order LTB-L-043607-23.
4. Based on the evidence before me, I am satisfied that the Tenant breached order LTB-L-011026-22.

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 agreed that there was a shortfall in the May rent of \$82.18 and that it was paid late on May 16, 2023. He submits that the rent is current and he has been adhering to the arrears payments as per the previous order.
7. The Tenant requested that his housing be preserved and that he be allowed to continue the prior payment plan. He testified that he has resided in the unit for over 6 years and that he has sufficient employment income to ensure the rent payments and arrears are paid in full and on time in the future.
8. The parties were uncertain whether there was confirmation of the \$1,182.18 rent payment in August 2023. By post hearing submissions as uploaded in Tribunals Ontario Portal (TOP), it was confirmed by the Landlord that the payment was made on July 31, 2023 and received by the Landlord on August 3, 2023.
9. The Landlord testified that the prior order for repayment of the arrears of rent was on consent and the Tenant breached that order. The Landlord requested that the motion be denied as the Tenant has a long history of court actions, paying rent when he wants and how much he wants. The Landlord seeks a lifting of the stay as the Tenant has failed to comply with payment terms in the past and breached the order.

Analysis

10. On the evidence before the Board, I am satisfied that the Tenant breached order LTB-L011026-22.
11. The Tenant testified that he has sufficient income and can ensure that his rent and the arrears payments are made on time going forward.

Discretionary Relief Under Subsection 78(11)(b)

12. 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.

File Number: LTB-L-043607-23

13. The Tenant has testified that he is seeking the opportunity to preserve his housing and testified that he understands the risk to his housing if he does not abide by the terms of the payment order.
14. 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 acknowledgement of his failure to comply with the prior order, that no further arrears have arisen, and his commitment to pay the rent on time in the future. 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 to comply with the terms of the order.
15. Accordingly, I am satisfied that it would not be unfair to the Landlord to grant a set aside of the *ex parte* order.
16. The Tenant's motion is therefore granted.

It is ordered that:

1. The Tenant's set aside motion is granted. Order LTB-L-043607-23 is cancelled.
2. Order LTB-L-011026-22, issued on March 30, 2023 remains in effect.

November 2, 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.