



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

Citation: Gasparro v Trieu, 2023 ONLTB 70833

Date: 2023-10-27

File Number: LTB-L-060119-23-SA

In the matter of: Basement, 254 RUSSET WAY
Woodbridge ON L4L5C1

Between: Domenic Gasparro Landlord

And

Stephanie Trieu Tenant

Domenic Gasparro (the 'Landlord') applied for an order to terminate the tenancy and evict Stephanie Trieu (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant failed to meet a condition specified in the order issued by the Board on July 21, 2023 with respect to application LTB-L-001530-23-SA.

The Landlords' application was resolved by order LTB-L-060119-23, issued on August 22, 2023. The Tenant filed a motion to set aside order LTB-L-060119-23.

The motion was heard by videoconference on October 17, 2023.

The Landlord's Legal Representative, R. Muasher, and the Tenant attended the hearing.

Determinations:

Tenant's breach of Order LTB-L-001530-23-SA

1. The order LTB-L-001530-23-SA issued July 21, 2023 required the Tenant to pay the lawful rent for July on or before July 15, 2023 and \$3,185.55 representing the rent arrears owing to June 30, 2023 on or before July 31, 2023.
2. The order provided that the Landlord can apply to the LTB under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenant to terminate the tenancy and evict the Tenant if the Tenant does not meet the payment conditions in the order.
3. There was no dispute that the Tenant breached the order by failing to pay \$3,185.55 on or before July 31, 2023.
4. The Landlord met the criteria set out in subsection 78(1) of the Act for obtaining the *ex parte* order.

Subsection 78(11)(b) of the Act

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. In her circumstances for breaching the order, the Tenant stated that because that order was only issued on July 21, 2023 it was impossible for her to come up with this large payment within 10 days. She also stated that she didn't know that the arrears owing to June 30, 2023 were \$3,158.55. She stated that she was receiving EI at the time of the last hearing which amounted to approximately \$500.00 every two weeks.
7. The Tenant understood that this is the 2nd order recovered by the Landlord resulting from a breach of payment, however requested a further opportunity to pay the rent arrears and continue the tenancy. The Tenant stated that she officially just got a job contract starting on October 26, 2023 which is a salary position. The Tenant requested another payment plan wherein she makes payments every two weeks when she get paid, to pay off the rent arrears and accruing rent.
8. The Landlord's Legal Representative submitted that the Landlord cannot afford to carry the mortgage on this property without the rental income being received when due. She also submitted that the Landlord had to get a loan to cover their expenses for the rental unit in the interim and is paying interest on that loan. She further submitted that the Landlord is tired of this back and forth with orders for payments that are not met by the Tenant as this is the Tenant's second motion. She requested that the Tenant's motion be denied and the order for eviction stand.
9. Based on the evidence before me, I was satisfied having regard to all the circumstances that it would be unfair to set aside the order. This is the Tenant's second motion to set-aside an eviction order resulting from the Tenant's breach of a condition in a previous order. The Tenant was aware that if she breached the payment terms in the order that the Landlord could apply without notice to her to terminate the tenancy. The Tenant did not dispute that she failed to meet the payment condition. In these circumstances, ordering another payment plan would not be fair to the Landlord.
10. As well, the previous order LTB-L-001530-23-SA issued July 21, 2023 provided terms and conditions for payment based on the Tenant's evidence at the hearing on June 12, 2023. Had the Tenant made the payments she stated she could, then the majority of the \$3,158.55 due on July 31, 2023 would have been already paid by the time the order was received.

Subsection 78(11)(c) of the Act

11. Pursuant to subsection 78(11)(b) of the Act, the Board has discretion to lift the stay of the order immediately or on a future date.
12. The Landlord's Legal Representative requested that the stay be lifted immediately.
13. The Tenant stated that she has been looking for another apartment and she would like to stay in the area. She also stated that it has been difficult because she has a dog and is not able to get responses from other landlords when she is honest about having a dog.

14. The Tenant has resided in the unit since 2017 and has made some payments to the Landlord since this order was issued. As well, since the lawful rent is due on the 15th day of each month, I find that lifting the stay as of November 14, 2023 to be fair in these circumstances.

It is ordered that:

1. The motion to set aside order LTB-L-060119-23 issued on August 22, 2023, is denied.
2. The stay of order LTB-L-064266-23 issued on August 22, 2023 is lifted as of November 14, 2023.

October 27, 2023

Date Issued

Lisa Del Vecchio

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.