



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

**Citation:** IMH Pool XII LP v Smith, 2023 ONLTB 70604

**Date:** 2023-10-25 **File Number:**  
LTB-L-060776-23-SA

**In the matter of:** 411, 25 FISHERVILLE RD NORTH  
YORK ON M2R3B7

**Between:** IMH Pool XII LP Landlord

**And**

Sylvester Smith Tenant

IMH Pool XII LP (the 'Landlord') applied for an order to terminate the tenancy and evict Sylvester Smith (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 28, 2023 with respect to application LTB-L-025169-23.

The Landlord's application was resolved by order LTB-L-060776-23, issued on August 23, 2023. The Tenant filed a motion to set aside order LTB-L-060776-23.

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

The Landlord's Legal Representative, E. Steinman, and the Tenant attended the hearing.

### **Determinations:**

#### Tenant's breach of Order LTB-L-025169-23

1. The order LTB-L-025169-23 issued July 28, 2023 required the Tenant to pay the accruing lawful rent plus \$500.00 towards the arrears on or before the 1<sup>st</sup> day of each month commencing August 1, 2023 to July 31, 2024.
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. Based on the evidence before me, I find that the Tenant breached the order by failing to pay the lawful rent for August 2023 plus \$500.00 towards the arrears on or before August 1, 2023. Even if I accept the Tenant's testimony that his cheque was refused on August 2, 2023, the payment was already late. I am not satisfied simply because the office was closed on August 1, 2023 that the Tenant could not have made the payment to the Landlord as required.
4. The Tenant stated that he attempted to pay at the Landlord's office on August 1, 2023, however the office was closed. He stated that he attended the following day and the Landlord's employee refused to accept his personal cheque and requested that he get it certified.
5. There was no dispute that subsequently the Landlord received payment of \$4,000.00 from the rent bank on behalf of the Tenant in the month of August. The Tenant stated that he was confused as to which payments he needed to make as he believed the rent bank payment covered the August rent and arrears payment and there was no communication from the Landlord.
6. The Landlord met the criteria set out in subsection 78(1) of the Act for obtaining the *ex parte* order.

Subsection 78(11) of the Act

7. 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.
8. The Tenant stated that he was seriously injured in June 2023 and at the previous hearing on July 19, 2023 he believed he would be returning to work right away and would have no issues meeting the payment conditions in order LTB-L-025169-23 issued July 28, 2023. However, the Tenant stated that he was only cleared to return to work in midSeptember 2023 as his injury was more serious than he understood it to be.
9. The Tenant has a good job and pays child support for his two children. The Tenant has resided in the rental unit for over two years and would like to continue his tenancy. The Tenant stated that he just needs some additional time to get caught up on the arrears to make up for the time he was out of work. The Tenant stated that he could maintain the accruing rent and make additional monthly payments towards the arrears.
10. The Landlord's Legal Representative confirmed that the rent bank paid \$4,000.00 on behalf of the Tenant on August 22, 2023. This payment substantially reduced the rent arrears at that time. However, there was no dispute that the rent for September and October 2023 were not paid by the Tenant.

- 11. The Landlord’s Legal Representative requested that the Tenant’s motion be denied and the stay on the eviction order be lifted immediately as the rent arrears have increased.
- 12. Based on the evidence before me, I am satisfied having regard to all of the circumstances, that it would not be unfair to set aside the eviction subject to the terms and conditions proposed by the Tenant. The Tenant has returned to work in September and is now able to maintain the accruing rent going forward and make additional payments towards the arrears to clear the arrears by the previously agreed timeframe.

Current rent arrears

- 13. The previous application included a request for an order for the payment of the arrears of rent. The order required the Tenant to pay rent. Accordingly, the Landlord is entitled to request an order for the payment of the arrears of rent.
- 14. There was no dispute that the rent arrears owing to October 31, 2023 are \$7,237.83.

**It is ordered that:**

- 1. The motion to set aside order LTB-L-060776-23 issued on August 23, 2023, is granted.
- 2. Order LTB-L-060776-23 issued on August 23, 2023 is cancelled and replaced by the following:
- 3. The Tenant shall pay to the Landlord \$7,237.83 for arrears of rent up to October 31, 2023 and costs.
- 4. The Tenant shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:

<b>Date Payment Due</b>	<b>Amount of Payment</b>
November 10, 2023	\$800.00 (arrears + costs)
December 1, 2023	\$800.00 (arrears)
January 1, 2024	\$800.00 (arrears)
February 1, 2024	\$800.00 (arrears)
March 1, 2024	\$800.00 (arrears)

April 1, 2024	\$800.00 (arrears)
May 1, 2024	\$800.00 (arrears)
June 1, 2024	\$800.00 (arrears)
July 1, 2024	\$837.83 (arrears)

5. The Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing on the 1<sup>st</sup> day of each month for the period of November 1, 2023 to July 31, 2024, or until the arrears are paid in full, whichever date is earliest.
  
6. If the Tenant fails 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 Tenant to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after October 31, 2023.

2023 ONL TB 70604 (CanLII)

**October 25, 2023**

**Date Issued**

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 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.