



Order under Section 77(8) Residential Tenancies Act, 2006

Citation: Fong v Harris, 2023 ONLTB 68438

Date: 2023-10-16

File Number: LTB-L-048031-23-SA

In the matter of: 48 ARCHDEKIN DR
BRAMPTON ON L6V1Y4

Between: Becky Fong and Si-sinh Chuong

Landlords

And

Clinton Harris

Tenant

Becky Fong and Si-sinh Chuong (the 'Landlord') applied for an order to terminate the tenancy and evict Clinton Harris (the 'Tenant').

The Landlords' application was resolved by order LTB-L-048031-23, issued on March 10, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-048031-23.

The motion was heard by videoconference on August 29, 2023.

The Tenant attended the hearing. The Landlords were represented at the hearing by Muhammed Nassar.

Determinations:

Preliminary Issue – Adjournment

1. Prior to the hearing the Tenant requested an adjournment.
2. *LTB Interpretation Guideline 1* sets out the factors a Member may consider when deciding whether to grant an adjournment. These factors include:
 1. the reason for the adjournment and position of the parties;
 2. the issues in the application;
 3. any prejudice that may result from granting or denying the request;
 4. the history of the proceeding including other adjournments or rescheduling;
 5. the LTB's obligation to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.

3. I find the issue before the Board to be straight forward. I considered the prejudice to the Landlords if the matter were to be unnecessarily delayed, and the LTB's obligation to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.
4. When I considered the factors outlined in *Guideline 1*, I found it to be appropriate to deny the adjournment request and proceeded with the hearing.

The Breach

5. The Landlords filed an application because the Tenant did not pay the rent the Tenant owes. This matter was settled by way of a consent order, LTB-L-044420-22 issued on March 10, 2023, which required the Tenant to pay the outstanding arrears by way of a payment plan.
6. The order provided that the Landlords could apply to the Board 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 he failed to meet the conditions specified in the consent order.
7. There is no dispute that the Tenant breached the order by failing the lawful rent on or before June 15, 2023. As a result, the Landlords applied for an ex-parte order terminating the tenancy. The Landlords' request was granted pursuant to LTB-L-048031-23
8. This motion is brought pursuant to subsection 78(11) of the Act. As the Tenant acknowledges breaching the mediated agreement the only issue before me is whether I am "satisfied, having regard to all the circumstances, that it would not be unfair to set aside the order.

Whether to Set Aside the Order

9. The Tenant failed to make the arrears payment due on June 15, 2023. While he has since made the payment, the Tenant has failed to make any payments due in July 2023 or August 2023. The Tenant has fallen further into rent arrears since the hearing of February 22, 2023. There is a significant amount of outstanding arrears, and the Tenant seems to have only entered this process to delay the eviction.
10. The Act is remedial legislation and the courts have determined that evicting a tenant is a remedy of last resort. In the cases of *Sutherland v. Lamontagne*, [2008] O.J. No. 5763 (Div. Ct.) and *Paderewski Society v. Ficyk*, [1998], the Divisional Court stated,

"to put somebody out of their home must, in my view, call for clear and compelling circumstances that it's no longer possible for the arrangement to continue."
11. I acknowledge eviction is a remedy of last resort, however it must be exercised when the Tenant continually does not pay his rent on time. The Tenant has had multiple opportunities to preserve the tenancy, continues not to make payments as required. Given

the Tenant's track record of missing payments, I am not satisfied the Tenant would comply with another conditional order.

12. After considering all of the circumstances, I find that it would be unfair to set aside order LTB-L-048031-23.
13. The only remaining issue before the Board is when to lift the stay. I find a slight delay in lifting the stay is warranted. This will give the Tenant an opportunity to find a new place to live that is within her budget.
14. The stay of order LTB-L-048031-23 shall be lifted on November 30, 2023.

It is ordered that:

1. The motion to set aside order LTB-L-048031-23 is denied.
2. The stay of order LTB-L-048031-23 is lifted on November 30, 2023

October 16, 2023

Date Issued

Bryan Delorenzi
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.