

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

Citation: Mehta v Silveira, 2023 ONLTB 68261

Date: 2023-10-16

File Number: LTB-L-059781-23-SA

In the matter of: 2401 IRISH MOSS
RD
LONDON ON
N6MOA5

Between: Sharad Mehta Landlords
Porshia Mehta

And

Mariana Silveira Tenant

I hereby certify this is a
true copy of an Order
dated OCT 16, 2023

Landlord and Tenant
Board

2023 ONLTB 68261 (CanLII)

Sharad Mehta and Porshia Mehta (the 'Landlords') applied for an order to terminate the tenancy and evict Mariana Silveira (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 June 21, 2023 with respect to application LTB-L-006325-23.

The Landlords' application was resolved by order LTB-L-059781-23, issued on August 18, 2023. The Tenant filed a motion to set aside order LTB-L-059781-23 on August 22, 2023.

The motion was heard by videoconference on October 5, 2023.

The Landlord Sharad Mehta and the Landlords' Legal Representative Danial Yousefian and the Tenant Mariana Silveira and the Tenant's Legal Representative Francisco Gomez attended the hearing.

Determinations:

1. This motion is before the Board because the Landlords obtained the eviction order without notice to the Tenant under s.78 of the Residential Tenancies Act, 2006 ("the Act") based upon an allegation that the Tenant breached the original order. The Tenant does not want to be evicted and asks that the eviction order be set aside. In the alternative, the Tenant sought a delay in the lifting of the stay of order LTB-L-059781-23.

2. There is no dispute the Tenant breached the mediated agreement reached on June 21, 2023. The Tenant did not pay \$2,300.00 towards the rent arrears on or before July 20, 2023, the date it was due.
3. The only issues before me are:
 - a) whether or not, pursuant to s.78(11) of the Act having regard to all of the circumstances, it would not be unfair to set aside order LTB-L-059781-23, issued on August 18, 2023.
 - b) if the answer to a) is no; when the stay imposed on the order LTB-L-059781-23 should be lifted - immediately or on a future date.
4. Pursuant to subsection 78(11)(b) of the Act, the Board may make an order setting aside the original order if the Board is satisfied that having regard to all of the circumstances, that it would not be unfair to set aside the order.
5. Pursuant to this provision, I have the discretion to grant relief to the Tenant by setting aside the original order notwithstanding that the Tenant has breached conditions required in it.

Tenant's Position

6. The Tenant's evidence was she is limited on the amount she can pay the Landlords each month. She cited other monthly expenses that she has to pay. She also stated that at the time she agreed to the mediated settlement of LTB-L-006325-23, she was not aware of her banking limits which prevented her from sending large payments to the Landlords at one time.
7. It was the Tenant's submission that she could not afford the payment agreement contained in the mediated settlement and while she agreed to it, she admits it was far too optimistic given her finances. She requested a new conditional order that would require a smaller payment towards the rent arrears owing. The Tenant suggested a payment plan that would require almost two years to complete given the rent arrears owing are \$35,299.00.
8. The Tenant admitted she has withheld rent while she awaited the outcome of this hearing. She did make two payments to the Landlord on September 20, 2023.
9. The Tenant lives with her three children and has two jobs. She has lived in the rental unit for four years. Her family is healthy and there are no disability issues in the household.
10. The Tenant stated she would need 60-90 days to find somewhere else to live. She also stated that as of October 5, 2023, she had not yet looked for anywhere else.

Landlords' Position

11. The Landlords were opposed the Tenant's position requesting the motion be denied and the stay lifted within 10 days of this order.

12. The Landlords submitted the accumulated rent arrears have caused significant financial stress to them. They have gone without much needed revenue to service their own mortgages and expenses.
13. The Landlords were also opposed to a revised payment plan given the length of time the Tenant would need to pay the rent arrears. The Landlords pointed out the Tenant agreed to the previous mediated agreement and could not follow through on the required payments. This was after the Landlords had already waived amounts above the Board's monetary limit of \$35,000.00.

Discretionary Relief Under s.78(11)(b)

14. I have considered all of the submissions and evidence presented. Section 78(11)(b) of the Act provides discretion to set aside an order where to do so would not be unfair.
15. I am not satisfied that setting aside the order in this case would not be unfair to the Landlords having regard to all the circumstances. While the Tenant provided an explanation for breaching the mediated agreement, I do not find it was a reasonable one. She agreed to make payments on specific dates knowing her financial circumstances could not support these payments. Nothing changed in her circumstances causing her to breach the mediated agreement. I find the breach had little to do with the Tenant's banking limits since the Tenant herself admitted the agreement was not one she simply could not afford.
16. At the time of the mediated agreement, the rent arrears were beyond the Board's monetary jurisdiction. As such they were capped at \$35,000.00. The rent arrears owing have not decreased since the mediated agreement was entered into. As of October 5, 2023, the rent arrears are \$35,299.00. Additionally, the Tenant admitted to withholding rent payments while she awaited the outcome of her set aside motion. Withholding rent payments is never a hallmark indicator of a health tenancy.
17. Based on the rent arrears continuing to be at the Board's monetary limit, the Tenant's need for a 23-month conditional order and the Tenant's decision to withhold rent payments, I do not find this tenancy is sustainable. I am also not convinced the Tenant would abide by a new conditional order given her choice to withhold rent payments while she waited for the outcome of her motion.
18. Lastly, I find it would be unfair and unduly prejudicial to the Landlords to set aside order LTB-L-059781-23 particularly when the rent arrears are already at the Board's limit and the Tenant has chosen to withhold rent payments.

Discretionary Relief under s. 78(11)

19. The Tenant requested a 60-to-90-day delay in the lifting of the stay of order LTB-L059781-23. The Landlord submitted a short delay of 10 days would be fair in the circumstances.

20. I note the Tenant's admission she has taken no steps to secure alternative housing since the process before the Board started. As such, I do not find her request to be reasonable.

21. In consideration of the three children that live in the rental unit, the stay will be lifted on October 31, 2023 instead of immediately.

It is ordered that:

- 1. The Tenant's motion to set aside order LTB-L-059781-23, issued on August 18, 2023, is denied.
- 2. Order LTB-L-059781-23, issued on August 18, 2023, is confirmed and remains unchanged.
- 3. The stay of order LTB-L-059781-23 is lifted on October 31, 2023.

October 16, 2023

Date Issued

John Cashmore
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.

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