



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

Citation: Beaux Properties Management Company v Mohammed, 2023 ONLTB 61362

Date: 2023-09-12 **File Number:**
LTB-L-030343-23-SA

In the matter of: 1802, 135 FENELON DR
NORTH YORK ON M3A3K7

Between: Beaux Properties Management Company Landlord

And

Ahmed Abdelwahab Medawi Mohammed Tenant

Beaux Properties Management Company (the 'Landlord') applied for an order to terminate the tenancy and evict Ahmed Abdelwahab Medawi Mohammed (the 'Tenant') and for an order to have the Tenant pay the rent the Tenant owes because the Tenant failed to meet a condition specified in the order issued by the Board on April 24, 2023 with respect to application LTB-L020422-22.

The Landlord's application was resolved by order LTB-L-030343-23, issued on May 18, 2023, without a hearing.

The Tenant filed a motion to set aside order LTB-L-030343-23.

This motion was heard by videoconference on July 25, 2023.

The Landlord's agent A. Mataxas, the Tenant and the Tenant's witness Mohammed Ahmed Zakria a.k.a. Mohamed Zakria attended the hearing.

Determinations:

1. As a preliminary matter, the parties and the Tenant's witness Mohammed Ahmed Zakria a.k.a. Mohamed Zakria, jointly confirmed that the Tenant is Ahmed Abdelwahab Medawi Mohammed, and not Mohammed Ahmed Zakria a.k.a. Mohamed Zakria. The Tenant Ahmed Abdelwahab Medawi Mohammed did not object that he was aware of the prior proceedings for this matter and therefore, the application is amended to reflect the correct Tenant in this matter.
2. The Tenant's motion to set aside the eviction order was brought pursuant to subsection

78(11) of the Residential Tenancies Act, 2006 (the “Act”).

3. The Board must first determine whether or not the Tenant breached LTB-L-020422-22 issued on April 24, 2023 (the “Section 78 Order”). If the Board finds that the Tenant did breach the Section 78 Order, then the Board must decide whether or not “in all the circumstances” it would be “unfair to set aside” the eviction order. If the Board determines that it would not be unfair to set aside the eviction order then the Board is supposed to grant the motion and set aside the order. If the Board determines that it would be unfair to set aside the eviction order then the motion must be denied. The third issue the Board must consider is when to lift the stay of the eviction order.
4. The Tenant admits to breaching the Section 78 Order. In particular, the Tenant admits to not paying the April rent payment on or before the 1st day of April 2023.
5. The next issue is whether or not “in all the circumstances” it would be “unfair to set aside” the eviction order. The Landlord seeks eviction, noting there was also a breach on May 1, 2023 when rent was also not paid.
6. At the hearing, the Tenant seemed apologetic, noting the breach occurred as a result of him assisting family during a time of need and emergency. The Tenant seeks to remain in the rental unit, noting he is currently living with his cousin’s brother who is also contributing towards the rent. The Tenant indicated they have the income and financial means to pay rent and the arrears moving forward and the Tenant has already taken steps to remedy the breach. In this regard, the Landlord acknowledged that the Tenant made a lump sum payment of \$6,450.00 in May 2023. The Tenant indicated a further payment of \$2,150.00 was made in July 2023 and subsequent to the hearing, the Landlord filed an updated ledger with the Board confirming the additional payment.
7. In all these circumstances, I find it would not be unfair to set aside the order as requested by the Tenant. I understand and sympathise with the Landlord’s concerns regarding the missed payment, however the Tenant has taken steps to remedy the breach and in the event the payment plan conditions noted below are met, those concerns will be satisfied.
As a result, conditional relief will be granted on the terms set out below.

It is ordered that:

1. The motion to set aside Order LTB-L-030343-23, issued on May 18, 2023, is granted.
2. Order LTB-L-030343-23, issued on May 18, 2023, is set aside and cannot be enforced.
3. Order LTB-L-020422-22, issued on April 24, 2023 is cancelled and replaced with the following terms:

4. The Tenant shall pay to the Landlord \$8,308.60 for arrears of rent up to July 31, 2023 and costs.
5. The Tenant shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:
 - (i) Between September 20, 2023 and December 20, 2024, the Tenant will make payments towards the arrears in the amount of \$500.00 each month. These arrears payments will be made on or before the 20th day of each month. This means that the Tenant will make payments of \$500.00 per month for 16 consecutive months, commencing September 20, 2023; and,
 - (ii) The final payment will be in the amount of \$308.60 and will be paid on or before January 20, 2025.
6. If not already paid, the Tenant shall pay the Landlord the monthly rent for August 2023 and September 2023, on or before September 20, 2023.
7. The Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period October 1, 2023 to January 1, 2025, or until the arrears are paid in full, whichever date is earliest.
8. 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 July 31, 2023.

September 12, 2023 Date
Issued

Peter Nicholson
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.