



Order under Section 78(6) Residential Tenancies Act, 2006

Citation: Mason v Russell, 2023 ONLTB 60675

Date: 2023-09-11 **File**

Number: LTB-L-008112-23

In the matter of: 215 TERRACE LAWN DR NORTH
BAY ON P1B7P5

Between: Stephen Mason Landlord

And

Heather Russell Tenant

Stephen Mason (the 'Landlord') applied for an order to terminate the tenancy and evict Heather Russell (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant did not meet a condition specified in the order issued by the LTB on August 19, 2022 with respect to application LTB-L-004090-22.

A hearing was held to consider this application.

This application was heard by videoconference on August 28, 2023.

The Landlord, the Tenant and the Tenant's legal representative Kavanpreet Parmar attended the hearing.

Determinations:

1. The order provides 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 certain condition(s) in the order.
2. Applications of this nature normally result in the Board issuing an eviction order without a hearing. However, this application was sent to a hearing because it was

unclear whether or when the breach occurred and the declaration provided insufficient clarity for an order under section 78 to issue ex parte.

3. In this case, the L4 application was sent to a hearing because the application as uploaded to the Board's portal was missing some essential content. The Landlord submits that the L4 application as filed by the Landlord was complete but the amounts included were not properly uploaded to the file. However, the Landlord said that when he noticed the omission, he promptly provided an additional document contains the missing details in support of the application. I note, the Board file contains an email dated January 25, 2023 with the Landlord's clarification, the same date as the L4 application.
4. The Landlord said that he did not understand the process and did not request to amend the application and believed his prompt response to correct the omission was sufficient.
5. The parties attended a hearing on April 17, 2023 where the Member adjourned the matter as disclosure requirements had not been met and the parties were ordered to disclose all documents they intend to rely on 7 days prior to the next hearing.
6. On the date of this hearing, the Tenant did not express any lack of understanding with respect to the Landlord's application nor allegations of the breach.
7. I was satisfied, the Tenant understood the issues before the Board and proceeded with a merit hearing.

The L4 Application and the Breach

8. The order LTB-L-004090-22 issued August 19, 2022 set out, among other things, a payment plan for arrears the Tenant owes the Landlord, and an order to pay rent until such time as the arrears are paid in full.
9. The Landlord reviewed the alleged breaches at the hearing as detailed in the L4 application filed January 25, 2023.
10. The Landlord said that although the Tenant breached in December 2022, he provided her with an opportunity to rectify the omission. Then, he said the Tenant failed to pay the rent as required for January 2023 which precipitated the L4 application.
11. The Tenant does not dispute that she did not pay the rent in January 2023 as she believed the last month's rent deposit held by the Landlord would be used as she planned to move. The Tenant acknowledged the error and said she could pay the \$1,500.00 on or before September 30, 2023. The Tenant also said that she can meet the obligations set out in the previous order to pay rent and arrears to December 2023.

12. The parties did not dispute that the Tenant has paid to the Landlord \$13,062.00 since the L4 application was filed.
13. There is a dispute however in the amount the Landlord believes the Tenant owes to the date of the hearing. He believes the Tenant owes \$1,638.20 and the Tenant says she owes rent for January 2023 in the amount of \$1,500.00.
14. At the hearing, the Landlord provided submissions on dates and amounts paid and also referred to various ledgers. I found the Landlord's evidence to be inconsistent and confusing at times and based on the evidence before the Board and on a balance of probabilities, I find the Tenant owes the Landlord \$1,500.00. An order will issue accordingly.
15. The Tenant said that due to a misunderstanding, she missed the January rent. She has made substantial payments toward the arrears and can continue to meet her financial obligations as detailed in the original order.
16. The Landlord seeks termination of tenancy stating he has no reassurance that the Tenant will make the payments on time and in full. He said there are other issues with the tenancy including missed utility payments.

Relief from Eviction

17. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to grant relief from eviction subject to the condition(s) set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
18. I have considered that the tenancy began around October 2018 and the efforts made by the Tenant to make the required payments. I also considered the Tenant's monthly income and her ability to meet said obligations.
19. The order LTB-L-004090-22 issued August 19, 2022 remains in force with respect to the ongoing payments of rent and arrears and other obligations.
20. However, for ease of reference, the outstanding payments of arrears as required by the August 19, 2022 order are transposed into this order.

It is ordered that:

1. The Landlord's application to terminate the tenancy is denied subject to the following conditions:
2. The Tenant shall pay to the Landlord \$1,500.00 for rent owed for January 2023 and the payment shall be made on or before September 30, 2023.
3. The Tenant shall pay to the Landlord the remaining amounts of arrears as set out in the August 19, 2022 order as follows:

- a) \$300.00 on or before September 1, 2023;
 - b) \$300.00 on or before October 1, 2023;
 - c) \$300.00 on or before November 1, 2023;
 - d) \$294.00 on or before December 1, 2023.
4. The order LTB-L-004090-22 issued August 19, 2022 remains in force.
 5. Section 78 of the Residential Tenancies Act, 2006 applies to this order. If the Tenant fails to pay make any payment in accordance with paragraphs 2 of this order, the Landlord may, without notice to the Tenant, apply to the Board for an order terminating the tenancy and evicting the Tenant. The Landlord must make this application no later than 30 days after the Tenant fails to make a payment.

September 11, 2023

Date Issued

Dana Wren

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-3323234.

