



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

Citation: The Effort Trust Company v Wakero kelboro, 2023 ONLTB 60193

Date: 2023-09-05

File Number: LTB-L-038393-23-SA

In the matter of: 104, 175 CATHARINE ST S
HAMILTON ON L8N2K2

Between: The Effort Trust Company Landlord

And

Aster Wakero kelboro Tenant
Elshadai Erberto

The Effort Trust Company (the 'Landlord') applied for an order to terminate the tenancy and evict Aster Wakero kelboro and Elshadai Erberto (the 'Tenant') and for an order to have the Tenants pay the rent they owe because the Tenants failed to meet a condition specified in the order issued by the Board on February 15, 2023 with respect to application LTB-L-034907-22.

The Landlord's application was resolved by order LTB-L-038393-23, issued on June 14, 2023.

The Tenants filed a motion to set aside order LTB-L-038393-23.

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

The Landlord's representative K. Holleran, the Tenant's representative J. Sue and the Tenant Elshadai Erberto attended the hearing.

Determinations:

1. 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").
2. The Board must first determine whether or not the Tenants breached order LTB-L-03490722 issued on February 15, 2023 (the "Section 78 Order"). If the Board finds that the Tenants

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.

3. The Section 78 Order provided that the Landlord could apply to the Board under section 78 of the Act without notice to the Tenants to terminate the tenancy and evict the Tenants if the Tenants did not meet certain conditions specified in the order.

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4. The Tenant admits to breaching the Section 78 Order. In particular, the Tenant admits to not paying the \$740.47 towards arrears on or before April 20, 2023 and the lawful rent of \$893.00 on or before May 1, 2023.
5. The next issue is whether or not “in all the circumstances” it would be “unfair to set aside” the eviction order.
6. The Tenant Elshadai Erberto (EE) stated she was hospitalized in April 2023 and tried to reach out to the Landlord’s property manager. The Tenant acknowledged the breach of the Section 78 Order and requests an additional opportunity to remedy the situation. The Tenant has been residing at the rental unit for nearly 20 years and the Tenant has 3 schoolage children. The Tenant fears they will be left homeless, should eviction be granted.
7. The Landlord noted that several Form N4’s have been given to the Tenant in the past and based upon the Tenant’s payment history, is doubtful the Tenant will abide by a new payment plan. While I note there have been multiple N4’s given in the past, the arrears have decreased since the date of the Section 78 Order, albeit slightly. As of July 31, 2023, the rent arrears owing are \$7443.77 – a decrease from the \$8,885.00 outstanding when the Section 78 Order was rendered in February 2023. Moreover, the Tenant has produced documentation showing both full-time and part-time employment and indicated she is receiving more hours now and can pay an additional \$1,000.00 towards the arrears every month. In this regard, the Tenant recently made total payments of \$1,893.00 to the Landlord in July 2023, being the monthly rent of \$893.00 and an additional \$1,000.00 as proposed going forward. In all these circumstances, I find it would not be unfair to set aside the order as requested by the Tenant.

It is ordered that:

1. The motion to set aside Order LTB-L-038393-23, issued on June 14, 2023, is granted.

2. Order LTB-L-038393-23, issued on June 14, 2023, is set aside and cannot be enforced.
3. Order LTB-L-034907-22 issued on February 15, 2023 is cancelled and replaced with the following order.
4. The total of arrears owing up to July 31, 2023 is \$7,443.77.
5. The Tenant shall pay to the Landlord the amount set out in paragraph 4 in accordance with the following schedule:
 - (i) Between September 20, 2023, and March 20, 2024, the Tenant will make payments towards the arrears in the amount of \$1,000.00 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 \$1,000.00 per month for 7 consecutive months, commencing September 20, 2023;
 - (ii) The final payment will be in the amount of \$443.77 and will be paid on or before April 20th, 2024.

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6. If not already paid, the Tenant shall pay 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 April 1, 2024, 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 4 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 5, 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.