



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

Citation: Najmudin Properties and Investment Corporation v Dellenbusch, 2023 ONLTB 57935

Date: 2023-08-29 **File Number:**
LTB-L-062733-23-SA

In the matter of: 7400 FERN AVE
NIAGARA FALLS ON L2G5H2

Between: Najmudin Properties and Investment Corporation Landlord

And

William Dellenbusch Tenant

Najmudin Properties and Investment Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict William Dellenbusch (the 'Tenant').

The Landlord's application was resolved by order LTB-L-062733-23, issued on August 4, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-062733-23.

The motion was heard by videoconference on October 19, 2023.

The Tenant attended the hearing. The Landlord was represented at the hearing by Adam Hamdani.

Determinations:

Preliminary Issue-Request to Speak with Tenant Duty Counsel

1. Prior to the hearing the Tenant requested to speak with Tenant Duty Counsel (TDC). The matter was stood for TDC to arrive. Unfortunately, TDC from the Tenant's region did sign into the hearing room.
2. Section 10 of the *Statutory Powers and Procedures Act* (SPPA) states that a party may be represented by a representative at a hearing. However, the right to representation is not absolute.

3. Section 184 of the *Residential Tenancies Act, 2006* (the 'Act') directs the Board 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 to be heard on the matter.

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4. In order to ensure there was sufficient time to hear the matter, the hearing proceeded without the Tenant speaking to TDC.

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-011720-23, 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 to pay \$1850.00 on or before August 1, 2023. The Tenant also failed to pay the lawful rent due August 1, 2023. As a result, the Landlords applied for an ex-parte order terminating the tenancy. The Landlords' request was granted pursuant to order LTB-L-062733-23.
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 pay the lawful rent for August 1, 2023. Since then, The Tenant has fallen further into rent arrears since the hearing of August 4, 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 Tenant submits the reason he did not make the required payments is because the Landlord is in breach of his maintenance obligations under s.20 of the Act. I do not accept this argument.
11. The Tenant attended the hearing on August 4, 2023. He entered into a consent agreement after having an opportunity to speak with TDC. If there were maintenance concerns with the unit, it would be reasonable to assume he would have raised them during the August 4, 2023, hearing.

12. The Tenant claims he did raise those concerns and the previous hearing Member did not consider the Tenant's claim. I have reviewed the record for LTB-L-011720-23. There is no indication the Tenant raised any concerns prior to the hearing. There is no indication in order LTB-L-011720-23 that the Tenant attempted raise any concerns that the hearing Member decided not to consider.
13. The Tenant claims he filed his own application before the Board but could not provide me with the file number. The Landlord's representative is unaware of any applications filed by the Tenant. I would expect if there were serious concerns with the state of the rental unit

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the Tenant would have attempted to file his own application, not raise them at the 11th hour when he owes over \$24,000.00 in rent arrears.

14. I find the Tenant consented to payment agreement he could not abide by and is raising maintenance concerns in a desperate attempt to preserve the tenancy. I say this because the Tenant's expenses far exceed monthly rent and the \$1,1150.00 per month, he committed toward the rent arrears.
15. 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."

16. 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.
17. Ultimately, I find the Tenant's monthly expenses, in relation to his monthly income, make the tenancy unsustainable. The Tenant has had multiple opportunities to preserve the tenancy and 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.
18. After considering all of the circumstances, I find that it would be unfair to set aside order LTB-L-062733-23.
19. The only remaining issue before the Board is when to lift the stay. I find a slight delay in lifting the stay is warranted. The Tenant has 3 children that live with him in the rental unit. I find the Tenant should be afforded additional This will give the Tenant an opportunity to find a new place to live that is within his budget.
20. The stay of order LTB-L-062617-23 shall be lifted on March 31, 2024.

It is ordered that:

1. The motion to set aside order LTB-L-062617-23 is denied.
2. The stay of order LTB-L-062617-23 is lifted on March 31, 2024

March 15, 2024

Date Issued

Bryan Delorenzi

Member, Landlord and Tenant Board

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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.