



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

Citation: Pinedale Properties Ltd v Piercey, 2023 ONLTB 57389

Date: 2023-08-24 **File Number:**
LTB-L-032168-23-SA

In the matter of: 120, 25 BERGAMOT AVE
ETOBICOKE ON M9W1W4

Between: Pinedale Properties Ltd Landlord

And

Sheldon Piercey Tenant

Pinedale Properties Ltd (the 'Landlord') applied for an order to terminate the tenancy and evict Sheldon Piercey (the 'Tenant') because the Tenant failed to meet a condition specified in the order issued by the Board on September 15, 2022, with respect to application LTB-L-004189-22.

The Landlord's application was resolved by order LTB-L-032168-23, issued on May 23, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-032168-23.

The motion was heard by videoconference on July 10, 2023.

The Landlord's Agent, Isabella Garcia, the Landlord's Legal Representative, Bryan Rubin, and Stefan Piercy for the Tenant attended the hearing.

Determinations:

1. As a preliminary issue, Stefan Piercy, the Tenant's son, was accepted as the Tenant's Agent; he was an agent for the Tenant at the original hearing and spoke on the Tenant's behalf.
2. After considering all of the circumstances, I find that it would not be unfair to set aside order LTB-L-032168-23.
3. The monthly rent is \$1,175.77, it is due the 1st day of each month.

4. Based on the monthly rent, the daily compensation is \$38.66. This amount is calculated as follows: \$1,175.77 X 12, divided by 365 days.
5. The Landlord collected a rent deposit of \$1,137.94, interest has been paid to December 31, 2020.
6. The Tenant's Agent testified that the Tenant was in the hospital for and missed 6 weeks of work, plus his brother moved out; all of this was circumstances out of the Tenant's control. He requested that the Tenant be allowed to pay the remaining amount owing on the repayment plan, consisting of the arrears' payments due July and August 20th plus August rent, within 5 weeks. He regrets not being more communicative with the Landlord about the situation and explained no evidence was uploaded on the portal because his father/the Tenant has it with him and he is working up North. They would like one last chance to salvage the tenancy; the Tenant has been in the unit 14 years.
7. The Landlord's Legal Representative submitted that the first payment plan was imposed based on what the Tenant's Agent put forward, and this was breach, and there is no evidence supporting the Tenant's Agent's explanation for the breach. There is plenty of ways the Tenant or Agent could have reached out to the Landlord to explain what was going on, but neither did. The Landlord is requesting the set aside be denied and the stay lifted immediately. The amount owing to July 31, 2023, per the Landlord's disclosure package, is \$2,848.70.
8. I have considered all the disclosed circumstances in accordance with subsection 78(11)(b) 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. The Tenant's Agent does not dispute that the original payment plan was breached and admitted it was not handled correctly by not reaching out to the Landlord about their circumstances; the Agent requested 5 weeks from the hearing date to clear all the arrears and preserve their 14-year tenancy. Considering the date of the order, this timeline is past, therefore, I find it reasonable the Tenant be given a last chance to preserve their tenancy by paying any outstanding arrears within 11-days from the date of this order.

It is ordered that:

1. The motion to set aside Order LTB-L-032168-23, issued on May 23, 2023, is granted.
2. Order LTB-L- LTB-L-032168-23, issued on May 23, 2023, is set aside and replaced with the following.
3. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
4. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**

- \$4,024.47 on or before August 31, 2023. This amount is comprised of arrears owing to July 31, 2023 plus August rent.

OR

- \$5,200.24 on or before September 4, 2023. This includes the above-noted amount plus September rent.

Any monies paid since the hearing date shall be deducted from the amount due.

5. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after September 4, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
6. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before September 4, 2023.**

If the Tenant does not void the order, the Tenant shall pay to the Landlord \$2,587.35. This amount is based on no payments being received and includes rent owing up to the date of this order and the cost of filing the application (\$3,753.85), minus the rent deposit (\$1,137.94) and interest the Landlord owes on the rent deposit (\$28.56). Any monies paid since the hearing date shall be deducted from the amount due.

7. If the Tenant has not voided the order, the Tenant shall also pay to the Landlord \$53.84 per day for compensation for the use of the unit starting August 25, 2023 to the date the Tenant moves out of the unit.
8. If the Tenant does not pay the Landlord the full amount owing on or before September 4, 2023, the Tenant will start to owe interest. This will be a simple interest calculated from September 5, 2023 at 6.00% annually on the balance outstanding.
9. If the Tenant has not voided the order and the unit is not vacated on or before September 4, 2023, then starting September 5, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after September 5, 2023.

August 24, 2023

Date Issued

Diane Wade

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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on March 5, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.