



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

Citation: Overbank Towers v Harris, 2023 ONLTB 57271

Date: 2023-08-17 **File Number:**
LTB-L-032998-23-SA

In the matter of: 222, 2360 EGLINTON AVE E
SCARBOROUGH ON M1K2P2

Between: Overbank Towers Landlord

And

Collette Harris Tenant

Overbank Towers (the 'Landlord') applied for an order to terminate the tenancy and evict Collette Harris (the 'Tenant') because the Tenant failed to meet a condition specified in the order issued by the Board on March 2, 2023, with respect to application LTB-L-037058-22.

The Landlord's application was resolved by order LTB-L-032998-23, 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-032998-23.

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

The Landlord's Legal Representative, Sean Beard, and the Tenant attended the hearing.

The Tenant spoke with Duty Counsel prior to the hearing.

Determinations:

1. After considering all of the circumstances, I find that it would not be unfair to set aside order LTB-L-032998-23.
2. The monthly rent is \$1,260.49.
3. The arrears owing to July 31, 2023 are \$8,813.31, including the application filing fee.
4. The Tenant does not dispute that she breached, but it was for reasons beyond her control; she is requesting to be put back on the repayment plan. Her mother got cancer and she had to use the money to care for her, she is back at work now and can abide by the

repayment plan. The Tenant testified that she paid rent in June and just paid July rent. She has lived there over 6 years and wants to preserve her tenancy.

5. The Landlord's Legal Representative submitted that; the set aside should be denied, and the stay lifted immediately. The Tenant breached more than once, she did not pay the

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April, May and June 15th arrears payments and was late paying June's rent. He has no knowledge as to whether July rent was just paid, but regardless, the Tenant owes more now than in the original order.

6. I have considered all the disclosed circumstances in accordance with subsection 77(11) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to grant relief from eviction pursuant to subsection 78(12) of the Act on the conditions that follow. I accept that the Tenant breached for reasons beyond her control, and although she now owes approximately \$800.00 more than when the original repayment plan was entered into, providing July's rent has been paid, it is actually slightly lower. I find it reasonable under the circumstances to allow the Tenant the opportunity to preserve her tenancy, however I also feel it is reasonable for the repayment terms to be a lesser length of time to minimize any prejudice to the Landlord. Any monies already paid to the Landlord by the Tenant shall be deducted off the amount owing

It is ordered that:

1. The motion to set aside Order LTB-L-032998-23, issued on March 2, 2023, is granted.
2. Order LTB-L-032998-23, issued on May 23, 2023, is set aside and replaced with the following.
3. The Tenant shall pay to the Landlord \$10,073.80, which represents the arrears of rent and costs outstanding for the period ending August 31, 2023.
4. The Tenant shall make the following payments to the Landlord in respect of the monies owing under paragraph 1 of this order:
 - a) Pay on or before August 28, 2023, \$3,020.98, consisting of July and August rent plus \$500 towards the arrears. Any monies already paid towards this amount shall be deducted.
 - b) Pay \$1,000.00 each September 15, 2023 through January 15, 2024.
 - c) Pay the balance of \$2,052.82 on or before February 15, 2024.
5. The Tenant shall also pay the Landlord the rent for the months of September 1, 2023 up to and including February 1, 2024 in full, on or before the first day of each corresponding month.

6. If the Tenant fails to make any of the payments in accordance with paragraph 3, and by the dates required, then:

(a) The Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant, and for the payment of any new arrears of rent and NSF charges not already ordered under paragraph 1 of this order. The Landlord must make the application within 30 days of a breach of a condition set out in paragraph 2 of this order.

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(b) The balance owing under paragraph 1 of this order shall become payable on the day following the date of default. The monies owing shall bear interest at the postjudgment interest rate determined under subsection 207(7) of the Act.

August 17, 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.