



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

**Citation:** Smeraldo v Neto, 2023 ONLTB 53533

**Date:** 2023-07-24 **File Number:**  
LTB-L-001257-23-SA

**In the matter of:** 705, 1100 Caven  
Mississauga ON L5G4N3

**Between:** Leigh Smeraldo Landlord

**And**

Brianna Neto, Eliza Neto, Susana Neto, Tenants  
Steven Neto and Jacob Neto

Leigh Smeraldo (the 'Landlord') applied for an order to terminate the tenancy and evict Brianna Neto, Eliza Neto, Susana Neto, Steven Neto and Jacob Neto (the 'Tenants') because the Tenants failed to meet a condition specified in a mediated order LTB-L020583-22 issued on November 8, 2022.

The Landlord's application was resolved by order LTB-L-001257-23, issued on March 21, 2023. This order was issued without a hearing being held.

The Tenants filed a motion to set aside order LTB-L-001257-23.

The motion was heard by videoconference on April 17, 2023.

The Landlord and the Tenant, Steven Neto attended the hearing.

**Determinations:**

1. After considering all of the circumstances, I find that it would be unfair to set aside order LTB-L-001257-23.
2. The Tenants motion to set aside the eviction order was brought pursuant to subsection 78(11) of the Act. That provision requires the Board to ascertain three parts. First, the Board must determine whether or not the Tenants breached order LTB-L020583-22 issued on November 8, 2022. If the Board finds that there was no breach by the Tenants, then the

motion must be granted and the eviction order set aside. If the Board finds that the Tenants did breach the mediated agreement, then a second question arises. Pursuant to paragraph 78(11)(b) 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 shall grant the motion and set aside the order. If the Board determines that it would be

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unfair to set aside the eviction order then the motion must be denied. The third issue the Board must then address is when to lift the stay of the eviction order.

3. The order provided that the Landlord could apply to the Board under section 78 of the Residential Tenancies Act, 2006 (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.
4. There is no dispute that the Tenants did not pay January’s rent on or before January 1, 2023.
5. The second question that the Board must decide is whether or not “in all the circumstances” it would be “unfair to set aside” the eviction order.
6. At the hearing of the set aside motion the Tenant submitted that things were not going his way in the months of December and January 2023 due to a slowdown and availability of supplies for his work and that he was off with the COVID for a period of two weeks. While they were able to pay the Landlord the arrears owed from the previous order, coming up with the payment of rent became difficult, in January his family attempted to secure a new place to live. They did not pay January rent as they were applying the last month’s rent deposit to January 2023, however they did not end up getting the place.
7. The Tenant submitted that the family household income ranges from \$1,500.00 to \$1,800.00 per month from his employment income and additional \$1,300.00 per month from the Canada Child Tax Benefit (CCTB) which is expected to increase to \$2,450.00 in July 2023. The monthly expenses are in form of food, personal care, cell phone and cable bills, the tenants do not have a vehicle.
8. The Landlord submitted that although ordered to do so, the Tenants have not been able to commit to paying their rent on time and in full. The rent arrears as of the time of the hearing were \$7,770.00, the equivalent of 3 months in arrears and that the Tenants always have excuses for non-payment of rent and do not communicate with the Landlord.
9. In all these circumstances, I find it would be unfair to set aside the order as requested by the Tenants. I say this as I am not satisfied that setting aside the order would have any

lasting impact as there is insufficient income to afford the ongoing rent which has increased to \$2,610.00 as of February 1, 2023 as well as the new arrears that have since arisen.

10. The Tenants requested that while they would like to remain in the rental unit, if decided otherwise that the Board delay lifting the stay until June 30, 2023 to allow for kids completion of school and to come up with enough money to afford first and last month's rent payments on a new rental unit.
11. The Landlord was opposed to delay in lifting the stay stating that any delay would be a financial hardship for the Landlord as the arrears of rent are expected to reach approximately \$13,000 by the end of June 2023.

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12. Having considered all the circumstances, I find it would be unfair to the Landlord to delay the lifting of the stay, as of the date of issuance of this order the June 30, 2023 date the Tenants were seeking as a delay has passed. I am mindful that the Court Enforcement Office (Sheriff) does not enforce the order immediately and I have taken that delay into consideration.

**It is ordered that:**

1. The motion to set aside LTB-L-001257-23, issued on March 21, 2023, is denied.
2. The stay of Order LTB-L-001257-23, is lifted immediately.
3. Order LTB-L-001257-23 is unchanged.

**July 24, 2023**

**Date Issued**

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Alicia Johnson

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.

