



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

Citation: Can-Am Urban Native Non-Profit Homes v King, 2023 ONLTB 51163

Date: 2023-07-24

File Number: LTB-L-020311-23-SA

In the matter of: 2634 Lauzon Road
Windsor, ON N8T 2Z6

Between: Can-Am Urban Native Non-Profit Homes Landlord

And

Joseph King Tenants
Calvin King

Can-Am Urban Native Non-Profit Homes (the 'Landlord') applied for an order to terminate the tenancy and evict Joseph King and Calvin King (the 'Tenants') and for an order to have the Tenants pay compensation for damage they owe because the Tenants did not meet a condition specified in the mediated settlement signed by the parties on November 4, 2021 with respect to application SWL-52268-21.

The Landlord's application was resolved by order LTB-L-020311-23, issued on May 2, 2023. The Tenants filed a motion to set aside order LTB-L-020311-23 on May 11, 2023.

This motion was heard by videoconference on June 12, 2023.

The Tenant Joseph King, the Tenant's Representative John Kulikowski, the Landlord's agent Eric Hill and the Landlord's Legal Representative Louis Marion attended the hearing.

Determinations:

Preliminary Motion – Scope of Breach

1. The Tenant's Legal Representative submitted that the alleged breach with respect to the Tenant's requirement to pay the rent on time and in full by February 1 should not be considered, as the Landlord's application had been filed on March 9, 2023 which is not in accordance with s. 78(5) of the *Residential Tenancies Act, 2006* (the Act) that outlines that an application under s. 78 of the Act shall not be made later than 30 days after the alleged breach.

2. Having reviewed the Landlord's application and the original order that resolved same, it was clear that the member who considered the Landlord's application on an *ex-parte* basis had only considered the alleged breach from March 2023 when issuing their order.
3. As such, the parties were directed to focus their evidence with respect to the alleged breach from March 2023.

Tenant's Motion

4. On February 13, 2023, the Landlord's agent e-mailed the Tenants to advised them that a Sewer Surcharge Rebate of \$150.00 would be applied to their rent for the month of March 2023, leaving \$34.50 owing for rent for the month of March.
5. The e-mail goes on to state that the Tenant's were in arrears by \$1.50, and then outlines that the rent due for March 2023 is \$183.00, subtracting the Sewer Surcharge Rebate, the total amount owing for rent was \$34.50 for the month of March.
6. The rent charged from April 2022 onward according to the Landlord's ledger was \$183.00. throughout that period until March of 2023, the Tenants would pay \$180.00 per month. The Tenant testified that he thought the rent had actually been \$179.00 per month and that he was sent an e-mail from the Landlord advising same.
7. The Tenant testified further that when he received the February 13, 2023 e-mail with respect to the Sewar Surcharge Rebate and the \$1.50 in arrears, the Tenant contacted the Landlord's accountant for clarification.
8. The Tenant paid to the Landlord the outstanding \$34.50, plus the additional \$1.50 for a total of \$37.00 to the Landlord on March 7, 2023 once he received clarification regarding the rebate. The Tenant testified that he does not have internet at home and did not receive the February 13, 2023 e-mail from the Landlord until sometime in March.
9. The Tenant testified that during the same period his water had been cut off and that he had to pay to get it turned back on. The Tenant testified that he had paid the Landlord \$360.00 the weekend before the hearing and submitted that the Tenants now only owe \$6.50.
10. The Landlord's agent testified that the Tenants should have been aware of the fact that their rent was \$183.00 and that tenants are provided yearly mailouts confirming this fact. That said, the Tenants paid \$180.00 for their rent unabated for some time without any notice given to them by the Landlord regarding this error.
11. The Landlord's agent testified further that the Tenants' balance has never been at zero however, he did admit that when the Tenants are ordered to pay rent on time, they do so but will often slip back into arrears once the order expires.

Section 78(11)(b) Considerations

12. In accordance with s. 78(11)(b) of the Act I am required to consider all of the circumstances surrounding the breach in determining whether to set aside the Landlord's application.

13. Having considered the circumstances of both parties, I find that it would not be unfair to set aside the order. The nature of the breach was minor in nature and largely based on a misunderstanding surrounding precisely what the rent was, which caused confusion regarding the \$1.50 of arrears from February.
14. Further, the Tenants sought clarification with respect to the arrears and the Sewar Surcharge Rebate. The Tenants could not respond in a timely fashion because they do not have internet in the unit. This is supported by the fact that the unit is a geared-to-income unit.
15. As well, the Tenants have been paying the rent on time since November 1, 2021. The Tenants have maintained steady rent payments since that period and were never seemingly corrected by the Landlord regarding the amount.
16. Seeing as the Act's focus is the retention of tenancies, the Landlord's motion is set aside.

It is ordered that:

1. The Tenants' motion to set aside Order LTB-L-020311-23 issued on May 2, 2023 is granted.
2. Order LTB-L-020311-23, issued on May 2, 2023, is cancelled.
3. Order SWL-52268-21, issued on November 4, 2021, remains in effect and is unchanged.

July 24, 2023
Date Issued

Jagger Benham
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.