



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

Citation: Jiwani v Sutherland, 2023 ONLTB 50460

Date: 2023-07-17 **File Number:**
LTB-L-000002-23-SA

In the matter of: 1516, 31 Tippet Rd
North York ON M3H0C8

Between: Salim Jiwani Landlord

And

Alexis Karesha Sutherland Tenant

Salim Jiwani (the 'Landlord') applied for an order to terminate the tenancy and Alexis Karesha Sutherland (the 'Tenant') because the Tenant failed to meet a condition specified in the agreement issued by the Board on November 28, 2022 with respect to application LTB-L-028513-22.

The Landlord's application was resolved by order LTB-L-000002-23, issued on March 7, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-000002-23. This motion was heard in videoconference on April 4, 2023.

The Landlord, the Landlord's representative Andrea Lahey and the Tenant attended the hearing.

Determinations:

1. The Tenant failed to meet a condition specified in the payment agreement, Order issued under s.206 of RTA issued by the Board on November 28, 2022 with respect to application LTB-L-028513-22.
2. The parties do not dispute that the Tenant did not make the ordered payment due on November 1, 2022 and that she failed to pay the full rent and arrears payment on

December 1, 2022. Based on the evidence, I am satisfied that the Tenant breached order LTB-L-028513-22.

File Number: LTB-L-000002-23

Set Aside Considerations: Discretionary Relief Under Subsection 78(11)(b)

3. Pursuant to subsection 78(11)(b) of the Act, the Board has discretion to set aside an eviction order even where the tenant has breached an order if having regard to all the circumstances, it would not be unfair to set aside the order.
4. The parties entered into a repayment plan and filed a written agreement with the Board on September 7, 2022 for arrears of rent up to August 31, 2022 and costs in the amount of \$6,086.00. The repayment plan specified that the Tenant was to repay the arrears of rent in the amount of \$600.00 on the 1st day of each month commencing September 1, 2022 and to pay the lawful rent on time, that is also on the 1st of each month.
5. The Tenant testified that she was no longer able to meet her repayment obligations once her second job ended on January 1, 2023. That she attempted to work out payment arrangements with the Landlord in which she would pay \$1,000.00 every two weeks, which she alleged he refused and suggested that she move out by Dec 31, 2022.
6. The Tenant also submits that she attempted to get assistance from government programs which did not materialize, she has had a difficult year with mental health concerns, loss of family and financial issues arising. She will be commencing a job with unreduced hours of work on May 1, 2023 and would prefer to continue to reside in the rental unit.
7. The Landlord submits that the Tenant's submissions about an offer to pay \$1,000.00 every two weeks and a move out date of December 31, 2022 is not accurate and that there is no evidence to support these claims.
8. On review of the Landlord's evidence, specifically emails exchanged with the Tenant on November 4, 2022 and November 15, 2022 the Landlord makes suggestions that the Tenant move out if she is not able to make the required payments per their agreement. Stating that "I was upfront and honest with you regarding my situation and I really don't want to go the Sheriff eviction route but I will have no choice if you are not caught up as discussed."

9. The written evidence supports a level of frustration on the part of the Landlord in the Tenant failing to meet the obligations of the repayment agreement and confirms the Tenants submissions that she was told to move out on a number of occasions.
10. The Landlord submits that he too has experienced significant financial and personal stress as a result of the Tenants non-payment of rent and difficulties in meeting his mortgage obligations on the property. As of the date of the hearing the amount of arrears outstanding was \$11,703.14, significantly higher since the issuance of the ex parte order.
11. Having considered the evidence and submissions of the parties, I am not satisfied on a balance of probabilities that if the ex parte order were to be set aside, the Tenant would **File Number:** LTB-L-000002-23

abide by any future order for payments for the substantial arrears. For this reason, setting aside the *ex parte* order, in my view, would be unfair to the Landlord.

12. Having carefully considered all of the submissions and evidence presented by both parties, I am not satisfied that setting aside the order in this case would not be unfair having regard to all the circumstances.
13. The Tenant's motion is therefore dismissed.

Lifting of the Stay

14. Having considered the circumstances of the parties, I find that it would not be unfair to postpone the lifting of the stay on the order. Taking into consideration the housing market and the fact the Tenant has just returned to a job with unreduced hours and corresponding wages on May 1, 2023 I find it would not be unfair to lift the stay of the order on August 17, 2023. I find that this is a reasonable amount of time for the Tenant to seek alternative housing, particularly since the ex parte order was issued on March 7, 2023. I find that although the arrears are substantial, and the potential for additional arrears may exist, there is greater prejudice to the Tenant as she must seek alternative housing in a very competitive housing market while contending personal and health concerns.

It is ordered that:

1. The motion to set aside Order LTB-L-000002-23, issued on March 7, 2023, is denied.
2. The stay of order LTB-L-000002-23 is lifted August 17, 2023.
3. Order LTB-L-000002-23 is unchanged.

July 17, 2023

Date Issued

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.

2023 ONL TB 50460 (CanLII)