



**Order under Section 78(6)
Residential Tenancies Act, 2006**

Citation: Sireg Management Inc. v Wolfe, 2023 ONLTB 49308

Date: 2023-07-12

File Number: LTB-L-004735-23

In the matter of: 13, 1410 KENSINGTON PARKWAY BROCKVILLE
ONTARIO K6V6S5

Between: Sireg Management Inc. Landlord

And

Cheryl Wolfe Tenants
Mark Harper

Sireg Management Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Cheryl Wolfe and Mark Harper (the 'Tenants') and for an order to have the Tenants pay the rent they owe because the Tenants did not meet a condition specified in the order issued by the LTB on March 22, 2022 with respect to application EAL-94027-21-RV.

The Landlord's application was resolved by order LTB-L-004735-23-EX, issued on March 9, 2023. This order was issued without a hearing being held.

The Tenants filed a motion to set aside order LTB-L-004735-23-EX.

The motion was heard by videoconference on April 5, 2023.

The Landlord attended the hearing. The Landlord was represented by Elena Jacob. The firstnamed Tenant attended the hearing and was self-represented.

Determinations:

1. After considering all of the circumstances, I find that it would be unfair to set aside Board order LTB-L-004735-23-EX.

2. The Tenants motion to set aside the eviction order issued by the Board on March 9, 2023 is denied.
3. The stay of order LTB-L-004735-23-EX is lifted immediately.

Background to the proceedings

4. The Landlord filed an L1 application for non-payment of rent which was resolved by hearing order EAL-94027-21 issued on November 2, 2021.
5. The Tenants requested a review of the order which was heard on February 25, 2021. Review order EAL-94027-21-RV was issued on March 22, 2022.
6. 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 they failed to make the arrears and rental payments specified in the order.
7. The Tenant failed to make full payment rent in full due on December 1, 2022 as required by the order. Subsequently, the Landlord applied to the Board under section 78 of the Act for an order terminating the tenancy. The Board issued order LTB-L-004735-23-EX on March 9, 2023 terminating the tenancy. The Tenants applied to set aside that order.

The Tenant's Motion

8. Subsection 78(9) of the Act provides that a tenant may make a motion to the Board, on notice to the applicant, to have an eviction order made under subsection 78(6) of the Act set aside within 10 days after the order made under that section was issued.
9. I am satisfied that the Tenants filed their motion in compliance with subsection 78(9) of the Act. The Board's order was issued on March 9, 2023. The Tenants filed their motion with the Board seven days later on March 16, 2023, which is within the statutorily required 10 day period of time stipulated under the Act and, as such, I am satisfied that the Tenants motion is properly before the Board.

The Tenant's breach of order EAL-94027-21-RV

10. The Tenants motion is brought under subsection 78(11) of the Act which provides that the Board can set aside an eviction order when it is satisfied, on a balance of probabilities, that the tenant did not breach the terms of the original order and/or it is satisfied that having regard to all of the circumstance, it would not be unfair to set aside the eviction order.

11. There is not dispute between the parties that the Tenants breached the Board's order by failing to pay rent that was due on or before December 1, 2022. Therefore, I am satisfied, on a balance of probabilities that the Tenants breached the terms of that order.

Consideration of all the circumstances

12. Subsection 78(11)(b) of the Act provides that if a tenant makes a motion under subsection 78(9) of the Act, the Board shall, after a hearing, make an order setting aside the order if the Board is satisfied, having regard to all the circumstances, that it would not be unfair to set aside the order.

Evidence

13. The Tenants explained that they did not pay rent as required under the order because they were required to spend their limited income on diapers and baby formula for their grandchild. Given that they are on a limited income from support provided through the Ontario Disability Support Program ('ODSP') they were unable to pay for both sets of expenses (necessaries for their grandchild and rent) and thus, decided not to pay their rent.
14. In response to questions posed by the Board regarding the impact an eviction would have on them the Tenants explained that they would be rendered homeless as they do not have the income to afford a new rental unit in the local area. A review of the Tenants income and expenses were undertaken during the hearing.
15. The Landlord did not call any witnesses. The Landlord's representative submitted that granting the motion would be prejudicial to the Landlord given the magnitude of arrears that have accumulated to date.

Analysis

16. Given all of the above, I am satisfied that the tenancy is no longer viable as the Tenants had voluntarily decided not to pay their rent despite having adequate resources. Although the Board had issued an order with conditions imposed aimed at preserving the tenancy through a payment plan, the Tenants past history of non-payment, and the reasons for their non-payment, demonstrates that it would be unlikely they would comply with terms and conditions of another payment plan.
17. I have considered the prejudice experienced by both parties. I acknowledge the prejudice the Tenants would experience by a termination of the tenancy however, I find that this is outweighed by that experienced by the Landlord who has a significant outstanding financial balance.

18. Considering the forgoing, and after considering all of the circumstances pursuant to subsection 78(11)(b) of the Act, I find that it would be unfair to set aside the eviction order issued by the Board on March 9, 2023.

The lifting of the stay

19. Subsection 78(11)(c) of the Act provides that if a tenant makes a motion to set aside a Board order, the Board shall, after a hearing, make an order lifting the stay of the order effective immediately or on a future date specified in the order.

20. I am satisfied that, based on the evidence presented at the hearing, that it would be unfair to the Landlord to delay lifting the stay. The matter first came before the Board on November 2, 2021 when a hearing was held to address the Landlord's L1 application. Since that time, the Tenant's income circumstances have not changed. By contrast, the Landlord's circumstances have deteriorated such that the tenancy continues to have an adverse impact on the financial standing of the rental unit.

21. Based on the above, I find that it would be unfair to delay lifting the stay. An order will issue accordingly.

It is ordered that:

1. The motion to set aside Order LTB-L-004735-23-EX, issued on March 9, 2023, is denied.
2. The stay of Order LTB-L-004735-23-EX is lifted immediately.

July 12, 2023
Date Issued

Emile Ramlochan

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.