



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

Citation: Sireg Management Inc v Baker, 2023 ONLTB 48792

Date: 2023-07-12 **File Number:**
LTB-L-025445-23-SA

In the matter of: 19, 80 CHURCHILL ST
WATERLOO ON N2L2X2

Between: Sireg Management Inc Landlord

And

Danielle Baker Tenant

Sireg Management Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Danielle Baker (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant did not meet a condition contained in the order issued by the Board on March 17, 2023 with respect to application LTB-L-028070-22.

This Landlord's application was resolved by Order LTB-L-025445-23, issued on May 2, 2023. The Tenants filed a motion to set aside Order LTB-L-025445-23.

The motion was heard by videoconference on June 27, 2023.

The Landlord's Legal Representative Elena Jacob and the Tenant Danielle Baker attended the hearing.

Determinations:

1. This motion is before the Board because the Landlord obtained the eviction order without notice to the Tenant under s.78 of the Residential Tenancies Act, 2006 ("the Act") based upon an allegation that the Tenant breached the original order. The Tenant do not want to be evicted and asks that the eviction order be set aside.

2. There is no dispute the Tenant breached a condition in the mediated agreement. On February 28, 2023, the Tenant was required to pay the Landlord \$3,952.72 towards the rent arrear and failed to do so.
3. The only issues before me are:
 - a) whether or not, pursuant to s.78(11)(b) of the Residential Tenancies Act, 2006 (“the Act”) having regard to all of the circumstances, it would not be unfair to set aside Order LTB-L-025445-23, issued on May 2, 2023.
 - b) if the answer to a) is no; when the stay imposed on the Order LTB-L-025445-23 should be lifted - immediately or on a future date.
4. Pursuant to subsection 78(11)(b) of the Act, the Board may make an order setting aside the original order if the Board is satisfied that having regard to all of the circumstances, that it would not be unfair to set aside the order.
5. Pursuant to this provision, I have the discretion to grant relief to the Tenant by setting aside the original order notwithstanding that the Tenant has breached conditions required in it.

Tenant's Position

6. At the hearing, the Tenant testified she was in a car accident on March 2, 2023. Her employment is two cities away and she requires a vehicle to get to and from her job. The Tenant explained that her insurance did not cover the accident and she was forced to rent a car to keep her employment. This was an unexpected depletion of her financial resources.
7. The Tenant also stated she had arranged for her ex-husband to make the payment required on February 28, 2023 however an issue with an American payment platform he was using failed to work and the funds were held up while the issue was resolved.
8. The Tenant's evidence was that she had made the other payments as required under the mediated agreement and has recently obtained a second job. She earns a reasonable amount of income per month and is also seeking supports from her Region to assist with the balance of rent arrears.
9. The Tenant agreed the total amount owing to the Landlord for the period ending June 30, 2023 is \$4,310.23. The current monthly rent is \$1,758.22.
10. The original amount owing at the time the mediated agreement was entered into was 19,075.42. This amount reflected the rent arrears owing to January 31, 2023.
11. The Tenant's evidence was she lives with her three children in the rental unit. She has twins aged 15 and the other child is 18 years old.

Landlord's Position

12. The Landlord submitted the Tenant is in a constant state of rent arrears and that this is the third time the parties have been before the Board for non payment of rent.
13. The Landlord submitted they have a mortgage and staff that have to be paid and being without rental revenue makes those obligations difficult to meet. The Landlord was concerned that if the tenancy continues the parties will be back before the Board at a future date.

Discretionary Relief Under s.78(11)(b)

14. I am mindful of Guideline 7 which directs me to consider the following on a set aside motion:
 - a) Circumstances that occurred after the date of the mediated agreement or conditional order that caused the party to be unable to meet the terms of the agreement or order.
 - b) Circumstances that occurred prior to the issuance of the conditional order or the signing of the mediated agreement should have been considered at the time the conditional order was made or the mediated agreement was signed, with respect to the previous application.
15. Having regard to all of the circumstances here, in balancing the prejudice to the Tenant against the prejudice to the Landlord, I find that it would not be unfair to set aside the eviction order and to provide the Tenant a final opportunity to save the tenancy. The amount outstanding is significantly less than it was when the mediated agreement was entered into.
16. While the Tenant's car accident occurred after the final payment was due towards the rent arrears, I find it was an unexpected event that affected the Tenant's ability to quickly make the final payment once the banking issue was discovered by the Tenant and her exhusband.
17. I am mindful the original mediated agreement was an aggressive one in which the rent arrears would have been extinguished in just over two month's time. I am also mindful of the significant payments the Tenant has made to the Landlord in the two months prior to the hearing of this motion and I am satisfied the Tenant can alleviate much of the prejudice to the Landlord by having the rent arrears paid in a time period similar to the original agreement.
18. I am satisfied, having regard to all the circumstances, that it would not be unfair to set aside Order LTB-L-025445-23 on the condition that the Tenant pays all of the rent arrears and new rent that becomes due in accordance with the payment plan that will issue. Given

the date of this order, the monthly rent for July 2023 will be ordered paid in full on or before July 20, 2023.

It is ordered that:

1. The Tenant's motion to set aside the ex parte Order LTB-L-025445-23 issued on May 2, 2023 is granted. Order LTB-L-025445-23 is cancelled and replaced by the following:
2. The Tenant shall pay to the Landlord \$4,310.23 which represents the rent arrears owing to June 30, 2023 and costs.
3. The Tenant shall pay the amount set out in paragraph 2 of this order in accordance with the following schedule:
 - a) \$2,155.11 on August 15, 2023.
 - b) \$2,155.12 on September 15, 2023.
4. The Tenant shall also pay to the Landlord the monthly rent for July 2023 on or before July 20, 2023.
5. The Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period starting August 1, 2023 to September 1, 2023, or until the arrears are paid in full, whichever date is earliest.
6. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 2 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after June 30, 2023.

July 12, 2023

Date Issued

John Cashmore

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor, Toronto
ON M7A 2G6

File Number: LTB-L-025445-23-SA

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

2023 ONLTB 48792 (CanLII)