



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

Citation: Matrix Non-Profit Housing Corporation v Alexander, 2023 ONLTB 26324

Date: 2023-06-29 **File Number:**
LTB-L-074908-22-SA

2023 ONLTB 26324 (CanLII)

In the matter of: 312, 141 Woolwich Street Guelph
ON N1H8M5

Between: Matrix Non -Profit Housing Corporation Landlord

And

Lindsay Alexander

Tenant

Matrix Non-Profit Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Lindsay Alexander (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant did not meet a condition specified in the order issued by the LTB on September 29, 2022 with respect to application LTB-L-014149-22.

The Landlord's application was resolved by order LTB-L-074908-22, issued on January 27, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-074908-22.

The motion was heard by videoconference on March 7, 2023. The Landlord's legal representative, Francisco Gomes, the Tenant, and the Tenant's legal representative, Anthea Millikin, attended the hearing.

At the hearing, the parties requested an order on consent. I was not satisfied that the parties understood the consequences of their joint submissions and therefore I denied the request for the consent order.

Determinations:

1. The parties agreed that the total amount of rent arrears and the application filing fee cost for the period ending March 31, 2023 is \$234.00. This is \$48.00 in rent arrears and \$186.00 for the application filing fee cost. The same amount that was ordered originally under LTB-L-014149-22 which was issued on September 29, 2022.

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2. The Tenant did not attend the first hearing, and the member felt it was appropriate to order a conditional order for the Tenant to make payments of \$25.00 on or by the 15th day of each month starting on October 25, 2022 until the balance was paid in full.
3. The Tenant breached the order when they did not pay the \$25.00 by October 15, 2022. This was undisputed.
4. However, the Tenant explained that they were not aware of the original hearing date, and they were not aware of the debt of \$48.00 in arrears until after they received the *ex parte* order issued on January 27, 2023 and made inquiries about it.
5. The arrears amount is a rent differential from when the Tenant went from receiving ODSP to OW. The Tenant has never paid their rent directly. It has been paid by ODSP or OW directly to the Landlord.
6. The Landlord sought a conditional order for the rent arrears and filing fee pursuant to section 78, or in the alternative, to deny the motion on the basis that the Tenant breached the payment plan.
7. Pursuant to subsection 78(11)(b) of the *Residential Tenancies Act, 2006* (the 'Act'), I find it appropriate to set aside the order terminating the tenancy having regard to all of the circumstances.
8. In my view, the intent of the legislation is to prevent unlawful evictions and to balance the rights and responsibilities of Landlords and Tenants. This can be seen in the preamble to the Act.
9. Section 202 of the Act requires that the Board ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so, may disregard the outward form of a transaction or the separate corporate existence of participants; and may have regard to the pattern of activities relating to the residential complex or the rental unit.
10. The parties originally approached me with a consent to a section 78 conditional order for the rent arrears of \$48.00 and the application filing fee of \$186.00. Essentially a similar order from the original order. The parties also consented to the Tenant paying the Sheriff fee of \$321.00 or interest would accrue starting April 1, 2023.
11. The Landlord is a social housing provider, and the rent is subsidized and geared to the Tenants income. The Tenant's portion of rent is \$139.00 and is paid directly to the Landlord.

12. Although there is nothing particularly unlawful about evicting a Tenant when they owe arrears of rent, I do not find it appropriate to impose conditions on a Tenant that may result in termination of the tenancy for failing to pay \$48.00 in rent arrears and a filing fee.
13. I further lack the jurisdiction under section 78 of the Act to order that the Tenant reimburse the Landlord the cost of the sheriff's enforcement fees.

It is ordered that:

1. The Tenant's motion to set aside the ex parte order under LTB-L-074908-22, issued on January 27, 2023, is granted. The order is cancelled and replaced with the following order:

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2. The Tenant shall pay to the Landlord \$234.00. This amount represents the rent owing up to March 31, 2023, and the cost of filing the application.
3. If the Tenant does not pay the Landlord the full amount owing on or before July 10, 2023, the Tenant will start to owe interest. This will be a simple interest calculated from July 11, 2023 at 6.00% annually on the balance outstanding.

June 29, 2023

Date Issued

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.