



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

Citation: Homestead Land Holdings Limited v Kondo, 2023 ONLTB 26179

Date: 2023-06-29

File Number: LTB-L-079897-22

In the matter of: 305, 33 ROBINSON ST
HAMILTON ON L8P1Y8

Between: Homestead Land Holdings Limited Landlord

And

Sandra Kondo Tenant

Homestead Land Holdings Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Sandra Kondo (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 consent order issued by the LTB on October 21, 2022 with respect to application LTB-L-017890-22.

This application was sent to a hearing on the basis that the Landlord had failed to complete the L4 application when filing. The declaration was not signed.

A hearing was held by videoconference on March 7, 2023 to consider the application. The Landlord's legal representative, Maegan O'Connor, and the Tenant attended the hearing. The Tenant had the opportunity to speak with Tenant Duty Counsel on the hearing date.

Determinations:

1. The order provides that the Landlord can apply to the LTB under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenant to terminate the tenancy and evict the Tenant and to collect any further rent arrears, NSF fees or related charges that came due and owing after October 31, 2022 if the Tenant does not meet certain condition(s) in the order.

2. The Landlord filed their L4 application on November 15, 2022 and alleged that the Tenant did not pay the November rent on or by November 1st as ordered. I find that this application was filed within 30 days of the breach.
3. At the hearing, the Tenant did not dispute that they breached the order and did not pay as required.
4. I therefore find that the Tenant breached the consent order.
5. The Tenant explained that they almost died in 2020 from septicemia and gangrene and that her toe had to be amputated. The Tenant attended rehabilitation due to a medication dependency. The Tenant further indicated that they receive nursing care 3x per week and when they had entered into the consent agreement payment plan with the Landlord, they believed that they would be getting a large lump sum amount when they filed their income tax, but unfortunately they did not file their return until the end of November with everything going on. The Tenant further indicated that they were owed a large sum of money, but the money never materialized.
6. The Tenant further indicated that they were approved for a housing benefit program and were expecting \$378.24 per month from this program. The Tenant further explained that they get paid approximately \$2,070.00 from CPP, OAS and GIS and that their daughter receives \$600.00 per month from her ex. The Tenant also indicated that this includes \$345.00 from WSIB.
7. The Tenant is also and insulin dependent diabetic and recently felt it necessary to purchase a prosthetic toe to help with ambulation. She also suffers from ulcers on her feet and has had severe arthritis since her youth. She also finds the pool at the residential complex accommodating for her mobility. The Tenant proposed that the Board order another payment plan and that this time she will follow it on the basis that she would be otherwise homeless. The Tenant proposed the rent on the first plus an additional \$500.00 per month until the arrears were paid in full.
8. The Landlord was sympathetic to the Tenants needs and concerns, however, they were opposed to an additional payment plan on the basis that the Tenant only paid \$1,400.00 on December 4, 2022 and only a total of \$1,900.00 for the entire tenancy since it started in November of 2021. As of March 31, 2023 the Tenant owed \$21,317.00 including the application filing fee and the Landlord felt the payment plan was unreasonable and prejudicial to the Landlord and that the tenancy should be terminated.
9. I am not satisfied that an additional payment plan would be appropriate under the circumstances. The Tenant provided no documentary supporting evidence regarding their income and the Tenant did not dispute their payment history to the Landlord. The Tenant testified that she was hoping to have her income tax done and receive a large sum of money regarding the previous payment plan, however, the Tenant waited until the end of November to even file her income tax. An additional payment plan would be prejudicial to the Landlord on the basis that I was not satisfied on a balance of probabilities that the Tenant would pay the Landlord as promised.
10. The previous application includes a request for an order for the payment of arrears of rent and the order requires the Tenant to make payments by specific due dates. Accordingly, in

addition to eviction, the Landlord is entitled to request an order for the payment of arrears owing.

11. The Tenant was required to pay \$15,866.00 for rent arrears, and the application filing fee in the previous order. The amount that is still owing from that order is \$15,866.00 and that amount is included in this order. This order replaces order LTB-L-017890-22.
12. Since the date of the previous order, the Tenant has failed to pay the full rent that became owing for the period from November 1, 2022 to March 7, 2023. The Tenant only paid \$1,400.00 to the Landlord since the Landlord filed their L4 application.
13. The Landlord collected a rent deposit of \$1,350.00 from the Tenant and this deposit is still being held by the Landlord.
14. Interest on the rent deposit is owing to the Tenant for the period from September 29, 2021 to March 7, 2023.
15. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenant is required to pay.
16. The Landlord is entitled to daily compensation from the day after the hearing to the date the Tenant moves out of the unit at a daily rate of \$44.92. This amount is calculated as follows: \$1,366.20 x 12, divided by 365 days.
17. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until July 31, 2023 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. Order LTB-L-017890-22 is cancelled and replaced with this order.
2. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before July 31, 2023.
3. If the unit is not vacated on or before July 31, 2023, then starting August 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after August 1, 2023.
5. The Tenant shall pay to the Landlord \$18,864.25*. This amount represents the rent owing up to March 7, 2023, and the cost of filing the application, less the rent deposit and interest the Landlord owes on the rent deposit.
6. The Tenant shall also pay to the Landlord \$44.92 per day for compensation for the use of the unit starting March 8, 2023 to the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before July 31, 2023, the Tenant will start to owe interest. This will be a simple interest calculated from August 1, 2023 at 6.00% annually on the balance outstanding.

June 29, 2023

Date Issued

Terri van Huisstede
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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on February 1, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

* Refer to the attached Summary of Calculations.

Summary of Calculation

Amount the Tenant must pay the Landlord:

Reason for amount owing	Period	Amount
Amount owing from previous order	Up to October 31, 2022	\$15,866.00
New Arrears	November 1, 2022 to March 7, 2023	\$5,779.24
New NSF cheque charges and related administration charges		\$0.00
Less the rent deposit:		-\$1,350.00
Less the amount the Tenant paid to the Landlord		-\$1,400.00
Less the interest owing on the rent deposit	September 29, 2021 to March 7, 2023	-\$30.99
Plus daily compensation owing for each day of occupation starting March 8, 2023		\$44.92 (per day)
Total the Tenant must pay the Landlord:		\$18,864.25 +\$44.92 per day starting March 8, 2023

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