



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

Citation: National Council of Jewish Women of Canada Toronto Section Foundation v
Menachem Mendel Aisenbach, 2023 ONLTB 45736

Date: 2023-06-16

File Number: LTB-L-065998-22-SA

In the matter of: 801, 3270 BATHURST ST
NORTH YORK ON M6A3A8

Between: National Council of Jewish Women of Canada Toronto Section Foundation Landlord

And

Menachem Mendel Aisenbach Tenant

National Council of Jewish Women of Canada Toronto Section Foundation ('NCJW' or the 'Landlord') applied for an order to terminate the tenancy and evict Menachem Mendel Aisenbach ('MMA' or the 'Tenant') because the Tenant failed to meet a condition specified in the order issued by the LTB on September 15, 2022 with respect to application LTB-L-011729-22 (the "Consent Order").

The Landlord's application was resolved during by order LTB-L-065998-22, issued on January 16, 2023 (the '*ex parte* Order'). The Tenant filed a motion to set aside the *ex parte* Order.

This motion to set aside was heard by videoconference on February 16, 2023.

The Tenant, the Tenant's Legal Representative, Kyle Warwick ('TTR'), and the Landlord's Representative, Sabrina Sciulli, ('LLR') attended the hearing. Bari Castor ('WIT') appeared as a witness for the Landlord.

Determinations:

1. There was no dispute that the Tenant's breached the terms of the Consent Order, which led to the issuance of the *ex parte* Order. To be clear, the breach leading to the *ex parte* Order was the Tenant's failure to pay \$6,329.63 on or before September 20, 2022.
2. The Tenant testified that the reason for breaching the Consent Order came from another issue or incident in the tenancy for which he sought certain assurances from the Landlord. The Tenant stated that he wanted the Landlord to assure him unequivocally that he would not be evicted if he paid all the amounts set out in the Consent Order. There were some past issues or incidents that were not disclosed with any specificity during the hearing, that were the centre of the Tenant's concern. There was some reference made by TTR to an

undisclosed letter by the Landlord's Director, David Russell (purportedly dated November 17, 2022), which had some bearing on the Tenant's concern, but apart from the reference being made, nothing was proffered by TTR or the Tenant.

3. Cross-examination of the Tenant produced nothing relevant for my consideration other than the Tenant testifying he was not given any indication at the L1 hearing held on September 1, 2022 (resulting in the Consent Order) that the Landlord would "abandon past issues" against the Tenant.
4. The Tenant stated outrightly that he could pay all of what he owes in "one week's time" if he were to secure the assurance he seeks.
5. The Tenant also set out his personal situation in respect of his ongoing Toronto charitable work and his health issues. If evicted, he said he will become homeless and his livelihood (life insurance business) will be impacted because he would likely lose his clientele base in the surrounding area.
6. WIT is the Landlord's senior property manager who is responsible for the rental unit building complex. She began working for the Landlord on July 1, 2022.
7. WIT confirmed the Tenant had requested a letter from the Landlord to "guarantee" all claims for past issues or incidents prior to September 2022 would be abandoned or waived. She testified she passed the request to her management who replied to her, stating the Landlord would not produce any such letter, because the Landlord does not understand what issues or incidents are to be abandoned or waived.
8. WIT testified that her predecessor (who retired) never initiated any legal proceedings against the Tenant and the only issue brought before the LTB was for arrears of rent. That matter was LTB-L-011729-22 which resulted in the Consent Order that is before me now.
9. Importantly, WIT also confirmed that she, as the Landlord's senior property manager, has no interest to pursue the Tenant for "past behaviours" or actions, whatever they may have been, other than the current matter of rent arrears. She did state that if the Tenant quite simply does not pay off his rent arrears and his rents going forward, the Landlord is left with no choice but to continue seeking termination of the tenancy.
10. In final submissions, TTR argued for the Tenant's motion to be granted, while LLR argued the motion should be denied and the stay lifted promptly.
11. TTR stated this is indeed an unusual situation, not typical of motions that usually address circumstances that are meant to explain why a breach of a conditional order happened. Here, TTR submitted the Tenant is attempting to advance his "own personal interests", which the Tenant truly believes in, and that the LTB should consider eviction only as an "avenue of last resort".
12. LLR stated the Tenant has been quite clear that he intentionally breached the Consent Order, and continues to do so, not because of not being able to pay off his arrears, but because he simply refuses to do so for some personal reasons of his own. LLR submitted

that currently the amount of rent arrears owing to February 28, 2023 has increased to \$24,109.90, plus the \$186.00 filing fee. Finally, LLR noted that TTR represented the Tenant at the September 1, 2022 hearing so that the Consent Order was arrived at in good faith, and with the Tenant having full legal representation at the time.

13. Based on the submissions from both parties, I was not persuaded by the Tenant's testimony that the surrounding circumstances were reasonable or sufficient to explain his initial breaching of the Consent Order, and certainly not the continued breaching of said order. I made this finding known to the parties present, with brief reasons being provided - as more fully given below.
14. The Tenant did not identify what past issues or incidents he was specifically seeking to receive assurances on, and there was no evidence led to support his vague references to these past issues or incidents. This means I was unable to understand what his concerns were in respect of past issues or incidents before September 2022. I must note that my inability to understand did not come from any language or communication barrier. The Tenant is a well-spoken, articulate gentleman.
15. I also note that from what LLR and WIT submitted, the Landlord has also been unable to understand the Tenant's concerns. And certainly, TTR was unable at this hearing to articulate the Tenant's concerns in any more meaningful way.
16. I found WIT's testimony to be much more useful, and relevant, for this motion. WIT testified that the Landlord has not pursued the Tenant for anything other than rent arrears, that the Landlord is only concerned with collecting past arrears under this tenancy and that WIT, in her capacity as senior property manager, has no interest to pursue the Tenant for anything that might have happened in the past. In my view, this is a reasonable general assurance that if the Tenant pays his arrears, he is certainly able to continue his tenancy without further ado.
17. When the parties were heard by the LTB on September 1, 2022, I note the Tenant was duly represented by counsel (i.e. TTR) in the discussions leading to the parties' request for an order on consent. I am of the view that the Tenant understood, or ought to have understood, the nature and consequences of the terms he sought under the consent arrangement.
18. The Tenant, in my view, has deliberately withheld paying rents, almost in ransom fashion, intending to somehow secure something that should have been secured at the September 1, 2022 hearing, or perhaps separately. The scope of this motion hearing is a rather narrow one, as set out under subsection 78(11) of the *Residential Tenancies Act, 2006*. The Tenant always retains the right to assert or defend his rights under the tenancy, and counsel can certainly advise and guide him in respect of these options or avenues.
19. On the other hand, I agreed with TTR that eviction should be a "remedy of last resort". The Divisional Court has affirmed this a number of times in the past – two quick citations would be: *Britannia Glen Co-operative Homes v. Singh*, cited in *Toronto Community Housing Corp. v. Thompson*, [2003] O.R.H.T.D. No. 145); and *Peel Non-Profit Housing Corp v. McNamara*, 1990 CanLII 6660 (ON SC), [1990] O.J. No. 1338 (Dist. Ct.).

20. Toward this end, I directed the parties to make post-hearing submissions by a deadline that I set for them. While I was not satisfied that the motion should be granted, I wanted to give the Tenant one last chance to save his tenancy by paying off the arrears that he himself said he could pay in “one week’s time”. I set a reasonable deadline for the Tenant to pay the Landlord the arrears owing and for the parties to make their submissions. Specifically, LLR and TTR were directed to submit to the LTB written confirmation whether the Tenant paid off his arrears as directed.
21. I made it clear that if the Tenant complies by paying the arrears owing, the Tenant’s motion would be granted and further, the Consent Order would likely be cancelled. If the Tenant fails to comply, then I indicated I would deny the motion and lift the stay placed on the *ex parte* Order with a short delay, taking into account the Tenant’s circumstances surrounding termination.
22. I confirm that both LLR and TTR made post-hearing submissions. LLR confirmed that the Tenant made no payment whatsoever and TTR confirmed the same to be true. TTR also stated that “[the Tenant] *advises that he remains acutely concerned that if he were to make payments, the landlord could subsequently file an eviction application against him for past incidents.*”
23. Based on the post-hearing submissions, I find the Tenant failed to comply with the direction given during the February 16, 2023 hearing. Consequently, as the Tenant was unable to persuade me on the merits of his motion to set aside, his motion is denied. The stay on the *ex parte* Order will be lifted on June 30, 2023. In effect, the late issuance of this ‘set aside’ order has actually given the Tenant an additional four months before the *ex parte* Order can be enforced.

It is ordered that:

1. The motion to set aside Order LTB-L-065998-22, issued on January 16, 2023, is denied.
2. The stay of Order LTB-L-065998-22 is lifted on June 30, 2023.
3. Order LTB-L-011729-22, issued on September 15, 2022, is unchanged.

June 16, 2023
Date Issued

 Alex Brkic
 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.