



Order under Section 78 Residential Tenancies Act, 2006

Citation: Del Condominium Rentals inc. v Tai-Sean Shoy, 2023 ONLTB 44353

Date: 2023-06-15

File Number: LTB-L-005498-23-SA

In the matter of: 1907, 6 EVA RD
ETOBICOKE ON M9C0B1

Between: Del Condominium Rentals inc. Landlord

And

Ashton Peters and Tai-Sean Shoy Tenants

Del Condominium Rentals inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Ashton Peters and Tai-Sean Shoy (the 'Tenants') because the Tenants breached a condition in consent order TSL-24865-21, issued on February 28, 2022.

The Landlord's application was resolved by order LTB-L-005498-23, issued on March 29, 2023. This order was issued without a hearing being held.

The Tenants filed a motion to set aside order LTB-L-005498-23.

The motion was heard by videoconference on April 24, 2023.

The Landlord's legal representative, S. Fatima, and the Tenant, A. Peters, attended the hearing.

Determinations:

1. The Tenant, A. Peters (AP), admits that the Tenants breached the consent order of February 2022 by failing to pay the January rent, and the \$600.00 payment towards the arrears by the first day of January 2023.
2. AP said that the other Tenant, T. Shoy (TS) is his older brother, and co-Tenant. AP said that TS vacated the rental unit, and up until that time TS was the person responsible for paying the rent. AP said that he paid his portion of the rent to TS, who then remitted it to the Landlord. AP said that he trusted TS to pay, even after the original hearing in February 2022, because TS is his older brother and they have a good relationship. AP said that he has made his own payments to the Landlord since TS left.
3. AP said that he has repeatedly asked the Landlord for an updated ledger, and the Landlord has failed to respond to him.
4. AP said that he is working at a distribution centre, earning about \$3,256.00 per month, and he has a roommate who pays \$1,100.00 per month towards the rent. AP said that he

continued to pay his portion to TS, and he realizes now that he has to personally oversee payments to the Landlord.

5. The Landlord submits that AP has always been aware of the total arrears owed, and he was aware of it even before the Landlord filed their L4 application. The Landlord submits that the arrears are now almost triple the amount they were at the hearing in February 2022 when the parties agreed a payment plan.

Reasons and Analysis:

6. AP said that he was unaware of the arrears owed, and he was unaware that TS was failing to pay the rent, until after TS left. AP said that he has a roommate who is paying \$1,100.00 towards the rent, yet the Landlord's ledger shows only NSF payments of the rent since December 2022. There is one rent payment that appears to have cleared during that period, paid on March 14, 2023, which was 14 days after the rent was due. Other than that one rent payment, the Tenants have only paid \$500.00 to the Landlord since November 2022. The ledger also shows that the Tenants were not following the payment plan prior to that time. Therefore, even if it were true that AP paid his portion of the rent to TS, and TS failed to pay the rent to the Landlord, AP provided no explanation at all for why he did not pay at least his roommate's portion of the rent to the Landlord. AP is a joint Tenant with TS, and he is therefore responsible for paying the rent if TS fails to pay it. AP should have been, vigilant that the rent was paid after the hearing for the Landlord's L1 application in February 2022. AP was not vigilant, and he continued to permit the arrears to accrue, even after he received the Landlord's ex parte eviction order issued on March 29, 2023. He has not yet paid the rent for April 2023. In any case, if AP were able to pay the rent in full and on time going forward, his proposed payment plan for the substantial arrears would take 4 ½ years to complete. AP's income does not support an ability to pay \$300.00 in addition to the rent, and the amount of time proposed to complete the payment plan is prejudicial to the Landlord.
7. After considering all of the circumstances mentioned above, I find that it would be unfair to set aside order LTB-L-005498-23. In particular, the Tenants do not have sufficient income to pay the rent in full and on time going forward, the arrears are substantial and have increased substantially since the breach, the Tenants have made almost no payments towards the rent in over 5 months, and the payment plan proposed would take too long, and its success is not supported by the evidence.

It is ordered that:

1. The motion to set aside Order LTB-L-005498-23, issued on March 29, 2023, is denied.
2. The stay of Order LTB-L-005498-23, is lifted immediately.
3. Order LTB-L-005498-23 is unchanged.

June 15, 2023
Date Issued

Nancy Morris
 Member, Landlord and Tenant Board

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

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