



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

Citation: Fase Holdings Inc. v Carrie Cesar (Pacheco), 2023 ONLTB 37132

Date: 2023-05-18 **File Number:**
LTB-L-000807-23-SA

In the matter of: G-195 Mohawk Street
Brantford, ON N3S 2X1

Between: Fase Holdings Inc. Landlord

And

Carrie Cesar (Pacheco) Tenant

Fase Holdings Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Carrie Cesar (Pacheco) (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 mediated settlement signed by the parties on April 5, 2022 with respect to application SOL-26312-21.

The Landlord's application was resolved by order LTB-L-000807-23, issued on March 20, 2023. The Tenant filed a motion to set aside order LTB-L-000807-23 on March 23, 2023.

The motion was heard by videoconference on April 17, 2023.

The Landlord's agent Patricia White ('PW'), the Landlord's Legal Representative Kurt Shmuir and the Tenant attended the hearing. The Tenant met with Tenant Duty Counsel prior to the hearing.

Determinations:

1. The mediated settlement 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 if the Tenant does not meet certain condition(s) in the mediated settlement. This application was filed within 30 days of the breach.

2. It is uncontested that the Tenant breached a condition of order SOL-26312-21 by failing to pay to the Landlord \$275.00 by December 30, 2022. The payment was made on January 3, 2023. Further, the Tenant acknowledges that she failed to pay to the Landlord \$275.00 by January 30, 2023. The payment was made on January 31, 2023.

File Number: LTB-L-000807-23-SA

3. The Tenant testified that on December 30, 2022, she worked a day shift and was unable to get to a bank to deposit the \$275.00 into her account. She testified that once she deposits the money into her account, it is typically subject to a 5-day holding period and that due to

the holidays she waited until January 3, 2023 to make the payment when the bank had reopened.

4. I note that December 30, 2022 was a Friday, while the 31st, 1st and 2nd were Saturday, Sunday and Monday. Monday, January 2, 2023 would have been recognized as New Year's Day.
5. The Tenant testified that the Landlord was made aware of the late payment. She testified that she advised an agent of the Landlord verbally of this.
6. The Tenant further testified that she was unsure why her payment scheduled for January 30, 2023 was late but testified that she likely got home late from work and submitted it the next day.
7. PW testified that the Landlord never heard from the Tenant about a late payment and would have never authorized a late payment in these circumstances.

Section 78(11)(b) Considerations

8. As the Tenant filed a motion to set aside the Landlord's application, I must have regard to all of the circumstances in order to determine whether or not it would be unfair to set aside the order.
9. Having considered the evidence of all of the parties, I do find that it would be unfair to grant the Landlord's application in this case.
10. The reasons for the denial of the Landlord's application are as follows:
11. Order SOL-26312-21 issued on April 5, 2022 ordered the Tenant to pay \$275.00 on the 30th of each month starting April 30, 2022, until December 30, 2023. The Tenant was in compliance with this order for 8 months before the breach occurred, which demonstrates to me that the Tenant has been cognizant of her requirement to pay her rent and arrears payments and has been able to keep up with the payments for a significant amount of time. The Tenant is currently up to date with her rent and arrears payments.

12. Further, the Tenant has provided a reasonable explanation for the December 30, 2022 breach. The Tenant was required to work a day shift on Friday, December 30, 2022. She did not know she would be working that shift until that date and as such, was unable to get to a bank to make the payment. The bank was closed Saturday, Sunday and Monday, which led to the late payment.
13. Further, while the Tenant was also late by one day in making her January 30, 2023 arrears payment, I find this breach to be minimal in the circumstances.

File Number: LTB-L-000807-23-SA

14. While I certainly agree with the Landlord's Legal Representatives that the Tenant could have been more responsible in ensuring that the payment was made by the 30th for December and January, I am not satisfied those two breaches totaling 4 total days late with her arrears payment due to extenuating circumstances after nearly a year of compliance is a valid reason to evict the Tenant in these circumstances.

It is ordered that:

15. The motion to set aside order LTB-L-000807-23, issued on March 20, 2023, is granted.
16. Order LTB-L-000807-23 is dismissed.
17. Order SOL-26312-21 remains in force.

May 18, 2023

Date Issued

Jagger Benham

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.