



**Order under Subsection 74(14)
Residential Tenancies Act, 2006**

Citation: PREMAX Management Limited v Manonga, 2023 ONLTB 42124

Date: 2023-05-07 **File Number:**
LTB-L-073976-22-VO

In the matter of: 1205, 3400 Eglinton Ave E
Toronto Ontario M1J2H8

Between: PREMAX Management Limited

Landlord

And

Steve K Manonga

Tenant

Steve K Manonga (the 'Tenant') filed a motion to set aside order LTB-L-073976-22 because, before the eviction order was enforced, the Tenant paid the amount required under subsection 74(11) of the *Residential Tenancies Act, 2006* (the 'Act') to void the order.

This motion was heard by videoconference on March 8, 2023. The Landlord's agent M. Premje, Landlord's legal representative D. Ciobotaru, the Tenant and Tenants' legal representative K. LaForest attended the hearing.

Determinations:

1. The Tenant has not previously made a motion under subsection 74(11) of the Act to set aside an eviction order during this tenancy.
2. The Tenant did not void order LTB-L-073976-22, issued December 6, 2022, before it was enforceable. The order provided the Tenant with the option to void the Order on or before December 31, 2022, or on or before January 15, 2023. The Landlord filed order LTB-L-073976-22 with the Sheriff to evict the Tenant on January 17, 2023, and on that date the Tenant still owed arrears of rent.
3. However, on or around February 8, 2023, the Tenant paid a total of \$17,851.88 to the Landlord. The amount paid represents all the rent that was in arrears under the tenancy agreement, all additional rent that would have been due under the tenancy agreement up to

February 28, 2023, all NSF and related administration fees the Landlord incurred and the filing fee for this application. The Landlord acknowledged the receipt of full payment by the Tenant.

4. After making all of the payments required to the Landlord, including the sheriff fee, the Tenant filed his motion under subsection 74(11) to set aside the Order on February 10, 2023. Pursuant to subsection 74(13), there is an automatic stay upon the acceptance of the motion by the Board.
5. The following business day, February 13, 2023, a Member of the Board issued an endorsement on informing the parties of the automatic stay on the enforcement of order LTB-L-073976-22 and ordering the matter to a hearing.
6. The Board sent the notice of hearing and stay of the order to the Toronto Sheriff by email at 3:08 pm on February 14, 2023,.
7. The Board's records indicated that it sent the parties the notice of hearing and stay of the order by email at 3:12 pm on February 14, 2023.
8. Unfortunately, the Sheriff had already executed the enforcement of order LTB-L-073976-22 on February 14, 2023 at 2:00 pm.
9. The Landlord's legal representative testified that the notice of hearing and stay of the order was not received by his office email until later in the day on February 15, 2023. The Tenants' legal representative did not dispute this and agreed that their office also received the notice and stay on February 15, 2023.
10. The Landlord's agent M. Premje is the director of the Landlord Corporation. He testified that new tenants occupied the unit on February 15, 2023. He testified that he has a long wait list and the next qualified applicants took immediate possession of the unit. He testified that the locks were changed, Tenant's possessions removed and stored, the unit was cleaned and possession was given to the new occupants the following day.
11. In an interim order issued on June 14, 2023, the Landlord was directed to produce a copy of the lease referenced during the hearing for the new occupants who allegedly moved into the unit on February 15, 2023. The Landlord complied with the order, providing a Standard lease agreement for the rental unit in question, indicating a lease term commencing March 1, 2023 and ending February 29, 2024. The lease also indicated that the occupants moved into the unit on February 15, 2023, with a pro-rated amount of rent payable for the period February 15 – 28, 2023.
12. In responding submissions, the Tenants' legal representative challenged the validity of the lease, because the lease term did not begin on February 15, 2023 as asserted by the Landlord at the hearing. He also argued that the occupancy date of February 15, 2023 could have been added to the document after the fact, thereby fabricating information on the document. He also argued that the same penmanship was used for the date written by both Landlord and tenant on the signature page, questioning the authenticity of the document.
13. He further argued that the Landlord's conduct is an abuse of process because a) it failed to check the LTB portal for updates as it relates to the Tenant's motion and any orders, stays,

etc. before pursuing the eviction; and b) the Landlord re-rented the unit in less than 24 hours after the Tenant was evicted, thus prohibiting the Tenant from being put back into possession of the unit.

14. The proximity of the Tenant's motion being filed and the execution of the eviction are very unfortunate. There was in fact a stay in place when the Sheriff enforced the eviction, however, the enforcement office was not in receipt of the stay until after the eviction had been executed.
15. I find the Landlord's pursuit of the eviction and immediate re-renting of the unit to be an abuse of process in these circumstances. Approximately six days prior to the Sheriff enforcing the order, the Landlord received full payment of all arrears of rent owing by the Tenant, and the Landlord's fee they incurred for filing the order with the Sheriff. As a result, the Landlord knew or ought to have known that the Tenant intended to take the steps necessary to void the order and continue the tenancy. Based on this knowledge, the Landlord had a duty to take reasonable steps to determine if a stay was in place following the Tenant's full payment. As the full payment was made 6 days prior to the eviction, the Landlord had ample time to make the necessary queries to determine the Tenant's intentions and whether a stay was in place. There was no evidence that the Landlord did anything to determine the status of the order. It was an abuse of process for the Landlord to proceed with the eviction having received full payment from the Tenant and then fail to take any reasonable steps to ascertain whether there was a stay in place.
16. Further, I do not find credible the Landlord's assertion that new tenants were in possession of the unit at the time of the receipt of the Board's notice of hearing and stay of the order on February 15, 2023. The new lease commenced on March 1, 2023 for a one-year period until February 29, 2024. While the lease also references a move-in date of February 15, 2023, I am not satisfied that this is a true representation of the circumstances. I find that it is unlikely that the Landlord conducted the eviction, removed and stored all of the Tenant's possessions, cleaned the unit, entered into a new lease agreement and gave possession to new tenants within less than 24 hours. I find on a balance of probabilities that the new tenancy with the new tenants commenced on March 1, 2023, and the Landlord gave those new tenants the ability to occupy the unit on March 1, 2023, very possibly for the purpose of frustrating the Tenant's right to reoccupy the rental unit. For the reasons given, I find the Landlord's conduct an abuse of process.
17. The only remedy sought by the Tenant in this motion is an order reinstating the Tenant in the rental unit. But for the Landlord's abuse of process, the Tenant would be able to return to the unit. However, I am unable to grant the requested remedy because of the new tenancy already in place. Pursuant to subsection 37(1) of the Act, once a tenancy has been put in place, it can only be terminated in accordance with the Act.
18. Section 23(1) of the *Statutory Power Procedures Act* (SPPA) provides that the LTB may make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes.
19. I have no jurisdiction to order the Tenant back in possession of the unit given that the rental unit has already been re-rented. However, I elect to exercise my discretionary power under

Section 23(1) of the *SPPA* to order the Landlord to give the Tenant possession of a comparable unit in the same residential complex, or if no such unit is available, in the closest residential complex owned or controlled by this Landlord. If the Landlord fails to comply with this order, the Tenant may seek relief and remedies in his Tenants Rights application, which has been filed with the Board but has not been scheduled for a hearing as of yet.

It is ordered that:

1. The Tenant's motion is granted.
2. Order LTB-L-073976-22 issued December 6, 2022 is void and cannot be enforced by the Landlord.
3. On or before July 15, 2023, the Landlord shall give possession of a comparable unit to the Tenant in the same residential complex, or if no such unit is available, in the closest residential complex owned or controlled by this Landlord.

July 5, 2023

Date Issued

Donna Adams

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.