

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

Citation: Domenic Gasparro v Stephanie Trieu, 2023 ONLTB 34079

Date: 2023-05-05

File Number: LTB-L-001530-23

In the matter of: 254 RUSSET WAY
WOODBIDGE ON L4L5C1

Between: Domenic Gasparro Landlord

And

Stephanie Trieu Tenant

Domenic Gasparro (the 'Landlord') applied for an order to terminate the tenancy and evict Stephanie Trieu (the 'Tenant') because the Tenant failed to meet a condition specified in the mediated settlement agreed to by the parties, order issued on November 22, 2022 with respect to application LTB-L-022054-22.

A hearing was held to consider this application. This application was heard by videoconference on April 17, 2023.

Only the Landlord attended the hearing.

As of 9:44 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the Board. The Tenant submitted a request to reschedule the hearing on April 12, 2023 indicating that she would be out of the country and that verbal consent had been obtained from the Landlord to reschedule. The Landlord submitted that he had not provided a verbal consent to reschedule the hearing, only becoming aware of the request when he logged into the Tribunals Ontario Portal (TOP) the evening prior to the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. The mediated settlement provides that the Landlord can apply to the Board 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.

The breach

2. I find that the Tenant has not met the following condition(s) specified in mediated settlement. Specifically, the Tenant was required to pay \$1,270.00, the lawful rent for the month of November on or before November 15, 2022, the Landlord submitted that only \$900.00 was received. The second part of the order required that the Tenant pay \$1,000.00 towards rental arrears on or before November 25, 2022, the Landlord submitted that \$900.00 was received on November 29, 2022. Lastly, the final payment of arrears of \$956.00 was required to be paid on or before December 9, 2022, the Landlord submitted that this amount was not paid entirely. These are the conditions that were not met within the 30 days prior to the L4 Application being filed.

Arrears owing

3. The previous application includes a request for an order for the payment of arrears of rent and the mediated settlement 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.
4. The Tenant was ordered to pay \$1,956.00 for rent arrears and application filing fee, and \$1,270.00 for November 15th, 2022 lawful rent in the previous mediated settlement. The total payable lawful rent and arrears arising from that order was \$3,226.00. The Tenant paid \$1,800.00. The amount that is still owing from that mediated settlement is \$1,426.00 and that amount is included in this order. This order replaces order LTB-0022054-22.
5. The Tenant paid \$1,270, the lawful rent for December 15, 2022 on December 12, 2022. This was accepted as an on time payment as per the agreed to facts in the order where it stated that December rent is payable on or before December 31, 2022.
6. Since the date of the previous mediated settlement, the Tenant has failed to pay the full rent that became owing for the period from January 15, 2023 the day after the rental period(s) covered by the previous mediated settlement to April 17, 2023.
7. The Landlord submitted that the Tenant made a lump sum payment on or about April 15, 2023 in the amount of \$2,000.00.
8. The Landlord did not collect a rent deposit.

Daily compensation

9. The Landlord is entitled to daily compensation from starting April 18, 2023 until the date the Tenant moves out of the unit at a daily rate of \$41.75. This amount is calculated as follows: monthly rent x 12 months, divided by 365 days.
10. The Landlord submitted that he has attempted to work with the Tenant as per the last mediated agreement and rent continues to be paid late or not paid at all, posing a financial hardship for the landlord. The Landlord has expressed that he has a young and growing family with his wife to be on a impending maternity leave, further impacting their

ability to maintain the costs of the rental unit given the history of non-payment of rent by the Tenant.

Section 83 considerations

11. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenant failed to attend the hearing to provide evidence of their circumstances and the Landlord testified that they are unaware of any circumstances that would cause me to delay or deny an eviction.
12. In arriving at my decision, I take into consideration that the Tenant, while provided a prior chance to preserve her tenancy has not been able to demonstrate an ability to make payments as agreed to by way of the prior mediated order. I also take into consideration, the lack of demonstrated judgment as it pertains to the Board's process. While she submitted a request to reschedule, not having any confirmation from the Board that the matter was in fact adjourned raises the question of the Tenant making assumptions that the matter would not be proceeding. What the Tenant ought to have done is send someone on her behalf to request an adjournment at the time of hearing. Lastly, the fact that the Tenant made submissions of air travel and a pre-planned trip to attend a friends wedding for a one (1) week duration as the reason for the rescheduling request, further raises questions as to the Tenant's judgment as it comes to placing the tenure of her tenancy at risk for non-payment of rent yet electing to pursue what may be characterized as leisure travel plans.
13. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. Order LTB-L-022054-22 is cancelled.
2. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before May 16, 2023.
3. If the unit is not vacated on or before May 16, 2023, then starting May 17, 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 May 17, 2023.
5. The Tenant shall pay to the Landlord \$3,945.80*. This amount represents the rent owing up to April 17, 2023.

6. The Tenant shall also pay to the Landlord \$41.75 per day for compensation for the use of the unit starting April 18, 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 May 16, 2023 the Tenant will start to owe interest. This will be simple interest calculated from May 17, 2023 at 6% annually on the balance outstanding.

May 5, 2023

Date Issued

15 Grosvenor Street, Ground
Floor,
Toronto ON M7A 2G6

Alicia Johnson

Member, Landlord and Tenant Board

The Tenant has until May 15, 2023 to file a motion with the LTB to set aside the order under s. 78(9) of the Act. If the tenant files the motion by May 15, 2023 the order will be stayed and the LTB will schedule a hearing.

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 November 15, 2023 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 CALCULATIONS

File Number: LTB-L-001530-23

Amount the Tenant must pay the Landlord:

Reason for amount owing	Period	Amount
Amount of arrears owing from previous mediated settlement	Up to January 14, 2023	\$1,426.00
Amount of compensation for damages owing from previous mediated settlement		\$0
New Arrears	January 15, 2023 to April 17, 2023 to the hearing date	\$2,519.80
New NSF cheque charges and related administration charges		\$0
		\$0
Less the interest owing on the rent deposit		\$0
Plus daily compensation owing for each day of occupation starting April 18, 2023		\$41.75 (per day)

Total the Tenant must pay the Landlord:

**\$3,945.80 + 41.75 per day
starting April 18, 2023**