



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

**Citation:** Hillhurst Park Apartments v Kruger, 2023 ONLTB 32866

**Date:** 2023-04-25 **File Number:**  
LTB-L-003564-23-SA

**In the matter of:** 907, 2700 BATHURST ST  
NORTH YORK ON M6B2Z7

**Between:** Hillhurst Park Apartments Landlord

**And**

Adina Kruger and Baruch Weinles Tenants

Hillhurst Park Apartments (the 'Landlord') applied for an order to terminate the tenancy and evict Adina Kruger and Baruch Weinles (the 'Tenants') because the Tenants failed to meet a condition specified in the mediated settlement agreed to by the parties on October 24, 2022 with respect to application LTB-L-017650-22.

The Landlord's application was resolved by order LTB-L-003564-23, issued on March 14, 2023. This order was issued without a hearing being held.

The Tenants filed a motion to set aside order LTB-L-003564-23.

This motion was heard in videoconference (VC#101) at 1:00 p.m. on April 12, 2023.

Only the Landlord's Representative David Ciubotaru attended the hearing.

As of 1:46 p.m., the Tenants were not present or represented at the hearing although properly served with notice of this hearing by the Board. There was no record of a request to adjourn the hearing.

**Determinations:**

1. Since the Tenants did not appear at the hearing to support the Tenants' motion, I find that this motion has been abandoned.

2. The Landlord asked that the Tenants be required to pay costs to the Board and the Landlord. In accordance with Rule 23 of the Landlord and Tenant Board's Rules of Practice the Board's Interpretation Guideline 3, a Member may order costs where the conduct of the party was unreasonable. Conduct is unreasonable if it causes undue expense or delay.

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3. This motion originated with the Landlord's application for rental arrears and eviction because the Tenants did not pay rent the Tenants owe. The matter was mediated on October 24, 2022. The order on consent required the Tenants to repay rental arrears of \$22,999.00 for unpaid rent up October 31, 2022 and pay rent on time until the arrears of rent are all paid.
4. On January 11, 2023, the Landlord filed the ex parte application (L4), which was granted on the basis that the Tenants had not paid \$4,000.00 representing a part payment towards rental arrears on November 30, 2022 and did not pay rent on time for December 1, 2022 as per the consent order. In the application and at the hearing, the Landlord's evidence is that there have been no payments since the order was issued on November 18, 2023.
5. On March 24, 2023, the Tenants filed the set aside motion.
6. The Tenants did not attend the hearing on April 12, 2023. There is no record of any contact from the Tenants to the Landlord, the Landlord's representative, or to the Board after the communications on March 24, 2023. In the result, the Landlord's representative prepared for and attended the hearing on April 12, 2023.
7. It was submitted that the Tenants applied for the motion to set aside as a means to protract the proceedings and without having any intent to appear. Since the last order was issued the current rental arrears as of the April 2023 are \$36,963.29, that the Landlord has been prejudiced through the additional rental arrears arising and through the incurred costs in preparing for the motion.
8. I find that the Tenants' conduct in the proceedings was unreasonable in that it caused undue expense and delay. The request for costs shall be granted.
9. The Landlord asked for \$250.00 for preparation time and attendance at the hearing. In accordance with Rule 23, where the Board orders a party to pay representation/preparation fees, these fees shall not exceed \$100 per hour for the services of a paid agent or legal representative.
10. I find that the \$200.00 is reasonable amount the Landlord has incurred as a result of retaining representation to attendant on their behalf and for the preparation costs in

responding to the Tenants motion to set aside. While I agree with the submissions that the Tenants have also taken the Boards limited time and have disrespected the process, an order for a party to pay both the representation/ preparation fees of another party and to pay the Board's costs in the same case would only be made in exceptional circumstances, I do not believe this is the case as before me.

11. As a result, the Tenants shall be required to pay only the costs of \$200.00 to the Landlord.

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**It is ordered that:**

1. The motion to set aside Order LTB-L-003564-23, issued on March 14, 2023, is dismissed.
2. The stay of order LTB-L-003564-23 is lifted.
3. On or before May 6, 2023, the Tenants shall pay to the Landlord \$200.00 for representation/ preparation costs.
4. If the Tenants do not pay the Landlord the full amount owing in accordance with paragraph 11 of this order, the Tenants will start to owe interest. This will be simple interest calculated from May 7, 2023 at 6.00% annually on the balance outstanding.

**April 25, 2023**

**Date Issued**

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Alicia Johnson

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.