



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

**Citation:** Durham Region Non-Profit Housing Corp. v Tait, 2023 ONLTB 30855

**Date:** 2023-04-14

**File Number:** LTB-L-075100-22-SA

**In the matter of:** 219-100 McKay Street  
Cannington, ON L0E 1E0

**Between:** Durham Region Non-Profit Housing Corp. Landlord

**And**

William Tait Tenant

Durham Region Non-Profit Housing Corp. (the 'Landlord') applied for an order to terminate the tenancy and evict William Tait (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 with respect to application LTB-L-003303-21.

The Landlord's application was resolved by order LTB-L-075100-22, issued on January 27, 2023.

On February 3, 2023, the Tenant filed a motion to set aside order LTB-L-075100-22.

This motion was heard by videoconference on March 8, 2023.

The Landlord's Legal Representative Arlene Herscheid, the Tenant and the Tenant's Legal Representative Ashley Somerville attended the hearing.

### **Determinations:**

1. There was no dispute that the Tenant failed to make a rent payment of \$931.00 on October 1, 2022. The Tenant paid \$506.00 and still owed \$425.00.
2. There was also no dispute that the Tenant failed to make an arrears payment of \$275.00 on October 1, 2022.
3. The Tenant testified that his car had been stolen a year and a half ago and his unit had been broken into which set him back financially.
4. Further, the Tenant testified that he is employed with Amazon and had recently started back to work after having been off due to a work place injury. The Tenant testified that he anticipates receiving an insurance settlement in which he plans on repaying the arrears in their entirety within the next few months.

5. The Tenant testified that he would like to keep the unit as he has been in the unit since July of 2020 and the unit is rent geared-to-income. The Tenant testified that his rent is \$425.00 but will likely increase once he goes back to work. He offered to repay the arrears by way of a payment of \$700.00 per month until the arrears are paid in full.
6. The Tenant was required to pay \$4,912.00 for rent arrears and the application filing fee in the previous mediated settlement. The amount that is still owing from that mediated settlement is \$3,812.00 and that amount is included in this order. The total amount the Tenant owed to the date of the order is \$6,107.00.
7. The Landlord opposed the payment plan and ask that the motion to set aside be denied on the basis that the Tenant is unable to afford the unit and has defaulted on three previous payment plans.
8. Section 78(11) of the *Residential Tenancies Act, 2006* (the 'Act') states that the order be set aside only if the Board is satisfied, having regard to all the circumstances, that it would not be unfair to do so. Based on the evidence and submissions before me, I am satisfied that it would not be unfair to set aside the order in these circumstances.
9. While I understand that the Tenant was already given three other chances to comply with a payment plan, I am satisfied that the Tenant's current income and the possibility of an insurance settlement within the next few months will permit the Tenant to repay the arrears.

**It is ordered that:**

10. Order LTB-L-075100-22, issued on January 27, 2023 is set aside.
11. Order LTB-L-003303-21, issued on June 7, 2022, is cancelled and replaced by the following order.
12. The Tenant shall pay the Landlord \$6,107.00 arrears and costs as follows:
  - a) Commencing May 1, 2023, and continuing each month up to and including December 1, 2023, \$700.00 on or before the 1<sup>st</sup> of each month, respectively.
  - b) A final payment of \$507.00 to be paid on or before January 1, 2024.
13. Commencing May 1, 2023, and continuing each month up to and including January 1, 2024, the Tenant shall pay the full monthly rent no later than the first day of each of those months, respectively.
14. Section 78 of the Act applies to this order. If the Tenant fails to make any payment, the Landlord may, without notice to the Tenant, apply to the Board for an order terminating the tenancy and evicting the Tenant. The Landlord must make this application no later than 30 days after the Tenant fails to make a payment.

**April 14, 2023**  
**Date Issued**

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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.

\* Refer to the attached Summary of Calculations.

**Summary of Calculation****Amount the Tenant must pay the Landlord:**

<b>Reason for amount owing</b>	<b>Period</b>	<b>Amount</b>
Amount owing from previous mediated settlement	Up to May 31, 2022	\$3,812.00
New Arrears	October 1, 2022 to April 14, 2023	\$1,870.00
New NSF cheque charges and related administration charges		\$0.00
Plus daily compensation owing for each day of occupation starting April 15, 2023		\$13.97 (per day)
<b>Total the Tenant must pay the Landlord:</b>		<b>\$6,107.00 + \$13.97 per day starting April 15, 2023</b>

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