



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

File Number: LTB-L-077556-22-SA

In the matter of: 2971 GRANDVIEW STREET
WINDSOR, ON N8T 2L5

Between: WINDSOR ESSEX COMMUNITY HOUSING CORPORATION Landlord

And

MARIE VACHON Tenant

WINDSOR ESSEX COMMUNITY HOUSING CORPORATION (the 'Landlord') applied for an order to terminate the tenancy and evict MARIE VACHON (the 'Tenant') because the Tenant failed to meet a condition specified in the order issued by the Board on March 17, 2022 with respect to application SWL-56809-21.

The Landlord's application was resolved by order LTB-L-077556-22 issued on February 7, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-077556-22.

This motion was heard via video conference on March 13, 2023.

The Landlord's Legal Representative Cameron Parrott and the Tenant attended the hearing.

Determinations:

1. The Tenant's set aside motion alleges that she has been working with several people for additional funding and has been paying "\$220.00 per month every month since the hearing". The Tenant denies breaching the order and states that she has not missed any payments but provided no proof to substantiate her payments.
2. The Tenant stated that she might have paid the November, 2022 rent late and then later stated that she was only paying \$219.00 per month to the Landlord. The Tenant states that she is not paying rent to the Landlord because while she is working, she is only earning \$1,000.00 per month and she cannot afford to pay the rent of \$756.00 per month.
3. The Landlord's Legal Representative submits that the Landlord received two payments from the Tenant in October, 2022 totalling \$654.00, which were applied to rent but the

rent is \$756.00 per month. The Landlord's Legal Representative submits that the Tenant has not paid full rent since November 14, 2022.

4. The Landlord's Legal Representative states that they are opposed to the setting aside of the *ex-parte* order as the tenancy is unfortunately not sustainable. The arrears owing are now \$9,514.00. The Landlord's Legal Representative acknowledged that the Tenant is working with the Property Manager regarding rent arrears but the situation has been going on for a year with the arrears continuing to grow.
5. The Landlord's Legal Representative submits that the Tenant's promises are disappointing and her proposal is not realistic, the Tenant has been attempting to have her rent reduced for some time and requests that the motion be denied.
6. This motion is brought pursuant to subsection 78(11) of the *Act*. The first issue for the Board to determine is whether or not there was a breach of order SWL-56809-21 issued March 17, 2022. Based on the evidence and submissions before me, I am satisfied that the Tenant breached the order. The Tenant failed to pay the lawful rent on time.
7. As I am satisfied that the Tenant breached the conditional order, the only issue before me is whether I am "satisfied, having regard to all the circumstances, that it would be unfair to set aside the order". For the following reasons, I find that it would be unfair to set aside the order.
8. The Board's expectation is that orders on consent will be complied with by the parties. The purpose of subsection 78(11)(b) of the *Residential Tenancies Act, 2006* is to provide for the possibility of relief from eviction where there has been a breach of a mediated agreement or order but there are extenuating circumstances to consider. The Board is usually interested in knowing whether or not the breach was unavoidable, or a result of events beyond the tenant's control. It is also interested in whether or not the tenancy is viable as there is no point in continuing a tenancy where future breaches are inevitable.
9. Since the issuance of the order, the arrears have only increased from \$7,945.00 to \$9,514.00. While the Tenant states that she has been working with supports to adjust the rent, there was no documentation provided to substantiate those efforts and there is no determination that she will receive any monies from those organizations.
10. Based on a close examination of the Tenant's monthly income and expenses, I am not satisfied that the Tenant cannot continue to afford living in the rental unit. In fact, based on the Tenant's description of her monthly income and the amount of her expenses, I am not satisfied that the Tenant is capable of paying her rent and her arrears on time and in full. Based on the evidence and submissions before me, I am not satisfied that this tenancy is viable.
11. For this reason, the Tenant's motion to set aside the eviction order must be denied.

The lifting of the stay

12. As I am satisfied that the Tenant's motion must be denied, the only remaining issue is when to lift the stay.
13. The Tenant says that she is not sure if she could move in with her parents and has a son who stays with her one week per month however, her son is 23 years old. The Tenant has not paid her rent on time for several months, she cannot afford to live in the rental unit and it appears that this situation is not expected to change in the near future. It would be unfair to the Landlord to allow this tenancy to continue however, I find that given the circumstances, it would be fair to allow the Tenant three weeks to find alternate accommodations. It is anticipated that this will provide the Tenant with time to receive some funds, make arrangements to vacate the rental unit and will minimize any further prejudice to the Landlord. An order will issue accordingly.

It is ordered that:

1. The motion to set aside Order LTB-L-077556-22 issued on February 7, 2023, is denied.
2. The stay of order LTB-L-077556-22 is lifted on April 19, 2023.

March 29, 2023

Date Issued

**Heather Chapple
Member, Landlord
and Tenant Board**

15 Grosvenor Street, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.