



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

Citation: HAMILTON EAST KIWANIS NP HOMES INC. v BERGHEGEN, 2023 ONLTB 26284

Date: 2023-03-24 **File Number:**
LTB-L-064219-22-SA

In the matter of: UPPER, 234 GEORGE STREET
HAMILTON ONTARIO L8P1G1

Between: HAMILTON EAST KIWANIS NP HOMES Landlord
INC.

And

CYNTHIA MONTOYA
SHAUN BERGHEGEN

Tenants

Hamilton East Kiwanis NP Homes Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Cynthia Montoya and Shaun Berghegen (the 'Tenants') because the Tenants failed to meet a condition specified in the order issued by the Board on September 13, 2022, with respect to application SOL-27197-22-SA.

The Landlord's application was resolved by order LTB-L-064219-22, issued on January 12, 2023. This order was issued without a hearing being held.

The Tenants filed a motion to set aside LTB-L-064219-22.

The motion was heard by videoconference on March 7, 2023. The Tenant, Shaun Berghegen, attended the hearing on behalf of both Tenants. The Landlord's agent, Lindsay Hauser, and the Landlord's legal representative, Dale Skverekas, attended the hearing.

Determinations:

1. It was undisputed that the Tenants failed to meet a condition specified in the order issued on September 13, 2022, with respect to order SOL-27197-22-SA. The Tenants failed to pay rent arrears of \$375.00 on or by August 20, 2022. In addition, the Tenants further failed to make the payment of \$375.00 on or by September 20, 2022.

2. After considering all of the circumstances, I find that it would not be unfair to set aside order LTB0L-064219-22.
3. There was an administrative issue in August. The Tenant was relying on ODSP to make the arrears payment directly to the Landlord, however there was a mix up in the paperwork

File Number: LTB-L-064219-22-SA

and the payment for the arrears was not made to the Landlord for August or September. The Tenant has not made up these payments to date.

4. The Tenant has been approved for a housing stability benefit and the details were provided to the Landlord during the hearing through the Tenant's housing stability worker. An email was forwarded by the Tenant to the Landlord's agent during the hearing which detailed that the Tenants had been approved for the \$1,500.00 housing relief payment.
5. The payment would cover a substantial amount of arrears and in a relatively short period of time. Which the Tenant indicated should be within a month. The Tenant further requested to continue paying the \$375.00 on or by the 20th day of each month in addition to the monthly rent on the first day of each month until the arrears are paid in full. All payments including the arrears and rent are paid directly from ODSP to the Landlord.
6. The Landlord was opposed to extending the payment plan on the basis that they have already given the Tenant several chances at a payment plan and the Tenants have defaulted on all of the plans. This causes an administrative burden on the Landlord and they feel prejudiced to have to continue attending hearings regarding the rent arrears.
7. In addition to the rent arrears, the Landlord requested that the Tenant ought to pay the Landlord back for the sheriff enforcement costs of \$319.00. However, in my view, I lack the jurisdiction under section 78 of the Act to order such costs.
7. Given that the payment of \$1,500.00 is assured by the housing stability fund and the other payments of rent and arrears are paid directly by ODSP to the Landlord, I find that it would not be unfair to set aside the order and consider an additional payment plan.

It is ordered that:

1. Order LTB-L-064219-22 is set aside.
2. Order SOL-27197-22-SA is cancelled and replaced by the following order.
3. The Tenants shall pay to the Landlord \$2,580.00 for arrears of rent up to March 31, 2023 and costs.

4. The Tenants shall pay to the Landlord the amount set out in paragraph 3 in accordance with the following schedule:
- a) \$375.00 on or by April 20, 2023;
 - b) \$375.00 on or by May 20, 2023;
 - c) \$330.00 on or by June 20, 2023;
 - d) \$1,500.00 on or by July 20, 2023; and

File Number: LTB-L-064219-22-SA

5. The Tenants shall also pay to the Landlord new rent on time on or before the first day of each corresponding month for the period April 1, 2023 to July 31, 2023, or until the arrears are paid in full, whichever date is earliest.
6. If the Tenants fail to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenants to the Landlord pursuant to paragraph 3 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenants' breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenants and requiring that the Tenants pay any new arrears, NSF fees and related charges that became owing after March 31, 2023.

March 24, 2023

Date Issued

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.