



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

Citation: Capreit Limited Partnership v Ali, 2023 ONLTB 26180

Date: 2023-03-23 **File Number:**
LTB-L-075288-22-SA

In the matter of: 914, 4010 Lawrence Avenue East
Scarborough ON M1E2R4

Between: Capreit Limited Partnership Landlord

And

Roula Hussin Ali Tenants
Zaher Al Dine Hassan Alou

Capreit Limited Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Roula Hussin Ali and Zaher Al Dine Hassan Alou (the 'Tenants') and for an order to have the Tenants pay the rent they owe because the Tenant did not meet a condition specified in the order issued by the LTB on October 25, 2022 with respect to application LTB-L-013774-22.

This application was resolved by order LTB-L-075288-22, issued on January 27, 2023. This order was issued without a hearing being held.

The Tenants filed a motion to set aside order LTB-L-075288-22.

This motion was heard by videoconference on March 7, 2023. The Landlord's legal representatives, Jason Paine and Geoff Paine, and the Tenant, Zaher Al Dine Hassan Alou, attended the hearing. The Tenant spoke with Tenant Duty Counsel on the hearing day.

Preliminary Issue – Adjournment Request

1. At the onset of the hearing the Tenant requested an adjournment on the basis that they wanted to have an Arabic interpreter to help them understand the questions being asked of them in the hearing. The Tenant further indicated that they understood what the hearing was about and the Tenant then began engaging in evidence regarding their employment and wanting to remain in the rental unit with an additional payment plan. The Tenant

further acknowledged that he has repeatedly breached the payment plan, but that he is now getting more employment income and hopes not to have to move with his family.

2. The Landlord was opposed to the adjournment request on the basis that the arrears have continued to accrue and currently stand at over \$25,000.00 because of the Tenants ongoing reluctance to pay the rent or the arrears. The Landlord was also opposed to the

File Number: LTB-L-075288-22-SA

adjournment on the basis that the Tenant raised the same issue on the first hearing relating to the L1 application and the Tenant was able to fully participate at the first hearing and the Landlord would be greatly prejudiced by any further delay.

3. After making inquiries with the Tenant I was not satisfied that the Tenant took steps to have an interpreter available on the hearing date. I was also satisfied that the Tenant understood the reason for the hearing on the basis that they were the one that had filed the motion for the set aside and they were engaging with communicating about the rent arrears and requests to enter into another payment plan. I also found that an adjournment would be unfair to the Landlord on the basis that the Tenant admittedly had been breaching the payment plan and did not pay rent to the Landlord.

Determinations:

1. The Tenants were in possession of the rental unit as of the date of the hearing.
2. I find that the Tenants have failed to meet a condition specified in the order issued by the Board on October 25, 2022, with respect to application LTB-L-013774-22. Namely, that the Tenant failed to pay the October 2022 rent on or before October 1, 2022. Additionally, the Tenant failed to make any payments beyond the rent bank payment on or about November 21, 2022.
3. After considering all of the circumstances, I find that it would be unfair to set aside order LTB-L-075288-22.
4. The Tenants only paid \$1,000.00 to the Landlord on October 1, 2022. The Tenants utilized a community service agency to pay to the Landlord \$4,000.00, but otherwise had not made any payments to the Landlord. The rent arrears and costs in the original order were \$17,576.00 for the period ending September 30, 2022. Now the arrears and costs stand at \$25,786.80 for the period ending March 31, 2023.
5. The Tenant proposed that they be able to make another payment plan of \$1,300.00 in addition to the monthly rent starting April 1, 2023. The Tenant stated that they have been working at a restaurant and have purchased a new vehicle to be able to drive Uber for extra income. The Tenant had not been making payments because they had been borrowing money from friends and family and were paying their friends back and could not pay the Landlord too.

6. The Tenant further indicated that his restaurant job started back in April of 2022 and he hopes to be getting more hours. Also, that he had started to drive for Uber back in January of 2022. The Tenant indicated that they would like to ask their boss for additional work so that they can pay the ongoing rent and arrears. The Tenant further indicated that they have 3 children at home that are in school, and they don't want to have to move their family.
7. The Landlord was opposed to the additional payment plan on the basis that the Tenants did not even make the full rent in October of 2022 and owed almost an entire year's worth of rent. The Tenants have not made good faith payments to the Landlord.
8. The Tenants circumstances have not changed since the hearing in September of 2022 where they requested the payment plan. The Tenant was not able to make the payments
File Number: LTB-L-075288-22-SA

and I am not satisfied that the Tenants will make the payments going forward. I was not satisfied that the Tenants put any additional effort to make payments to the Landlord after the last hearing.

9. On this basis, the Tenants' motion to set aside is denied.
10. I find it appropriate under the circumstances to provide a short delay before lifting the Stay on the basis that the Tenants have small children in the household and would require additional time to find alternative housing.

It is ordered that:

1. The motion to set aside Order LTB-L-075288-22, issued on January 27, 2023, is denied.
2. The stay of order LTB-L-075288-22 is lifted on April 30, 2023.

March 23, 2023

Date Issued

Terri van Huisstede
Member, Landlord and Tenant Board

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