



Order under Section 78(6) Residential Tenancies Act, 2006

Citation: Carousel Estate Homes Inc. v Carson, 2023 ONLTB 19914

Date: 2023-02-14

File Number: LTB-L-071854-22

In the matter of: C-8 Home Street
Guelph, ON N1H 2E5

Between: Carousel Estate Homes Inc. Landlord

And

Sean Carson Tenant

Carousel Estate Homes Inc. (the 'Landlords') applied for an order to terminate the tenancy and evict Sean Carson (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant failed to meet a condition specified in the consent order issued by the Board on January 17, 2022 with respect to L1 application SOL-02509-21.

This application was heard by videoconference on January 23, 2023.

The Landlord's agent Joel Varkey and the Landlord's Legal Representative Fiona Douglas appeared on behalf of the Landlord.

As of 1:49 pm, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. The Landlord's L4 application was directed to a hearing in order to determine why the Landlord had indicated in their application additional rent paid was listed as not applicable and why the rent on deposit was also listed as not applicable.
2. The consent agreement dated January 17, 2022 with respect to SOL-071854-22 ordered the Tenant to pay to the Landlord \$11,736.00 for arrears of rent and costs owing up to October 31, 2021.
3. The Tenant was ordered to pay the regular lawful rent of \$1,250.00 on or before the 1st of each month and was ordered to pay \$550.00 a month towards the arrears on the 15th of each month starting November 15, 2021, until July 15, 2023 with a final payment of \$186.00 to have been paid on August 15, 2023.

4. The Landlord's Legal Representative submitted that the Tenant vacated the unit on August 15, 2022. The Tenant continued making the agreed upon payments towards the arrears as of that date but on September 15, 2022, the Tenant had only paid \$75.00 and owed and additional \$475.00. The Tenant has not made any payments towards the arrears since that time.
5. On the basis of the Landlord's uncontested evidence, I am satisfied on a balance of probabilities that the Tenant breached the settlement order from January 2022 by failing to make a full arrears payment of \$550.00 on September 15, 2022 as required.
6. Having reviewed the Landlord's evidence and s. 78 of *Residential Tenancies Act, 2006* (the 'Act'), it appears as though the Act does not precisely contemplate a situation such as this.
7. That said, the Landlord's interest with respect to this application is arrears of rent and s. 78(3) outlines that in addition to an application under section 1, a landlord *may also* request that the Board make an order for payment under subsection 7.
8. Based on my review of the previous order and the evidence of the Landlord, I find that nothing in the order ended the Tenant's obligation to repay the arrears even if the tenancy was terminated within the payment period.
9. Further, it appears as though the parties agreed to terminate the tenancy and the Tenant did continue to make payments after the tenancy was terminated. Therefore, I find that the mediated agreement and its terms were still live when the tenancy terminated. As such, the Tenant is found to have breached the agreement and will be directed to pay the balance of the arrears owing to August 15, 2022.

It is ordered that:

10. The Tenant shall pay to the Landlord *\$5,527.50. This amount represents the rent owing and costs up to August 15, 2022.
11. If the Tenant does not pay the Landlord the full amount owing on or before February 25, 2023, the Tenant will start to owe interest. This will be a simple interest calculated from February 26, 2023 at 5.00% annually on the balance outstanding.

February 14, 2023
Date Issued

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

File Number: LTB-L-071854-22

Amount the Tenant must pay

Reason for amount owing	Period	Amount
Amount owing from the previous order (\$11,736.00), plus new rent owing to August 15, 2022 (\$11,866.50) subtracting payments made towards rent and arrears from November 1, 2021 to September 15, 2022 (18,075.00)		\$5,527.50

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Total the Tenant must pay the Landlord:	\$5,527.50
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