



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

Citation: McKinnon v Leclare, 2023 ONLTB 19860

Date: 2023-02-13

File Number: LTB-L-071221-22

In the matter of: Main Floor-14 Princess Street
Brantford, ON N3R 1T8

Between: David McKinnon Landlords
Suzanne McKinnon

And

James Leclare Tenant

David McKinnon and Suzanne McKinnon (the 'Landlords') applied for an order to terminate the tenancy and evict James Leclare (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 July 26, 2022 with respect to L1 application LTB-L-002803-22.

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

The Landlords attended the hearing and were represented by their Legal Representative Berkun Altun. The Tenant appeared on his own behalf.

Determinations:

Adjournment Request & Preliminary Issues

1. In the middle of the hearing, the Tenant sought an adjournment of the hearing in order to obtain legal advice, as Tenant Duty Counsel had never arrived in the hearing block.
2. As well, the Tenant submitted that he had just received the Notice of Hearing on January 14, 2023 and had only two days in order to serve evidence upon the Landlord and the Board.
3. The adjournment was denied on the basis that the request was made by the Tenant after I had heard evidence from both parties regarding the application and the fact that the Tenant acknowledged the breach as outlined.
4. Further, the Tenant alleges that his wife is also a Tenant and that the Landlord failed to list her as a Tenant on the N4 when it was served upon him.

5. The Landlord's Legal Representative submitted that in July of 2021, the other named Tenant had signed and filed an N15 notice of termination and was removed from the lease at that time.
6. As such, I am satisfied that the Landlord properly named the only remaining Tenant on the lease when the N4 was served.

Landlord's Application

7. The Landlord's *ex-parte* application was ordered to a hearing in order to clarify the total amount of rent owed by the Tenant.
8. The consent order for LTB-L-002803-22 issued on July 16, 2022 had directed the Tenant to pay to the Landlord \$200.00 by August 1, 2022, and \$815.50 to be paid on or before the 15th of the month starting August 15, 2022, until June 15, 2023 with the remaining balance of \$615.50 to be paid on or before July 15, 2023.
9. The Tenant was also directed to pay the regular rent of \$1,750.00 on or before the 1st of each month.
10. The Landlord's Legal Representative submitted that no rent was paid on September 1, 2022 and that the \$815.50 payment due on September 15, 2022 was not paid until September 16, 2022.
11. Further, the Tenant made another payment of \$2,466.66 on October 20, 2022 and then another one-time payment of \$2,000.00 on November 13, 2022. The Tenant did not make any payments in December or January, be it rent or a payment toward the arrears.
12. The total amount owing to the hearing date is \$11,304.34 including rent and arrears from the previous consent agreement.
13. The Tenant acknowledges the breach and testified that due to various health issues he was unable to work. The Tenant testified that he is back to work now full-time and is making approximately \$1,200.00 every week. He testified that he would like to stay in the unit and that his employer is willing to pay off his arrears.

Analysis & s. 83 Considerations

14. While I am satisfied that the Tenant did breach the mediated agreement, due to the fact that the Landlord's application was directed to a hearing, I am required by s. 83 of the *Residential Tenancies Act, 2006* (the 'Act') to consider all of the circumstances before considering eviction.
15. The Landlord's Legal Representative submitted that this is the second payment plan that the Tenant had failed to follow and is asking for the Tenant to be evicted.
16. The Tenant acknowledges that he has suffered from health issues that has prevented him from working steadily but is now working full time and is making \$1,200.00 a week. The

Tenant also submitted that his employer is willing to pay off the entirety of the arrears on his behalf but did not provide a timeline in which this could be done.

17. The Tenant lives with his wife and two children and submits that moving would be very difficult as the cost of living in his arear has tripled.
18. In considering the Tenant's evidence and the nature of the Act and its focus on trying to preserve tenancies, the Tenant will be given an opportunity to have his employer void the entirety of the arrears and will be given until the end of March to do so.

It is ordered that:

19. The previous consent order LTB-L-002803-22 is cancelled.
20. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
21. On or before March 31, 2023, the Tenant shall pay to the Landlord \$14,804.34 for arrears of rent owing up to January 23, 2023, and the rent due and owing for February and March, 2023.
22. If the Tenant fails to comply with the conditions set out in paragraph 21 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.

February 13, 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.

