



**Order under Section 21.2 of the
Statutory Powers Procedure Act
and the Residential Tenancies Act, 2006**

Citation: Charmant Apartment v Jalin, 2023 ONLTB 19768

Date: 2023-02-07

File Number: LTB-L-002904-23-RV

In the matter of: 12, 14 TORBOLTON DRIVE
ETOBICOKE ON M9W3Y2

Between: Charmant Apartment Landlord

and

Richard Jalin Tenants
Amanda Halley

ORDER

Charmant Apartment (the “Landlord”) applied for an order to terminate the tenancy and evict Richard Jalin and for an order to have him pay the rent he owes because he failed to meet a condition specified in the order issued by the Board on May 9, 2022, with respect to application TNL-34887-21.

The Landlord’s application was resolved by Order TNL-37142-22 issued on October 7, 2022. A motion to set aside order TNL-37142-22 was filed.

The motion was heard by videoconference on November 14, 2022. By Order TNL-37142-22-SA issued on December 9, 2022, the motion to set aside was dismissed as abandoned and the stay of order TNL-37142-22 issued October 7, 2022 was lifted effective immediately.

On January 6, 2023, Richard Jalin and Amanda Halley (the "Tenants") requested that order TNL-37142-22-SA issued on December 9, 2022 be reviewed and that the October 7, 2022 *ex parte* eviction order TNL-37142-22 be stayed until the request to review is resolved.

On January 10, 2023, Order LTB-L-002904-SA-RV-IN issued, staying the order issued on October 7, 2022.

The request was heard by videoconference on January 23, 2023.

The Landlord’s Agent, Allan Shafman, the Tenants’ Legal Representative, Yodit Edemariam, and the Tenant, Amanda Halley, attended the hearing. Unless otherwise specified, references to the Tenant singular are to Ms. Halley.

Determinations:

Preliminary Issue

1. The Tenant submitted both she and her husband are tenants. She testified both she and her husband signed a copy of the lease in 2015 when the rental unit was rented with the former Superintendent.
2. The Landlord's Agent advised they do not have a copy of a written lease and it was his understanding the tenant was Richard Jalin. Nonetheless, the Landlord was open to naming Amanda Halley as a tenant.
3. In the above circumstances, the application was amended to name Amanda Halley as a tenant.

Request to Review

4. The Tenants' Request to Review alleges they were not reasonably able to participate in the hearing held on November 14, 2022.
5. The Tenant testified they never received a copy of the Notice of Hearing.
6. The Board's records indicate the Notice of Hearing was emailed to the incorrect email address for the Tenants. The Board's records do not show the Notice of Hearing was otherwise sent to the Tenants.
7. The Landlord's Agent admitted he had not given a copy of the Notice of the Hearing to the Tenants.
8. In these circumstances, I find it more likely than not the Tenants did not receive the Notice of Hearing. As a result, I find the Tenants were not reasonably able to participate in the hearing and have not had an opportunity to be heard.
9. The Tenants' request to review was granted and the Tenants' motion to set aside proceeded to a hearing on the merits.

Tenants' Motion to Set Aside

10. The first issue to consider on this Tenants' motion to set aside order TNL-37142-22, issued on October 7, 2022, is whether the Tenants breached the previous conditional order as alleged by the Landlord in their application.
11. The Tenant admitted they failed to meet the payment terms in Order TNL-34887-21, issued by the Board on May 9, 2022. The Tenant testified she paid rent on August 4, 2022 and not on August 1, 2022. The Tenant initially testified they did not make any other late payments; however, on cross-examination the Tenant admitted rent had also been paid late for June as it was paid on June 2, 2022.
12. The second issue to consider as mandated under s. 78(11)(b) of the *Residential Tenancies Act, 2006* (the 'Act') is whether or not it would be unfair in all of the circumstances to set aside the eviction order.

13. The original application was for persistent late payment of rent. The Tenants were provided with the opportunity to preserve their tenancy on the condition they pay rent in full and on time for period of one year.
14. The Tenant testified they paid rent late in June and August as she had to wait to get paid to pay rent.
15. The Tenant testified she is now working again Full-Time and will set aside money in advance to ensure rent is paid on time and is able to seek assistance from her parents, as was done in August to pay rent for three months in advance, if necessary.
16. The Tenants have lived at the rental unit since 2015. They have two minor children who attend the local school. The Tenant testified they do not have local family with whom they can stay. She also testified she has been unable to find equivalent affordable accommodation.
17. The Landlord's Agent testified they have a large loan on the residential complex for which payments are due at the end of each month. I find that rent payments that are late by a few days do not impact the Landlord's ability to make payments on this loan.
18. The Landlord's Agent also testified they cannot be left wondering if and/or when they are going to get paid each month. No application was brought for breach after the late payment in June and this application was commenced after the second late payment in August.
19. While the amount of time by which the rent payments were late was minor, they nonetheless continued the pattern of problematic behaviour of concern to the Landlord and which the Tenants previously said they would cease.
20. That said, in July 2022 rent was paid three days in advance. In September 2022, the Tenants voluntarily paid three months in advance. December's rent was paid on time and on January 1, 2023, the Tenant asked the Superintendent if she could pay rent but testified this payment was refused given the then eviction order. Rent was accepted after the eviction order was stayed.
21. As a result, I find the most recent pattern of behaviour is that of paying on time. When considered in conjunction with the residence of two minors in the building, the fact that payments were late by a short period of time, the Tenant's evidence of new measures put in place to prevent this going forward and the lack of evidence of any specific impact of the late payment by these Tenants on the Landlord outside of concern, I find it would not be unfair to set aside the eviction order. The Tenants are cautioned further incident may not be viewed favourably by the Board.
22. The Tenant advised she was amenable to extending the original consent order by a further two months to compensate for the months they did not pay rent on time. The Landlord requested a further 12 months and noted the lump sum portion of the timely payments was made by a third party. This order is issuing on May 31, 2023. In the above circumstances, I have extended the conditions in the original order to add another 6 months but delayed the requirement to pay June's rent until June 9, 2023.

It is ordered that:

1. Amanda Halley is added as a tenant to the application.
2. The Tenants' request to review Order TNL-37142-22-SA issued on December 9, 2022 is granted. The order is cancelled.
3. The Tenant's motion to set aside Order TNL-37142-22 issued on October 7, 2022 is granted. The order is cancelled.
4. The Landlord's application TNL-37142-22 under section 78 of the Act is dismissed.
5. Order TNL-34887-21 issued on May 9, 2022, is cancelled and replaced with the following:
 1. The Tenants shall pay rent to the Landlord for the month of June 2023 on or before June 9, 2023, and from July 2023 through to November 2023, on or before the 1st day of each and every month.
 2. If the Tenants fail to make any payment in accordance with paragraph 1 of the order, the Landlord may, without notice to the Tenant, apply to the Board, pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant. The landlord must make this application no later than 30 days after the Tenant's breach of paragraph of this order.

May 31, 2023
Date Issued

Rebecca Case
Member, Landlord and Tenant Board

15 Grosvenor Street, 1st 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.