



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

**Citation:** Huynh v Dewolfe, 2023 ONLTB 18612

**Date:** 2023-02-07

**File Number:** LTB-L-068493-22-SA

**In the matter of:** 140 Rosemund cres  
Kingston ON K7M6Z1

**Between:** Vu Huynh Landlord

**And**

Chelsey Dewolfe Tenant

Vu Huynh (the 'Landlord') applied for an order to terminate the tenancy and evict Chelsey Dewolfe (the 'Tenant') and for an order to have the Tenant pay the rent the Tenant owes because the Tenant failed to meet a condition specified in the order issued by the Board on July 4, 2022 with respect to application LTB-L-002011-21.

The Landlord's application was resolved by order LTB-L-068493-22, issued on January 12, 2023.

The Tenant filed a motion to set aside order LTB-L-068493-22.

This motion was heard by videoconference on January 31, 2023.

The Landlord's representative Christopher Hall, the Landlord and the Tenant attended the hearing. The Tenant was assisted by tenant duty counsel prior to the hearing.

### **Determinations:**

Preliminary matter

1. At the commencement of the hearing, the Tenant sought an adjournment. The Tenant noted she had filed a T2 Application and requested that the Tenant's T2 application be heard at the same time as the Tenant's motion to set aside ex parte order. The Landlord opposed the adjournment, noting there has been no rent payments since July 2022 and noting the request to merge the files will cause a further delay that will be severely prejudicial.
2. Given the potential prejudice to the Landlord, the lack of any evidence to suggest the Tenant made the request to combine the proceedings with the Board or the Landlord prior to the hearing date, and the Board's obligation to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly

affected by the proceeding an adequate opportunity to be heard, the adjournment request was denied.

#### Tenant's motion

3. The Tenant's motion to set aside the eviction order was brought pursuant to subsection 78(11) of the Residential Tenancies Act, 2006 (the "Act")
4. The Board must first determine whether or not the Tenant breached order LTB-L-002011-21 issued on July 4, 2022 (the "Section 78 Order").
5. If the Board finds that the Tenant did breach the Section 78 Order, then the Board must decide whether or not "in all the circumstances" it would be "unfair to set aside" the eviction order. If the Board determines that it would not be unfair to set aside the eviction order then the Board is supposed to grant the motion and set aside the order. If the Board determines that it would be unfair to set aside the eviction order then the motion must be denied. The third issue the Board must consider is when to lift the stay of the eviction order.
6. The Section 78 Order provided that the Landlord could apply to the Board under section 78 of the Act without notice to the Tenant to terminate the tenancy and evict the Tenant if the Tenant did not meet certain conditions specified in the order. The Tenant admits to breaching the Section 78 Order. In particular, the Tenant admits to not paying the lawful rent on or before September 19, 2022, as well as the \$1000 payment on or before October 2, 2022, towards the arrears of rent.
7. The next issue is whether or not "in all the circumstances" it would be "unfair to set aside" the eviction order. At the hearing, the Tenant acknowledged she has paid no rent or made any repayment of rent arrears since making an \$800 payment on July 20, 2022. The Tenant, however, alleged the Landlord interfered with her ability to pay rent.

#### *Hydro Disconnect*

8. Firstly, the Tenant stated hydro was cut off in the rental unit in July 2022 due to the Tenant's non-payment and was only reconnected in November 2022. Although it was the Tenant's obligation to pay hydro under the lease, it was the Tenant's submission the Landlord prolonged the period of time before the hydro was reconnected and accordingly, the Tenant unnecessarily incurred the expense of eating out/lodging elsewhere at a total approximate cost of \$3500.00. Essentially, the Tenant stated when hydro was cut off, the only way to restore power was if the account was placed in the Landlord's name. The Tenant produced a July 21, 2022 email from Utilities Kingston (Credit & collections) which stated "*The owner is the only person authorized to sign for service to have service restored.*"
9. The Landlord denies any interference, stating the Tenant had a power generator and he didn't hear from the Tenant for some time about the hydro disconnect. The landlord further indicated he ultimately did become involved and assisted in restoring the hydro.

10. The Tenant did not produce any receipts or other documentary proof to substantiate either the temporary housing relocation, or the alleged \$3500 cost to relocate. Even if proven, however, the monthly rent is \$1695 and there was no payment of rent or arrears in the months after the power was admittedly restored in November 2022.

*OW interference*

11. Secondly, the Tenant alleges the Landlord contacted Ontario Works (OW) and interfered with the Tenant's funding source by falsely claiming the Tenant was no longer living at the rental unit.
12. The Landlord strongly denied contacting OW, or any other funding source. He indicated he once received rent cheques from the city of Kingston and thus specifically denied even having knowledge of the Tenant's OW funding source.
13. Despite multiple requests at the hearing, the Tenant could not provide any documentary proof to show the Landlord either interfered with the Tenant's OW funding, or that OW funding was cut off. Moreover, although the Tenant states her OW entitlement stopped in August 2022, the Tenant failed to provide a reasonable explanation as to why she has not taken the requisite steps to restore any such loss of funding. In this regard, the Tenant countered she has been "*submitting paperwork the last two months*" to show she still lives at the rental unit. Later, however, the Tenant indicated she was doing a placement as a PSW and expects to be able to work full time sometime in March 2023, which admittedly could impact her eligibility. There was insufficient evidence presented to determine the Landlord interfere with the Tenant's OW funding or hydro reconnection.
14. The Tenant has resided at the rental unit since 2020 and has three children, ages 15, 13 and 5. The Landlord seeks eviction, noting there has been no rent paid since July 2022. The arrears are in excess of \$26,000.00, and the Landlord has had to pay the Tenant's utilities as well as condominium fines/lien charges imposed as a result of the Tenant's actions. In all these circumstances, I find it would be unfair to set aside the order as requested by the Tenant.
15. In the event eviction were ordered, the Tenant requested that the Board delay lifting the stay for 30-40 days. The Landlord was opposed to delay lifting the stay stating that any delay would be prejudicial to the Landlord as the Tenant has not shown good faith and the arrears and other costs have continued to accumulate. Having considered all the circumstances as noted above, I find it would not be unfair to delay the lifting of the stay until February 20, 2023.

**It is ordered that:**

1. The motion to set aside Order EAL-99094-21, issued on January 12, 2023 is denied.
2. The stay of order EAL-99094-21 is lifted on February 20, 2023.

**February 9, 2023**

**Date Issued**

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Peter Nicholson

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground 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.

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