



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

Citation: 2523619 Ontario Inc. v Lilly, 2024 ONLTB 23216

Date: 2024-03-28

File Number: LTB-L-093577-23-SA

In the matter of: 1102, 32 Trolley Crescent
Toronto ON M5A0E8

Between: 2523619 Ontario Inc.

And

James Lilly

I hereby certify this is a
true copy of an Order dated
MAR 28, 2024
Landlord and Tenant Board

Landlord

Tenant

2523619 Ontario Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict James Lilly (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant did not meet a condition specified in the order issued by the LTB on November 20, 2023 mediated settlement signed by the parties on November 20, 2023 with respect to application LTB-L-073622-22-RV.

The Landlord's application was resolved by order LTB-L-093577-23. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-093577-23.

This motion was heard by videoconference on February 21, 2024.

The Tenant attended the hearing. The Landlord was represented at the hearing by Stephen Wai.

Determinations:

1. The Landlords filed an application because the Tenant did not pay the rent the Tenant owes. This matter was settled by way of order LTB-L-073622-22-RV. which required the Tenant to pay the outstanding arrears by way of a payment plan. The order also required the Tenant to pay their rent on time, every month, until the arrears were paid in full.
2. The order provided that the Landlords could apply to the Board under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenant to terminate the tenancy and evict the Tenant if he failed to meet the conditions specified in the consent order.
3. There is no dispute that the Tenant breached the order by failing the lawful rent on or before December 1, 2023. Further the Tenant did not pay \$400.00 toward the arrears before December 15, 2023. As a result, the Landlords applied for an ex-parte order terminating the tenancy. The Landlords' request was granted pursuant to LTB-L-093577-23

4. This motion is brought pursuant to subsection 78(11) of the Act. As the Tenant acknowledges breaching the mediated agreement the only issue before me is whether I am satisfied, having regard to all the circumstances, that it would not be unfair to set aside the order.

Whether to Set Aside the Order

5. The Act is remedial legislation and the courts have determined that evicting a tenant is a remedy of last resort. In the cases of *Sutherland v. Lamontagne*, [2008] O.J. No. 5763 (Div. Ct.) and *Paderewski Society v. Ficyk*, [1998], the Divisional Court stated,

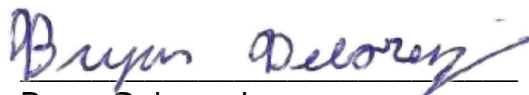
“To put somebody out of their home must, in my view, call for clear and compelling circumstances that it’s no longer possible for the arrangement to continue.”

6. The Tenant failed to make the required due to loss of employment. However, since then the Tenant’s circumstances have improved, and the Tenant now has a sales job.
7. The difficulty for the Tenant is he is unable to make a payment plan to pay down the arrears in a reasonable amount of time. The Tenant is in arrears \$22,281.00. He proposes to pay \$450.00 a month toward the arrears. At the rate the Tenant proposes to pay the arrears, it would take over 49 months to bring the tenancy into good standing. I do not find that to be reasonable amount of time.
8. Without a plan to pay down the arrears in a reasonable amount of time the Landlord would be prejudiced if the tenancy were to continue. I acknowledge eviction is a remedy of last resort, however it should be exercised when it is no longer possible for the tenancy to continue. In this case, I find ending the tenancy is warranted.
9. After considering all of the circumstances, I find that it would be unfair to set aside order LTB-L-093577-23.
10. The only remaining issue before the Board is when to lift the stay. The arrears are quite substantial. Any prolonged delay in eviction would be prejudicial to the Landlord. I am also mindful that the Tenant has a new job with a modest income. The Tenant should be able to find a new place to live in a relatively short period of time. Accordingly, I find it appropriate to lift the stay on order LTB-L-093577-23 on April 30, 2024.

It is ordered that:

1. The motion to set aside Order LTB-L-093577-23 is denied.
2. The stay of order LTB-L-093577-23 is lifted April 30, 2024.

March 28, 2024
Date Issued


Bryan Delorenzi
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.