



I hereby certify this is a true copy of an Order dated
NOV 15, 2023
Kelly Delaney
Landlord and Tenant Board

**Order under Section 77(8)
Residential Tenancies Act, 2006**

Citation: D Cubed Enterprises v Marinucci, 2023 ONLTB 74560

Date: 2023-11-15

File Number: LTB-L-063507-23-SA

In the matter of: 11, 595 KING ST
WELLAND ON L3B3L3

Between: D Cubed Enterprises Landlord

And

Don Marinucci Tenant

D Cubed Enterprises (the 'Landlord') applied for an order to terminate the tenancy and evict Don Marinucci (the 'Tenant') because they did not meet a condition specified in board order LTB-L-015283-23 issued on June 22, 2023 in that:

The Landlord's application was resolved by order LTB-L-063507-23-EX, issued on September 12, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-063507-23-EX on September 21, 2023.

The motion was heard by videoconference on November 2, 2023 at 1:00 pm.

The Landlord Representative Curt Anderson and the Tenant attended the hearing.

Determinations:

1. I find that the Tenant breached a condition contained in Order LTB-L-015283-23. After considering all of the circumstances, I find that it would be unfair to set aside order LTB-L-063507-23.
2. LTB-L-063507-23 finds the Tenant breached the following conditions contained in LTB-L-015283-23:
 - They did not pay the lawful rent plus \$999.00 to arrears on or before July 15, 2023 ; and
 - The did not pay the lawful rent on or before August 1, 2023.
3. The Tenant didn't deny that they breached the conditions. It was his testimony that he did so because he had yet to receive a forthcoming settlement from a identify fraud suit and had, as of yet been able to cash in investments being held in United States banking accounts.

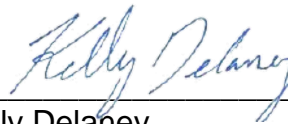
4. He further testified he would require an additional 90 days before he would be able to pay the rent and any arrears owing. He also testified if the Board does not grant him 90 days to pay he would be forced to declare bankruptcy and the Landlord would get nothing.
5. In response the Landlord Representative testified that these were the same excuses given at the previous hearing that led to the consent agreement contained in LTB-L-015283-23. He further testified that the Tenant had failed to pay the rent for September, and October 2023. This was supported by the Landlord's ledger entered in evidence. Accordingly, it was his submission that the stay should be lifted immediately otherwise the Landlord would be further prejudice.
6. I am satisfied that the Tenant breached the conditions contained in Board Order LTB-L-015283-23 issued on June 22, 2023. The Tenant's own testimony confirms that.
7. In accordance with section 78(11)(b) of the Act, I must also have regard to all the circumstances and determine whether it would be unfair to set aside LTB-L-063767-23-EX.
8. The Tenant didn't deny the breach, nor did he deny failing to pay September and October 2023 rent, constituting further breaches. Furthermore, I don't accept the Tenant's reasoning for an additional 90 days. Waiting on a settlement and access to foreign investments is tantamount to waiting on the winning lottery ticket. Accordingly, I am in agreement with the Landlord Representative in that any delay would only further prejudice the Landlord. As such, its for these reasons I am satisfied that it would be unfair to set aside LTB-L-063767-23-EX.

It is ordered that:

1. The motion to set aside Order LTB-L-063507-23-EX, issued on September 12, 2023, is denied.
2. The stay of Order LTB-L-063507-23-EX, is lifted immediately.
3. Order LTB-L-063507-23-EX is unchanged.

November 15, 2023

Date Issued



Kelly Delaney

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.

