



NOV 14, 2023

Kelly Delaney
Landlord and Tenant Board

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

Citation: Villari v Fulton, 2023 ONLTB 74572

Date: 2023-11-14

File Number: LTB-L-065902-23-SA

In the matter of: 53 WANITA RD
SCARBOROUGH ON M1C1V3

Between: Philip Villari Landlord

And

Leslie Fulton Tenant

Philip Villari (the 'Landlord') applied for an order to terminate the tenancy and evict Leslie Fulton (the 'Tenant') because the Tenant failed to meet a condition of Order LTB-L-019629-23 issued on August 21, 2023.

The Landlord's application was resolved by order LTB-L-065902-23-EX, issued on September 11, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-065902-23-EX on September 20, 2023.

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

The Landlord Representative Teresa Ciccone and the Tenant attended the hearing.

Determinations:

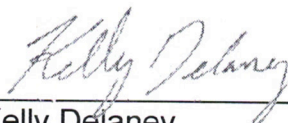
1. After considering all of the circumstances, I find that it would not be unfair to set aside order LTB-L-065902-23.
2. LTB-L-065902-23-EX found that the Tenant breached the following condition contained in LTB-L-019629-23:
 - The Tenant failed to pay the Landlord \$1,625.00 towards arrears of rent on or before August 15, 2023.
3. It was the Tenant's testimony that they had met all the conditions of LTB-L-065902-23 with the exception of the final payment that was due on August 15, 2023, stating it was only 31 hours late due to his employer paying him late.
4. In response the Landlord Representative acknowledged that the Tenant had made the final payment, but it was in fact 26 days late. However, in the interim the Tenant had failed to pay the utilities as stipulated in the lease and as such they had been shut off forcing the Landlord to file another application.

5. The Tenant acknowledged that the utilities were in arrears due to him focusing on paying the rent arrears to the Landlord, and that he was actively working with Toronto Hydro to commence a payment plan to have the utilities reinstated and thereby maintain the tenancy.
6. The Landlord Representative then submitted that they would be open to a conditional order that saw the rent paid on time for a period of one year and the utilities reinstated in a reasonable amount of time. Further, if such an order was issued they would request that the Landlord's application to evict the Tenant for failing to pay the utilities as per the lease agreement, LTB-L-083750-23, be withdrawn as it would be resolved by this order.
7. Having given consideration to the above testimony and evidence I am satisfied that it would not be unfair to set aside LTB-L-065902-23-EX and replace it with the following conditional order pursuant to section 78(12) of the *Residential Tenancies Act, 2006* (the "Act").

It is ordered that:

1. The motion to set aside Order LTB-L-065902-23-EX, issued on August 21, 2023, is granted.
2. Order LTB-L-065902-23-EX, issued on August 21, 2023, is set aside and replaced with the following.
3. The Tenant shall pay the November 2023 rent on or before November 30, 2023.
4. Commencing December 12, 2023, and continuing until November 12, 2024, the Tenant shall pay the rent in full when it comes due on or before the 12th day of each month.
5. On or before December 31, 2023 the Tenant shall have a payment plan in place to ensure the utilities are reinstated and remain active for a period no less than 12 months.
6. The Landlord's application LTB-L-083750-23 is dismissed.
7. If the Tenant fails to comply with any the conditions set out in paragraph 3-4 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 Tenants. 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.

November 14, 2023
Date Issued



Kelly Delaney
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.