

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

File Number: NOL-43447-21-RV

In the matter of: 280, 280 BROOK STREET STREET
MATTAWA ON P0H1V0

Between: 9328335 Canada Inc

and

Heather Stockecke

I hereby certify this is a
true copy of an Order dated

SEPT 21 2022

Landlord and Tenant Board

Landlord

Tenant

Review Order

9328335 Canada Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Heather Stockecke (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order NOL-43447-21 issued on February 4, 2022.

On January 27, 2022, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On March 25, 2022 interim order NOL-43447-21 -IN was issued, staying the order issued on February 4, 2022.

The request was heard by videoconference on May 5, 2022.

The Landlord's agent, Sandeep Sharma, and the Tenant attended the hearing.

Determinations:

REQUEST TO REVIEW

Not Reasonably Able to Participate

1. The Tenant's request for review asserts the Tenant was not reasonably able to participate in the original hearing of the application as she did not receive the notice of hearing. She says that she was unaware of the hearing date and that if she had known about the hearing date, she would've attended. It was only when she received the order that she found out she had missed the hearing and submitted her request for review promptly. The Tenant seeks that her request be granted so that she can propose a repayment plan.

2. The Landlord submits that he contacted the post office who informed him that the Tenant failed to collect her mail for a long time. The Landlord describes the rental unit as a house, which the Tenant occupies and the mailbox is located at a post office that is approximately 2 km away.

ANALYSIS

3. The Board's records show that the original notice of hearing was mailed to all parties and the Tenant's copy was returned back to the Board on December 8, 2021; it was marked as "moved." The order was mailed to the same address but was not returned to the Board.
4. Given the fact that the notice of hearing returned to the Board, and the Tenant failed to attend the initial hearing, I am satisfied that the Tenant was not reasonably able to participate at the hearing held on January 27, 2022.
5. As a result, the Tenant's request to review is granted, order NOL-43447-21 is cancelled and a new hearing was held to consider the Landlord's application.

L1 APPLICATION

6. The Tenant has not paid the total rent the Tenant was required to pay for the period from February 1, 2021 to July 31, 2021. Because of the arrears, the Landlord served a Notice of Termination effective July 26, 2021.
7. The Tenant is in possession of the rental unit.
8. The lawful monthly rent is \$1,200.00 and is due on the first of the month.
9. The Tenant paid \$6,650.00 since the application was filed.
10. The arrears and costs owing to May 31, 2022, total \$6,086.00.
11. The Landlord is not holding a last month's rent deposit.
12. The Landlord seeks a standard, voidable, eleven-day order.

Tenant's Request for Relief

13. The Tenant does not dispute the arrears as claimed by the Landlord. she explains that the reason she fell into arrears was because of a reduction in her income of \$2,700.00 when she went back to school.
14. However, she testified that she has just finished school and is actively looking for a job in her field. In the interim, she receives income from the Ontario Works Program and her Child Tax Benefits totaling \$1,200.00.
15. The Tenant seeks to preserve her tenancy and proposes a repayment plan whereby she would pay her rent on time and an additional \$450.00 each month until the arrears are paid in full.

16. In the alternative, the Tenant seeks a delay in eviction to June 1, 2022, to secure alternative housing. The Tenant testified that she has lived in the rental unit since October 2019 with her four children ages 5, 7, 10 and 12.
17. The Tenant also testified that the heat in her rental unit has been turned off as of a month ago, but that she never notified the Landlord about this issue because she did not know how to reach him.
18. On cross-examination, the Tenant confirmed she reached out to the Landlord via email on October 13, 2021, on a separate issue and therefore did have his contact information.
19. The Landlord opposes the Tenant's request for a repayment plan as the Tenant had previously proposed a repayment plan in October 2021 but failed to adhere to its terms. The Landlord is agreeable to a delay in eviction to June 1, 2022, as requested by the Tenant.
20. With respect to the issue of a lack of heat in the rental unit, the Landlord confirms this is the first he has heard about the issue; the Landlord also confirms that neither the Landlord or its agents turned the heat off at the rental unit and that the access to the furnace is inside the rental unit which only the Tenant can enter.

ANALYSIS

21. Based on the evidence before the Board, I find the arrears and costs owing to May 31, 2022 total \$6,086.00.
22. Section 83(3)(a) of the *Residential Tenancies Act, 2006* requires the Board to refuse eviction in certain circumstances and states:
 - (3) Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,
 - (a) the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement;
23. The evidence before the Board with respect to the issue of heat was that the Landlord was unaware of the issue as the Tenant did not report it to him. This is uncontested by the parties. This means that the Landlord is not withholding heat from the rental unit.
24. The issue of heat raised by the Tenant, if accurate, is at best an issue of disrepair. While disrepairs to the rental unit of this nature is a landlord's responsibility under the tenancy agreement, I find that a landlord cannot be in serious breach of their responsibility if they are unaware of the issue in the first place. Thus, I find that section 83(3)(a) does not apply under these circumstances.
25. With respect to the Tenant's request for relief, the problem I have with the repayment plan that she proposes is that it is unclear how she will be able to make the extra payments. I say this because the evidence before the Board was the Tenant's income was from benefits, she received which totalled \$1,200.00. The Tenant's proposal for repayment of arrears requires her to pay a total of \$1,650.00 each month. The Tenant's rent alone is \$1,200.00.

26. In other words, the evidence before the Board suggests that the Tenant is unable to afford the rental unit.
27. Repayment plans are granted to allow a tenant to catch up on the arrears while continuing to pay their monthly rent. Here, based on the Tenant's own statements, a repayment plan would seem to be unrealistic and put her in further financial distress.
28. Therefore, I cannot grant the repayment plan the Tenant seeks but I can consider delaying the termination of this tenancy.
29. Given the Tenant's personal circumstances including the length of her tenancy and her family size, I find that some delay is warranted, even though the Tenant's requested time has passed.
30. I have considered all of the disclosed circumstances in accordance with subsection 83 of the Residential Tenancies Act, 2006 (RTA), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant, and find that it would not be unfair to postpone the eviction until October 15, 2022 pursuant to subsection 83(1)(b) of the Act.
31. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The request to review order NOL-43447-21 issued on February 4, 2022 is granted and replaced with the following order.
2. The interim order issued on March 25, 2022 is cancelled.
3. Unless the Tenant voids the order as set out below, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before October 15, 2022.
4. The Tenant shall pay to the Landlord \$10,530.95 (less any amount paid by the Tenant to the Landlord after the application was filed with the Board)*, which represents the amount of rent owing and compensation up to September 21, 2022.
5. The Tenant shall also pay to the Landlord \$39.45 per day for compensation for the use of the unit starting September 22, 2022 to the date the Tenant moves out of the unit.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. If the Tenant does not pay the Landlord the full amount owing* on or before October 15, 2022, the Tenant will start to owe interest. This will be simple interest calculated from October 16, 2022 at 3.00% annually on the balance outstanding.

8. If the unit is not vacated on or before October 15, 2022, then starting October 16, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord, on or after October 16, 2022.
10. **If the Tenant wishes to void this order and continue the tenancy, the Tenant must pay to the Landlord or to the Board in trust:**
 - i) **\$6,086.00 (less any amount paid by the Tenant to the Landlord after the application was filed with the Board) if the payment was made on or before May 31, 2022; or**
 - ii) **\$7,286.00 (less any amount paid by the Tenant to the Landlord after the application was filed with the Board) if the payment was made on or before June 30, 2022; or**
 - iii) **\$8,486.00 (less any amount paid by the Tenant to the Landlord after the application was filed with the Board) if the payment was made on or before July 31, 2022; or**
 - iv) **\$9,686.00 (less any amount paid by the Tenant to the Landlord after the application was filed with the Board) if the payment was made on or before August 31, 2022; or**
 - v) **\$10,886.00 (less any amount paid by the Tenant to the Landlord after the application was filed with the Board) if the payment is made on or before September 30, 2022; or**
 - vi) **\$12,086.00 (less any amount paid by the Tenant to the Landlord after the application was filed with the Board) if the payment is made on or before October 15, 2022.**

If the Tenant does not make full payment in accordance with this paragraph and by the appropriate deadline, then the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

11. The Tenant may make a motion to the Board under subsection 74(11) of the Act to set aside this order if they pay the amount required under that subsection on or after October 16, 2022 but before the Sheriff gives vacant possession to the Landlord. The Tenant is only entitled to make this motion once during the period of the tenancy agreement with the Landlord.



Sonia Anwar-Ali
Member, Landlord and Tenant Board

September 21, 2022
Date Issued

Northern-RO
199 Larch Street, Provincial Building, Suite 301
Sudbury ON P3E5P9

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

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on April 16, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction