



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

Citation: McNinch v Arlt, 2024 ONLTB 32690

Date: 2024-05-06

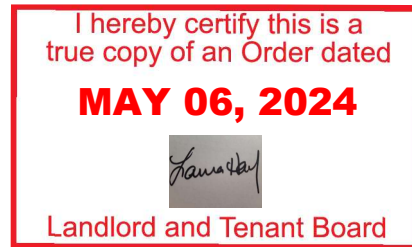
File Number: LTB-L-051948-22-RV

In the matter of: 95 Tanner Street
Gananoque Ontario K7G2P3

Between: Dennis McNinch

And

Rebecca Arlt



Landlord

Tenant

Review Order

Dennis McNinch (the 'Landlord') applied for an order to terminate the tenancy and evict Rebecca Arlt (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-051948-22 issued on January 18, 2024.

On February 6, 2024, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On February 8, 2024, interim order LTB-L-051948-22-RV-IN was issued, staying the order issued on January 18, 2024.

The review request was heard in by videoconference on April 4, 2024.

The Landlord, the Tenant and the Tenant's legal representative, Linda Tranter, attended the hearing.

Determinations:

The Review Request

1. For the following reasons, I find that the Tenant's request for review should be granted.
2. I say this because, after listening to the entire hearing recording, I find that the presiding Member failed to make any inquiries regarding whether the Landlord had served a proper notice of rent increase. This was despite the fact that the Tenant raised objections about the amount of outstanding arrears at the hearing and the hearing update sheet clearly shows a rent increase that is above the guideline amount for 2023.

3. At the review hearing, the parties agreed that the Landlord served the Tenant with an N10 agree to increase the rent above the guideline, but the Tenant refused to sign the agreement.
4. Although the Landlord says he served a notice of rent increase in 2024, there is no dispute that he failed to serve a notice of rent increase 90 days prior to the rent increase that he imposed on January 1, 2023. This means that, pursuant to subsection 116(4) of the *Residential Tenancies Act, 2006* (the 'Act'), the rent increase in 2023 is void.
5. As the 2023 rent increase is void, this means the order issued on January 18, 2024, contains a serious error and the Tenant's request for review must be granted.

The Application for Non-Payment of Rent

6. As the Tenant's request for review is granted, I heard the Landlord's L1 application *de novo*.
7. The parties agree that the outstanding arrears are \$2,595.00 plus the costs of filing the application. In fact, the arrears are the same three months of rent that appear on the N4 notice of termination. There is no dispute that the Tenant has not accumulated any additional arrears since the notice was served in April 2022.
8. Although the Landlord is seeking a standard voidable order, I see no reason to terminate this tenancy and I find it would not be unfair in all the circumstances to grant relief from eviction in the form of a payment plan.
9. I say this because the Tenant now has a seasoned legal representative who is very familiar with the financial resources available to the Tenant in her community and she assures the Board that she is assisting the Tenant to gain access to those resources.
10. In fact, although the Tenant is requesting a payment plan that would span 18 months, the Tenant's legal representative is confident that she can acquire significant financial assistance within about 90 days of the date of the hearing. The Tenant's legal representative is also assisting the Tenant to apply for additional monthly supplements which will improve the Tenant's monthly financial situation.
11. Based on the evidence before me, and after considering all of the circumstances, I find that it would not be unfair to grant relief from eviction pursuant to subsection 83(1)(a) in the form of the payment plan the Tenant is requesting. This will ensure that the Landlord receives the outstanding arrears and, as the Tenant has continued to pay her monthly rent, I see no reason to justify terminating this tenancy. An order will issue accordingly.
12. Finally, as the Tenant's request for review is granted, the Board must refund the Tenant the costs for the review in the amount of \$58.00 as required by section 182 of the Act. An order will issue accordingly.

It is ordered that:

1. The Tenant's request to review order LTB-L-051948-22 issued on January 18, 2024, is granted. The order is cancelled and replaced with the following order.

2. The Tenant shall pay to the Landlord \$2,781.00 for arrears of rent up to April 30, 2024, and costs.
3. The Tenant shall pay to the Landlord the amount set out in paragraph 2 of this order by paying \$154.50 on or before the 15th day of each month for the period commencing May 15, 2024, up to and including October 15, 2025, or until the arrears are paid in full, whichever is earlier.
4. The Tenant shall also pay to the Landlord the monthly rent in full on or before the first day of each month for the period of June 1, 2024, to October 31, 2025, or until the arrears are paid in full, whichever is earlier.
5. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears or rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 2 of this order shall immediately become due and owing and the Landlord may, without notice to the Tenant, apply to the Board pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after April 30, 2024. The Landlord must make this application no later than 30 days after the Tenant's failure to make a payment.
6. The Board shall refund to the Tenant any filing fee she paid with respect to the request for review.

May 6, 2024
Date Issued



Laura Hartslief
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.