



OCT 26, 2022

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

File Number: LTB-L-003076-21-RV

In the matter of: 6,871 ADELAIDE STREET NORTH
LONDON, ON N5Y 2M2

Between: 2765749 Ontario Corporation Landlord

and

Franklin Young Tenant

Review Order

2765749 Ontario Corporation (the 'Landlord') applied in a L1 application for an order to determine that Franklin Young (the 'Tenant ') did not pay the rent that he owes, to terminate the tenancy, and to evict the Tenant.

The L1 application was heard by telephone/video-conference on June 23, 2022. Only the Landlord's legal representative attended the hearing. The L1 application was resolved by an order issued on June 29, 2022, which was a voidable eviction order.

On July 20, 2022 a request to review was submitted, claiming that the Tenant was illiterate, did not understand the Notice of Hearing or eviction order, and that he had not been able to reasonably participate in the L1 hearing held on June 23, 2022.

An interim order LTB-L-003076-21-RV-IN was issued on July 20, 2022, granting a hearing to determine whether or not the Tenant was reasonably able to participate in the L1 hearing, and staying order LTB-L-003076-21 issued on June 29, 2022.

The request for review was heard by telephone/video-conference on September 13, 2022. The Tenant attended, along with his legal representative Betsy Esbaugh, and support person Theresa Kiefer (from Neighbourhood Legal Services). The Landlord's agent James Fernandez also attended the review hearing on behalf of the Landlord.

Determinations:

1. The Tenant's legal representative submitted that the Tenant's entire outstanding rent arrears balance, (including all the arrears from the L1 order, plus the filing fee, plus the sheriff's fee), had been paid into the Board in trust, after the L1 eviction date became enforceable, but before the actual eviction was enforced by the sheriff. She also submitted that by error, a second payment for the entire amount had been made directly to the Landlord in cash, and that a receipt had been issued acknowledging the payment. She requested that the amount currently held in trust by the Board be released and returned back to the rent bank.
2. After the hearing, I noticed that a document had been submitted into the TOP portal on September 13, 2022, which was a copy of an email from Melissa Jeffrey (Program Manager, Housing Stability Bank, Salvation Army Centre of Hope) dated August 10, 2022 to the Board's Southwest office (email forwarded by Ms. Esbaugh). This document was submitted late (not within 7 days prior to the review hearing); however, I allowed it to be submitted since the contents of the email were known to the Landlord and there was no dispute over what had occurred since the L1 hearing. In the email, Ms. Jeffrey states:

"A couple of weeks ago the HSB program paid rent in trust to the LTB to void a sheriff order for a landlord who has initially refused our funds. This payment was made at the CIBC bank in cash and we were provided a receipt....Unfortunately due to an error, an additional cheque for the same amount (basically a duplicate payment) was sent to the landlord directly which they have since cashed. As a result we are now in a position to seek a return of the program funds paid to the board in trust and are looking for direction on how to do so."
3. The Landlord's agent confirmed that the rent arrears, filing fee, and sheriff's fee (this Tenant's entire account) was brought into good standing (less 1 cent which was waived) after the termination of tenancy from the L1 order but before the sheriff enforced the eviction.
4. The Tenant's legal representative submitted that the request for review had been filed in order to ensure a stay of the L1 eviction order.
5. Considering the circumstances, rather than determining whether the Tenant was reasonably able to participate in the proceedings, by virtue of section 74(11) of the *Residential Tenancies Act, 2006* (the 'Act'), I determined it may be the easiest and most expeditious on all parties to convert this hearing to a Tenant's motion to void the L1 order, and to grant the motion based on the

parties' evidence that the rent ledger was brought into good standing before the sheriff's eviction. Also, even though proper notice of the motion to void was not given to the Landlord, I waived the notice period given the Landlord's concession that the Tenant's account had been brought into good standing before eviction was enforced. Also, paragraph 3 of the L1 order specifically states that the Tenant may make a motion to the LTB to void the order under section 74(11).

6. The Board's Rules of Procedure allow me discretion to waive or vary any provision in the Rules in order to provide the most expeditious and fair determination of the questions arising in any proceeding. As per Rule 1.6(h), I may *"amend any application on its own motion where appropriate, on notice to the parties"*, and Rule 1.6(u) *"take any other action the LTB considers appropriate in the circumstances."*
7. The Landlord's agent confirmed that the Tenant had not previously made a motion to void during the period of the Tenant's tenancy agreement with the Landlord. Both parties agreed that this was the first time the entire balance owing had been brought into good standing after an L1 eviction order became enforceable but before the sheriff evicted. I was satisfied based on the parties' evidence that section 74(12) of the Act was complied with.
8. After the hearing, I noticed that the Board's file contained a CIBC business deposit slip (dated July 19, 2022 but stamped as July 20, 2022), showing a cash payment of \$1,518.50 was made to the Board's account in trust. The "name of party/depositor name" is listed as "Franklin Young".
9. Ms. Jeffrey's email seemed to indicate that it was HSB that made the payment and they were provided with a receipt. Unfortunately, Ms. Jeffrey was not brought to the hearing to be a witness, and no receipt was produced. Therefore, I had no first-hand evidence that the rent bank had made the payment in trust. Based on the evidence at hand, I find it more likely that the rent bank gave the Tenant money in cash, and the Tenant deposited it into the Board's account in trust.
10. Although the Tenant's legal representative submitted that the money currently held in trust by the Board should be released back to HSB, I have no authority to release money other than to the payor. Also, I cannot use this Order to correct the error which was made by HSB by making 2 payments (one directly to the Landlord and one to the Tenant). As a result, the money held in trust shall be returned back to the Tenant. Thereafter, it will be between the HSB and the Tenant to work out any reimbursement among themselves.

It is ordered that:

11. The motion to void order LTB-L-003076-21 is granted.
12. Order LTB-L-003076-21 is void and cannot be enforced by the Landlord.
13. Interim order LTB-L-003076-21-RV-IN issued on July 20, 2022 is cancelled.
14. The Board shall pay out to the Tenant, Franklin Young, the amount of \$1,518.50, together with any accrued interest. **

October 26, 2022
Date Issued



Michelle Tan
Member, Landlord and Tenant Board

15 Grovenor Street, 1st 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.

****When the Board directs payment out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party(ies) named in this Order. The cheque will be in the amount directed plus any interest accrued up to the date of this Order.**