



Order under Section 69 Residential Tenancies Act, 2006

Citation: Novotny v Wilson, 2024 ONLTB 17777

Date: 2024-03-05

File Number: LTB-L-065424-23

In the matter of: 1346 BRYDGES ST
LONDON ON N5W2C4

Between: Jarda Novotny

And

Christopher Wilson
Roxanne Toussaint

I hereby certify this is a
true copy of an Order dated
MAR 5, 2024

Landlord and Tenant Board

Landlord

Tenants

Jarda Novotny (the 'Landlord') applied for an order to terminate the tenancy and evict Christopher Wilson and Roxanne Toussaint (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on January 15, 2024.

The Landlord and the Landlord's Legal Representative, Jason Difruscia, and the Tenant, Roxanne Toussaint, attended the hearing.

Determinations:

Preliminary Issue – adjournment request

1. At the hearing, the Tenant asked for an adjournment. The Tenant submitted that she was sick. The Tenant submitted that her brother, the other Tenant, was in the hospital. The Tenant submitted that she might need to go to the hospital as well.
2. The Landlord opposed the adjournment. The Landlord submitted that the arrears were significant. The Landlord submitted that it was highly prejudicial to them since it had been almost a year since the Landlord had received any rent.
3. After considering the submissions of both parties, I denied the adjournment. I noted that the significant arrears. I further noted that the Tenants was present and had a chance to speak to allegations.
4. With respect to the Tenant's illness, I informed the parties that the hearing would occur earlier in the block so as to allow the Tenant time to go to the hospital if need be. I also informed the Tenant that she could take breaks as well if need be.

The L1 Application

5. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
6. As of the hearing date, the Tenants were still in possession of the rental unit.
7. The lawful rent is \$1,310.00. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$43.07. This amount is calculated as follows: $\$1,310.00 \times 12$, divided by 365 days.
9. The Tenants have not made any payments since the application was filed.
10. The rent arrears owing to January 31, 2024 are \$14,410.00.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. There is no last month's rent deposit. The Tenant disputed this but did not provide any evidence of this. Therefore, I find that there was no last month's rent deposit.

Submissions

13. The Tenants alleged that the Landlord was refusing to take her rent because the Tenants were trying to pay in cash. As evidence of this, the Tenants produced a letter from a community legal aid clinic corroborating this submission. The letter outlined that the March 2023 rent had been refused because the Tenants were actually illegal occupants of the person on the lease.
14. The Landlord submitted that this point was addressed in their evidence. The Landlord submitted that the lease signed for the rental unit contained multiple individuals. All the individuals have since departed the rental unit. As evidence of this, the Landlord produced an N11.
15. The Landlord submitted that the individuals named on the N4 had moved in without the Landlord's consent. The Landlord further submitted that there was some disagreement about whether Christopher Wilson (CW) and Roxanne Toussaint (RT) were in fact Tenants. The Landlord submitted that the letter produced by the Tenants alluded to that.
16. The Landlord testified that this matter was resolved and that the Landlord recognizes that CW and RT are Tenants as of March 2023. The Landlord submitted that, due to this, the Landlord is counting the arrears from March 1, 2023, the beginning of the tenancy.
17. Based on the Landlord's testimony and the evidence submitted by the Tenant, I find that CW and RT are Tenants.
18. The Landlord testified that the rent was not refused. As evidence of this, the Landlord submitted that there was an email from the Landlord to the Tenants requesting the arrears to be addressed. The Landlord further testified that the reason cash was not accepted was because the Tenants would call the police when he tried to collect the arrears. The

Landlord testified that, after that, he no longer tried to collect the rent in that fashion but instead requested payment in other forms.

Section 83 Considerations

19. The Landlord submitted that there were discussions with the Tenants about payment plans to address the arrears at various times. No response.
20. The Landlord requested a standard order.
21. The Tenants submitted that they needed 2 months to move. The Tenants submitted that she did not want to live at the rental unit any longer, but needs time to move due to her breathing issues and that the cold air poses a challenge to her.
22. I note that the Tenants did not dispute the arrears. As a result, I find that the arrears are correct as claimed by the Landlord. As the order date is March 4, I exercise my discretion and extend the eviction date to March 31, 2024.
23. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants voids this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$17,216.00 if the payment is made on or before March 31, 2024. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after March 31, 2024 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before March 31, 2024**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$13,932.05. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$43.07 per day for the use of the unit starting January 16, 2024 until the date the Tenants moves out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before March 16, 2024, the Tenants will start to owe interest. This will be simple interest calculated from March 17, 2024 at 7.00% annually on the balance outstanding.

8. If the unit is not vacated on or before March 31, 2024, then starting April 1, 2024, 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 April 1, 2024.

March 5, 2024**Date Issued**

Henry Yeung

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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on October 1, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before March 31, 2024

Rent Owing To March 31, 2024	\$17,030.00
Application Filing Fee	\$186.00
Total the Tenants must pay to continue the tenancy	\$17,216.00

B. Amount the Tenants must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$13,746.05
Application Filing Fee	\$186.00
Total amount owing to the Landlord	\$13,932.05
Plus daily compensation owing for each day of occupation starting January 16, 2024	\$43.07 (per day)

Subject: FW: LTB-L-065424-23 [IWOV-HPMain.FID650316]
From: Jason DiFruscia <jdifruscia@harrisonpensa.com>
Date: 2024-03-17, 5:49 p.m.
To: Jarda Novotny <jarda@start.ca>

Jarda,

Please see attached. Chris Wilson is attempting to appeal the eviction. The LTB will review the request and determine whether a hearing is necessary to explore the request further.

I am tied up in court for the entirety of tomorrow but will be available to discuss further by telephone on Tuesday if you have any questions.

For now, there is nothing that can be done until we hear the LTB's position on the request. If they have not provided a position by April 1 we will proceed with eviction.

Thank you,

Jason DiFruscia | Associate | HARRISON PENSA LLP | 130 Dufferin Avenue, Suite 1101, London, ON, N6A 5R2 | tel 519-661-6750 | fax 519-667-3362 | jdifruscia@harrisonpensa.com

This e-mail may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

From: Bob Fex <robertkfex@gmail.com>
Sent: Friday, March 15, 2024 12:05 PM
To: Jason DiFruscia <jdifruscia@harrisonpensa.com>
Subject: LTB-L-065424-23

You don't often get email from robertkfex@gmail.com. [Learn why this is important](#)

[EXTERNAL EMAIL]

Mr. Difruscia

Please find the attached application to review the order so that the tenant can attend the hearing.

Respectfully

R.Fex

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize and can verify the sender and know the content is safe.

[EXTERNAL EMAIL]

Attachments:

Receipt_2024-03-15_115403.pdf

1.6 MB

Payment Portal Application Receipt : 28715418

LTPayments@ontario.ca <LTPayments@ontario.ca>

Fri 3/15/2024 11:45 AM

To:FRENCHROXY@HOTMAIL.COM <FRENCHROXY@HOTMAIL.COM>;LTPayments@ontario.ca <LTPayments@ontario.ca>;TO-ControllershshipRevenue@ontario.ca <TO-ControllershshipRevenue@ontario.ca>



Tribunals Ontario

Tribunaux décisionnels Ontario

RECEIPT #: 28715418

Transaction Date: Fri, Mar 15, 2024

Transaction Time: 11:44

Paid By: CHRIS WILSON

Email: FRENCHROXY@HOTMAIL.COM

Phone: (226) 663-5678

TRIBUNAL	APPLICATION TYPE	QUANTITY	TOTAL
Landlord and Tenant Board	Request to Review Order	1	C\$58.00
TOTAL AMOUNT			C\$58.00

PAYMENT INFORMATION		
CARDHOLDER NAME		PAYMENT TYPE
ROBERT FEX		VISA
AUTHORIZATION #	SESSION ID	TRANSACTION ID
10669192	28715418	81985993

Please include the RECEIPT # : 28715418 in the payment section of your application before you send it to the Landlord and Tenant Board.

ADDITIONAL INFORMATION: 1346 BRIDGES STREET. LONDON, ON N5W 2C4

Part 3: Signature

Robert Fex

15 / 03 / 2024
dd/mm/yyyy

Who has signed the request? Shade the circle completely next to your answer.

Requester Representative Other

Information About the Representative

First Name

R O B E R T

Last Name

F E X

LSUC #

P 1 7 3 2 9

Mailing Address

2 1 0 R E C T O R Y S T

Unit/Apt./Suite

B

Municipality (City, Town, etc.)

L O N D O N

Prov.

O N

Postal Code

N 5 Z 2 A 5

Day Phone Number

(5 1 9) 6 1 5 - 7 9 3 4

Evening Phone Number

() -

Fax Number

() -

E-mail Address

r k f p a r a l e g a l @ g m a i l . c o m

Collecting Personal Information

The Landlord and Tenant Board has the right to collect the information requested on this form to resolve your application under section 185 of the Residential Tenancies Act, 2006. After you file the form, all information related to the proceeding may become publicly available in a tribunal decision, order or other document, in accordance with Tribunals Ontario's Access to Records Policy and the Tribunal Adjudicative Records Act, 2019. Parties wanting records or information to remain confidential must seek a confidentiality order from the adjudicator. If you have questions about confidentiality orders or access to records, please contact us by email at LTB@ontario.ca or our Contact Center at 416-645-8080 or 1-888-332-3234 (toll free).

Important Information from the Landlord and Tenant Board

1. If a hearing is scheduled for your request, you can ask the Board to provide French-language services. If you are the requester, you can fill out the Request for French-Language Services or Request for Accommodation form included at the end of this form. If you are one of the other parties, the Request for French-Language Services or Request for Accommodation form is available at Board offices and at the Board's website at tribunalsontario.ca/ltb.
2. If a hearing is scheduled for your request, you can ask the Board to make special arrangements (called a Request for Accommodation) under the Ontario Human Rights Code to help you participate in the hearing. For example, you can ask the Board to make arrangements to provide a sign-language interpreter. You can make a request for accommodation under the Code in person, by telephone, or mail. If you are the requester, you can fill out the Request for French-Language Services or Request for Accommodation form included at the end of this form. If you are one of the other parties, the Request for French-Language Services or Request for Accommodation form is available at Board offices and at the Board's website at tribunalsontario.ca/ltb.
3. It is an offence under the Residential Tenancies Act, 2006 to file false or misleading information with the Landlord and Tenant Board.
4. The Board has Rules of Practice that set out rules related to the review process and Interpretation Guidelines that explain how the Board might decide specific issues that could come up in the review process. You can read the Rules and Guidelines on the Board's website at tribunalsontario.ca/ltb or you can buy a copy from a Board office.

Shade the appropriate circle to indicate whether you are asking the Board to stay (put on hold) the order or to lift (remove) a stay.

- I am requesting that the Board stay the order I want reviewed.**
An order that is stayed **cannot** be enforced.

Explain why the Board should stay the order you want reviewed.

I was in hospital and not able to attend the hearing.

Attach additional sheets if necessary

- I am requesting that the Board lift the stay imposed by the Divisional Court on the order I want reviewed.**

An order that is appealed to the Divisional Court is automatically stayed and the Board cannot consider your Request to Review an Order **unless** it first decides to lift the stay.

Explain why the Board should lift the stay resulting from the appeal to Divisional Court.

Attach additional sheets if necessary



Part 1: General Information

Requester's Information

Landlord Co-op Tenant Co-op Member Other Party

First Name

C H R I S

Last Name

W I L S O N

Mailing Address

1 3 4 6 B R I D G E S S T

Unit/Apt./Suite

Municipality (City, Town, etc.)

Prov.

Postal Code

L O N D O N O N N 5 W 2 C 4

Day Phone Number

Evening Phone Number

Fax Number

(2 2 6) 6 6 3 - 5 6 7 8 () - () -

Unit, Building or Complex Covered by the Request

Landlord Co-op Tenant Co-op Member Other Party

Street Number

Street Name

1 3 4 6 S B R I D G E S

Street Type (e.g. Street, Avenue, Road)

Direction (e.g. East)

Unit/Apt./Suite

S T R E E T

Municipality (City, Town, etc.)

Prov.

Postal Code

L O N D O N B R I D G E S S T O N N 5 W 2 C 4

Other Parties to the Request

Landlord Co-op Tenant Co-op Member Other Party

First Name

J A R D A

Last Name

N O V O T N Y

Mailing Address

4 6 B R I D G E S

Unit/Apt./Suite

Municipality (City, Town, etc.)

Prov.

Postal Code

S T R E E T

Day Phone Number

Evening Phone Number

Fax Number

() - () - () -

If there is more than one other party, provide the names, addresses and telephone numbers of the additional other parties on the *Schedule of Parties* form which is available from the Board's website at tribunalsontario.ca/lrb.

OFFICE USE ONLY:

File Number

Delivery Method:

In Person Mail Courier Email Service Ontario Center FL

Part 2: Reasons for Your Request

I am requesting that the Board review the order

L	T	B	-	L	-	0	6	5	4	2	4	-	2	3
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 issued on

0	5	/	0	3	/	2	0	2	4
---	---	---	---	---	---	---	---	---	---

, because it contains a serious error.
dd/mm/yyyy

Shade the box(es) completely next to your reason for applying.

- I believe the order contains a serious error,
- I was not reasonably able to participate in the proceeding

In the space provided below, describe why you are requesting a review of the order.

If you are requesting a review because you believe the order contains a serious error, describe why you believe that the order contains a serious error. For example:

- Did the Board apply the *Residential Tenancies Act, 2006* in a situation where it did not apply?
- Did the order include a remedy that is not appropriate in the circumstances?
- Was a decision in the order affected by information that was misleading or incorrect?
- Did the order fail to comply with the rules of natural justice?

If you are requesting a review because you were not reasonably able to participate in the proceeding, describe why you were not reasonably able to participate. For example:

- Did you not receive the Notice of Hearing?
- Was the Notice of Hearing served incorrectly, for example to the wrong address or to the wrong person?
- Were you physically unable to attend?

Explain in detail why you believe the order contains a serious error or why you were not reasonably able to participate in the proceeding. As well, indicate how you think the order should be changed if your request for review is successful.

If you do not convince the Board that there may be a serious error in the order, or that you were not reasonably able to participate in the proceeding, your Request to Review an Order may be dismissed without further consideration.

Attach additional sheets if necessary



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

Citation: Novotny v Toussaint, 2024 ONLTB 17777

Date: 2024-03-18

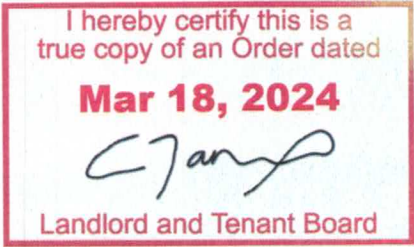
File Number: LTB-L-065424-23-RV

In the matter of: 1346 BRYDGES ST
LONDON ON N5W2C4

Between: Jarda Novotny

And

Roxanne Toussaint
Christopher Wilson



Landlord

Tenants

Review Order

Jarda Novotny (the 'Landlord') applied for an order to terminate the tenancy and evict Roxanne Toussaint and Christopher Wilson (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was resolved by order LTB-L-065424-23 issued on March 5, 2024.

On March 18, 2024, the Tenant, C. Wilson, requested a review of the order.

A preliminary review of the review request was completed without a hearing. In determining this request, I reviewed the materials in the LTB's file as well as the audio recording for this hearing.

Determinations:

1. The hearing of this application took place on January 15, 2024. The Landlord, the Landlord's legal representative and the Tenant, R. Toussaint, attended the hearing. The Landlord's application was granted.
2. C. Wilson submits that they were not reasonably able to participate because they were in the hospital.
3. The hearing record and final order demonstrates that R. Toussaint attended the hearing on behalf of the Tenants and requested an adjournment. The basis of the adjournment request was that she was sick, and C. Wilson was in the hospital. The adjournment request was denied.
4. It is apparent from the final order that the presiding hearing correctly exercised their jurisdiction to deny the adjournment request. The final order shows that R. Toussaint

exercised her right to make submissions on the adjournment request. Paragraph 1 to 4 demonstrates that the hearing member considered the Tenants' illness and the prejudice to the Landlord in granting the adjournment. The adjournment request was denied because there were significant arrears and R. Toussaint was present to speak to the allegations. The Board Member's exercise of discretion was rationally connected to the parties' evidence and submissions, and the exercise was therefore not capricious. Although another Board Member may have exercised their discretion differently, the presiding hearing member's decision is entitled to deference.

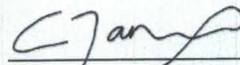
5. The hearing record also demonstrates that R. Toussaint was able to make submissions and present evidence. For example, R. Toussaint was able to make submissions regarding the last month's rent deposit.
6. As R. Toussaint was appearing on behalf of the Tenants, and she was also able to make meaningful submissions, I am satisfied that the Tenants were reasonably able to participate.
7. On the basis of the submissions made in the request, I am not satisfied that there is a serious error in the order or that a serious error occurred in the proceedings and/or that C. Wilson was not reasonably able to participate in the proceeding.

It is ordered that:

1. The request to review order LTB-L-065424-23 issued on March 5, 2024 is denied. The order is confirmed and remains unchanged.

March 18, 2024

Date Issued



Camille Tancioco

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.