



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

**Citation:** Hassan v Scott, 2023 ONLTB 51043

**Date:** 2023-07-19

**File Number:** LTB-L-057525-22-RV

**In the matter of:** 281 TOPAZE CRES  
ROCKLAND ON K4K0E7

**Between:** Sani Hassan  
Basirat Ananeyi Hassan

**And**

Daniel Scott

I hereby certify this is a  
true copy of an Order dated  
**JUL 19, 2023**  
Landlord and Tenant Board

Landlord

Tenant

**Review Order**

Sani Hassan and Basirat Ananeyi Hassan (the 'Landlord') applied for an order to terminate the tenancy and evict Daniel Scott (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-057525-22 issued on May 3, 2023.

On May 15, 2023, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved. On May 16, 2023, interim order LTB-L-057525-22-RV-IN was issued, staying the order issued on May 3, 2023.

The request for review was heard by videoconference on June 8, 2023.

The Landlords and the Tenant attended the hearing. The Landlords were represented by Furaz Alvi. The Tenant was represented by Felicia Ross.

**Determinations:**

**THE REQUEST FOR REVIEW**

1. The Tenant's request for review alleges he was not reasonably able to participate in the hearing held on April 24, 2023. The Tenant's request is granted. For the reasons that follow. I am satisfied the Tenant was not reasonably able to participate in the hearing held on April 24, 2023.
2. The Board's records show that on March 17, 2023, the Board served Notice of Hearing on the Tenant for the original hearing held on April 24, 2023. On March 29, 2023, the Board received back in the mail the Notice of Hearing package sent to the Tenant. For some unknown reason Canada Post was unable to deliver it to the Tenant's address. Absent

some evidence that the Tenant was aware of the hearing of April 24, 2023, I am satisfied that the Tenant was not reasonably able to participate in the original hearing. The Tenant's request for review is granted. Order LTB-L-057525-22 issued on May 3, 2023, is cancelled.

3. Pursuant to s. 182 of the Act, the Board shall refund to the Tenant \$58.00 for the cost of filing the review.

## THE RE-HEARING OF THE APPLICATION

### *The Adjournment Request*

4. The Tenant seeks adjournment of the re-hearing of the Landlord's application. The Tenant's original representative had a conflict and could not attend the hearing of the review so alternative representation was organised. The Tenant says his current representative is not as well prepared as his former one.
5. The Board's records show that on May 16, 2023, the Board e-mailed the Tenant's original representative the Notice of Hearing for the review hearing held on June 8, 2023.
6. On May 30, 2023, the Tenant filed a request to reschedule with the Board on the basis that his original representative was unavailable as he was scheduled to be the best man at a wedding that day and the date had been reserved more than a year prior. On the same day the request to reschedule was filed, it was denied. Pursuant to Rule 21.1 requests to reschedule must be made on consent.
7. The Tenant's request to adjourn the re-hearing of the Landlords' application is denied for the following reasons.
8. Although it may be true that the Tenant's current representative is not as familiar with his issues as his prior one, that does not mean she has not had adequate time to prepare, nor does it mean she is unable to provide adequate representation. The issues on the Landlords' application are very simple: did the Landlords give the Tenant a valid Notice of Termination in Form N4; what are the rent arrears owing; and should relief from eviction be granted pursuant to s. 83 of the Act? The re-hearing is actually even simpler than that as the Tenant does not dispute the amount of rent arrears owing or the validity of the N4.
9. In addition, the delay caused by granting the Tenant's request would be highly prejudicial to the Landlords. The rent arrears owing approach or exceed the Board's jurisdictional limit.
10. Given all of the above, the Tenant's request for adjournment of the re-hearing is denied.

## THE APPLICATION FOR NON-PAYMENT OF RENT

11. There is no dispute that:

- The Landlords served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice) that meets all of the requirements of the Act;

- The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 or before the date the application was filed or at any point in time prior to the review hearing;
- As of the hearing date, the Tenant is still in possession of the rental unit;
- The lawful monthly rent is due on the first day of the month in the amount of \$2,800.00;
- The Tenant has not made any payments to the Landlords since the application was filed;
- The rent arrears owing to June 30, 2023, as of the date of hearing before the Board total \$35,000.00; and
- The Landlords collected a rent deposit of \$2,800.00 from the Tenant and this deposit is still being held by the Landlords.

12. Essentially what this means is that the only real issue before the Board on the re-hearing is the question of relief from eviction.

#### RELIEF FROM EVICTION

13. The Tenant seeks relief in the form of a repayment plan spread over twelve months. In the alternative, he asks for a delay of eviction of 60 days. The Landlords seek a standard voidable eviction order.
14. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act beyond the Board's standard voidable eviction order. I say this for the following reasons.
15. This tenancy appears to have commenced in the fall of 2021. The Tenant lives in the rental unit with four young children. Its location is ideal because it is within walking distance of the Tenant's former spouse so the children can easily walk back and forth between the homes of their parents.
16. The Tenant runs a business managing properties. He says he has about \$18,000.00 in the bank and makes between \$4,000.00 and \$5,000.00 a week. He has made no payments to the Landlord since sometime in August of 2022.
17. I believe that part of the reason for the Tenant's non-payment is related to a storm that occurred on May 24, 2022. It caused damage to the rental unit. The Tenant apparently plans to file his own application with respect to the disrepair caused by the storm but had not done so by the date of the review hearing and no claim by way of s. 82 was asserted. That means the Tenant is not entitled to set off by way of this order.
18. I would also observe that there is no suggestion in the evidence that the disrepair the Tenant complains of would meet the threshold of "serious breach" contemplated by s. 83(3)(a) of the Act.
19. Both the Landlords and the Tenant say they wanted to make a repayment agreement, and the Tenant concedes the Landlord approached him about it. What appears to have

happened is the Tenant was reluctant to make any payment agreement until the Landlords made good on doing necessary repairs. Because he was unsatisfied with the disrepair situation, he decided to stop paying rent entirely.

20. The Landlords say they are struggling to meet their financial obligations. When they bought the rental unit they originally intended to live there, but their circumstances changed for reasons outside of their control and they decided to rent out the unit to a tenant. The Landlords currently rent a three-bedroom home for themselves and their three children who are all under the age of eight.
21. The Landlords say they do not have enough money to meet their children's needs. For example, they cannot afford day care for one son so one Landlord has to stay home while the other is working. They are concerned about foreclosure and the possibility they may be forced to file for bankruptcy. In addition to the financial stress, they have a six year old daughter just diagnosed with heart disease who may need surgery soon. They describe their circumstances as draining.
22. So the question for the Board is whether it would be unfair in all of the circumstances here to grant relief from eviction to the Tenant?
23. Denying eviction outright and simply ordering payment of the outstanding arrears to the Landlords would clearly be unfair and unreasonable. I say this because the Tenant's behaviour since his last partial payment of rent in August of 2022 suggests he is unwilling or unable to pay rent.
24. The same problem arises with respect to the request for a repayment plan. A person's promises about future behaviour must be weighed against the reality of their past behaviour.
25. Specifically, although the Tenant claims to have \$18,000.00 in the bank he is not willing to give that or any lump sum to the Landlords. He wants his repayment spread out over twelve months. That suggests the Tenant is either being untruthful about his assets and income or continues to believe he should be entitled to withhold rent due to the disrepair issues. Regardless of which of these possibilities is true, both of them suggest that it is more likely than not that the Tenant will not comply with any reasonable repayment plan either because he cannot afford it, or because he does not believe the Landlords deserve to be paid. As the Tenant's promises to pay in the future are unreliable, a repayment plan is likely to fail making the option of a repayment plan unfair in all of the circumstances.
26. That leaves the alternative request for delay.
27. The Tenant has already had the benefit of considerable delay. The Landlords delayed serving notice to terminate on the Tenant until September 9, 2022, because the Tenant made promises to pay that were not kept. They filed this application on October 5, 2022, and no hearing was scheduled before the Board for six months due to Board delays. Further delay occurred because a review request was necessary. In effect, the Tenant has had a year to find a new home, or pay the rent arrears, or make efforts to pay that would demonstrate a good faith intention to pay. More importantly perhaps, if the Tenant's evidence about his financial circumstances is true, then he has more than adequate funds to find a new home or stay somewhere temporarily until he does so. In other words, I am not convinced he actually needs the delay he seeks.

28. In the meantime, the arrears of rent have ballooned to the level of the Board's jurisdiction. The delay the Tenant seeks would result in a loss to the Landlords of an amount above the \$35,000.00 jurisdictional limit that the Landlords are not entitled to claim.
29. So given all of the above, I am satisfied that it would be unfair in all of the circumstances to delay eviction further. The Board's standard order shall issue. The Tenant can pay the amount outstanding and preserve the tenancy or return vacant possession to the Landlords.
30. If the Tenant chooses to move out of the rental unit then the amount owing to the Landlords is calculated as follows:
- For arrears of rent and daily compensation owing up to the date of hearing of June 8, 2023 - \$32,200.00 for rent arrears up to May 31, 2023 plus daily compensation for the period June 1, to June 8, 2023 inclusive calculated as  $8 \times (\$2,800.00/\text{month} \times 12 \text{ months} \div 365 \text{ days/year}) = \$32,936.44$ ;
  - Plus the Landlords' cost of filing the application of \$186.00;
  - Less \$2,800.00 which is the rent deposit being held by the Landlords;
  - Less interest on the deposit owing up to the date of hearing of \$87.49 calculated as follows:
    - For the period September 1, 2021 to August 31, 2022 -  $\$2,800.00 \times 1.2\% = \$33.60$ ; and
    - For the period September 1, 2022 to June 8, 2023 -  $(\$2,800.00 \times 2.5\%) \div 365 \text{ days/year} \times 281 \text{ days} = \$53.89$ ;
  - Plus daily compensation of \$92.05 starting June 9, 2023 up until the Tenant moves out and returns vacant possession to the Landlords.
31. If the Tenant wishes to remain in the rental unit, then pursuant to s. 74(4) (and *Hornstein et al. v. Royal Bank of Canada*, 2010 ONSC 3134 at paragraph 13), the Tenant must pay to the Landlords \$37,986.00 for arrears of rent up to July 31, 2023 and costs (less any payment made by the Tenant to the Landlords after the hearing held on June 8, 2023).
32. This order contains all of the reasons for the decision within it. No further reasons shall be issued.


**It is ordered that:**

1. Order LTB-L-057525-22 issued on May 3, 2023, is cancelled and replaced with the following order:
2. The tenancy between the Landlords and the Tenant is terminated unless the Tenant voids this order.
3. **The Tenant may void this order and continue the tenancy by paying to the Landlords or to the Board in trust:**
  - a) \$37,960.00 (less any payment made to the Landlords after the hearing of June 8, 2023) if the payment is made on or before July 30, 2023.
4. The Tenant may also make a motion at the Board to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent

that became due after July 30, 2023, but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.

5. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before July 30, 2023.**
6. If the Tenant does not void this order, then the Tenant shall pay to the Landlords \$30,234.95 which represents arrears of rent and daily compensation owing up to the date of hearing, plus the Landlords' cost of filing the application, less the deposit and the interest owing on the deposit.
7. The Tenant shall also pay the Landlords compensation of \$92.05 per day for the use of the unit starting June 9, 2023, until the date the Tenant moves out of the unit.
8. If the Tenant does not pay the Landlords the full amount owing on or before July 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 31, 2023 at 6.00% annually on the balance outstanding.
9. If the unit is not vacated on or before July 30, 2023, then starting July 31, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 July 31, 2023.
11. The Board shall refund to the Tenant \$58.00 for the cost of filing the review.

**July 19, 2023**  
**Date Issued**

  
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Ruth Carey  
Vice Chair, 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 January 31, 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.