



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

**Citation:** Shan v Swartman, 2023 ONLTB 61051

**Date:** 2023-09-13

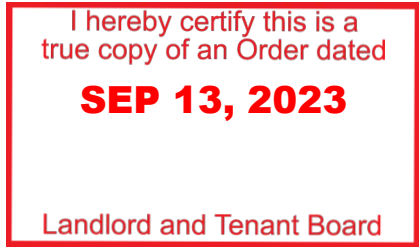
**File Number:** LTB-L-061706-22-RV

**In the matter of:** 270 DAVIS DR  
UXBRIDGE ON L9P1R1

**Between:** Hui Gao  
Yun Shan

**And**

Vicki Cheryl Swartman



Landlords

Tenant

### Review Order

Hui Gao and Yun Shan (the 'Landlords') applied for an order to terminate the tenancy and evict Vicki Cheryl Swartman (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-061706-22 issued on June 21, 2023.

On June 26, 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 June 28, 2023, interim order LTB-L-061706-22-RV-IN was issued, staying the order issued on June 21, 2023.

This application was heard in by videoconference on July 24, 2023.

The Landlord, Hui Gao ('HG'), the Landlords' legal representative, Rong Wei Yu ('RWY') and the Tenant attended the hearing.

### Determinations:

#### Review Request

1. The review request claims that the Tenant was not reasonably able to participate in the original hearing. It alleges that the Tenant was granted use of a Public Access Terminal ('PAT'), but on her way to the PAT location, her truck broke down. It is alleged that she had to flag down another motorist to call a tow truck, and ultimately had to wait 5 hours for an appropriate tow truck to arrive. It also says an email was sent to the LTB at 8:47 a.m. on the hearing date to advise of the situation, and by the time the Tenant finally arrived at the PAT, the hearing was over. The request also alleges that the order contains a serious error

because it did not consider money the Tenant paid for repairs that the Landlords were supposed to reimburse her for.

2. The Tenant said that she had a PAT room booked for the hearing and she was on her way to the PAT location on the hearing date when her truck broke down. She said that she had to flag down another motorist to borrow a phone because she did not have a phone with her. She said that she called her son, who in turn called a tow truck and emailed the LTB. She said the first tow truck that arrived was not equipped to tow her vehicle, and she had to wait until 2:15 p.m. for an appropriate tow truck.
3. She said the tow truck took her vehicle to the rental unit and she used her husband's vehicle to drive to the PAT location, but when she arrived the hearing was over.
4. On cross-examination, the Tenant said she did not have an invoice or receipt for her vehicle repair, the tow truck, or parking at the PAT location when she finally arrived there.
5. Jason Small ('JS') also gave evidence for the Tenant. He said he is the Tenant's son. JS said that on June 12, 2023 his mother called him saying her vehicle had broken down and she didn't know what to do. He said that he told her he would take care of it. He then contacted CAA to tow the vehicle, and emailed the LTB. JS said he fixed his mother's vehicle himself.
6. A copy of the email from JS to "ltbaccommodations@ontario.ca" at 8:47 a.m. on June 12, 2023, explaining that the Tenant would be late for her hearing because her car broke down, was filed together with the review request.
7. On cross-examination, JS said that his mother's truck was towed to the rental unit and he completed the repairs to it on June 14, 2023. He said it was towed by "Andy's towing" and the driver's name was "Glen", who lives across the road from the rental unit.
8. The Landlords did not present direct evidence with respect to whether the Tenant was reasonably able to participate in the hearing.
9. The Tenant asked that the review request be granted. She said that if she was not planning to attend the hearing, she would not have booked a PAT, and that she would have attended had her vehicle not broken down.
10. RWY argued that this request is a delay tactic and asked that the review request be denied and that the original order be left unchanged.
11. The review request is granted for the following reasons.
12. The evidence of the Tenant and JS was consistent and credible. Although the Tenant did not present supporting documentation aside from the email sent to the LTB by JS, I note that JS recalled specific details, including the name of the towing company and the name of the driver. I also find the Tenant's submission that she would not have booked a PAT if she did not plan to attend the original hearing to be persuasive.
13. I accept that the Tenant did not attend the hearing on June 12, 2023 because her vehicle broke down on the way to the PAT location. The right to be reasonably able to participate in a hearing must be interpreted broadly because it is a matter of natural justice: *King-Winton v. Doverhold Investments Ltd.*, 2008 CanLII 60708 (ON SCDC), para 3. The Tenant was not reasonably able to participate in the June 12, 2023 hearing.

Merits of Original L1 Application

14. On February 13, 2023, an interim order was issued by the LTB that required the Tenant to provide the Landlords and the LTB with a list of any section 82 issues she intends to raise at the hearing, and supporting documents, by February 21, 2023. This was not done, and so the Tenant was not permitted to raise section 82 issues.
15. The Landlords served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant 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.
16. As of the hearing date, the Tenant was still in possession of the rental unit.
17. The lawful rent is \$3,300.00. It is due on the 22nd day of each month.
18. Based on the Monthly rent, the daily rent/compensation is \$108.49. This amount is calculated as follows:  $\$3,300.00 \times 12$ , divided by 365 days.
19. The parties agreed that the rent arrears owing to August 21, 2023 are \$49,500.00. RWY confirmed that the Landlords accept that the LTB's monetary jurisdiction is \$35,000.00, and on issuance of this order, their claim to any amount exceeding \$35,000.00 will be extinguished.
20. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
21. The Landlords collected a rent deposit of \$3,300.00 and a key deposit of \$500.00 from the Tenant and these deposits are still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
22. Interest on the rent deposit, in the amount of \$181.46 is owing to the Tenant for the period from February 18, 2021 to July 24, 2023.

*Relief from Eviction*

23. RWY said that both he and the Landlords have tried to negotiate payment plans with the Tenant, but that the Tenant has never been willing to accept one. The Landlord sought an order terminating the tenancy 11 days after the issuance of this order.
24. The Tenant said she wants to maintain the tenancy. She said she could pay a total of \$4,300.00 per month for rent and rent arrears. She proposed that payments of \$2,150.00 be required on the 5<sup>th</sup> and 20<sup>th</sup> day of each month. This would amount to \$1,000.00 per month being paid toward the arrears of rent.
25. The Tenant said she lives in the rental unit with her adult son (JS), his wife, and their two children, aged 12 and 15.
26. On cross-examination, the Tenant said she is retired, and it would be JS who would come up with the \$4,300.00 per month.
27. JS said that he did not have any documentary evidence available on the hearing date to establish that he could afford to pay \$4,300.00 per month, but that he can afford it, and if he has to pay the arrears faster he could liquidate some assets. He said he owns 23 cars.

28. The interim order issued on February 13, 2023 required the Tenant to pay the monthly rent by the 22<sup>nd</sup> of each month beginning on February 22, 2023. The Tenant did not comply with that requirement. She said the reason she did not comply is because she did not have confirmation that the one \$1,650.00 payment she did make had been received by the Landlord.
29. I do not accept that the Tenants' proposed payment plan is reasonable. Even if the plan is complied with, it would take over 49 months, or 4 years, to repay the rent arrears. There was also no evidence to support the oral evidence of the Tenant and JS that JS can afford to pay \$4,300.00 per month.
30. The Tenant said that if the tenancy is terminated she would need at least 90 days to find new living accommodation. Given that the rent arrears are already beyond the LTB's monetary jurisdiction, and the fact that the Tenant has not paid ongoing rent pending this hearing date despite an LTB order requiring her to do so, I find that it would be unfair to postpone eviction for this length of time.
31. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until September 30, 2023 pursuant to subsection 83(1)(b) of the Act.

**It is ordered that:**

1. The request to review order LTB-L-061706-22 issued on June 21, 2023 is granted. The order is cancelled and replaced with the following.
  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 LTB in trust:**
    - **\$52,986.00** if the payment is made on or before September 21, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- **\$56,286.00** if the payment is made on or before September 30, 2023. See Schedule 1 for the calculation of the amount owing.
  4. The Tenant may also make a motion at the LTB 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 September 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 September 30, 2023**
  6. If the Tenant does not void the order, the Tenant shall pay to the Landlords **\$35,000.00**. The amount owed by the Tenant for rent arrears owing up to the date of the hearing and

the cost of filing the application, less the key deposit, rent deposit and interest the Landlords owe on the rent deposit exceeds the LTB's monetary jurisdiction of \$35,000.00. See Schedule 1 for the calculation of the amount owing.

7. If the Tenant does not pay the Landlords the full amount owing on or before September 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 1, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before September 30, 2023, then starting October 1, 2023, the Landlords 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 Landlords on or after October 1, 2023.

**September 13, 2023**  
**Date Issued**

---

Mark Melchers  
Member, Landlords 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 April 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before September 21, 2023**

Rent Owing To September 21, 2023	\$54,400.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlords since the application was filed	- \$1,600.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlords owes the Tenant for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$52,986.00</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before September 30, 2023**

Rent Owing To October 21, 2023	\$57,700.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlords since the application was filed	- \$1,600.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlords owes the Tenant for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$56,286.00</b>

**C. Amount the Tenant must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$48,125.47
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlords since the application was filed	- \$1,600.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent and key deposit	- \$3,800.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$181.46
<b>Less</b> the amount the Landlords owes the Tenant for an {abatement/rebate}	- \$0.00

<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlords</b>	<b>\$42,730.01</b>
Plus daily compensation owing for each day of occupation starting July 25, 2023	\$108.49 (per day)
<b>Landlord and Tenant Board Monetary Jurisdiction Limit:</b>	<b>\$35,000.00</b>