



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

**File Number:** TSL-21121-21-RV

**In the matter of:** 1308, 25 THE ESPLANADE  
TORONTO ON M5E1W5

**Between:** Benjamin Skalnik  
Michelle Skalnik

**and**

Aisha Rosen  
David T. Rosen

I hereby certify this is a  
true copy of an Order dated

**April 27, 2022**

Landlord and Tenant Board

Landlords

Tenants

**Review Order**

Benjamin Skalnik and Michelle Skalnik (the 'Landlords') applied for an order to terminate the tenancy and evict David T. Rosen and Aisha Rosen (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was resolved by order TSL-21121-21 issued on February 23, 2022.

On March 25, 2022, the Tenants requested a review of the order alleging the order contained serious error because the Member granted an order for arrears of rent based on an invalid N4 Notice of Termination.

A preliminary review of the review request was completed without a hearing.

**Determinations:**

1. The Tenant filed a request to extend time to file the review request. I note, the order was issued on February 23, 2022 and the request was filed on March 25, 2022. As such, the request to review was filed within 30 days of the order being issued. There is no need for the Board to consider the request to extend time.
2. The Tenant's Representative submits that the order contains serious error because the N4 Notice of Termination which forms the basis of the Landlord's L1 application was invalid. The Tenant's Representative submits that because of the N4 Notice of Termination being invalid, the Board did not have the jurisdiction or legal authority to make a decision on the Landlord's L1 application.

3. I have reviewed the order and the Board's record. I note that the Tenant vacated the rental unit on April 24, 2021, being several months before the Board's hearing. Because the Tenant vacated the rental unit, the Landlord's application was no longer for eviction, but rather arrears only. This means, the validity of the N4 Notice of Termination was no longer a consideration for the hearing or the Board's order. In simple terms, the Landlord's L1 application became an L9 application for arrears of rent because the Landlord was no longer seeking eviction as the Tenant moved out of the rental unit. This is in keeping with the Board's Interpretation Guideline 11 which states:

In some cases, the evidence may establish that the tenant moved out of the rental unit after the L1 Application was filed, but before the hearing date. In that case, the LTB's order will generally include a determination that the tenancy ended on the date the tenant moved out. Further, the order will generally: (1) end the tenancy effective the date the tenant moved out of the rental unit without ordering enforcement through the Court Enforcement Office (Sheriff); and (2) require the tenant to pay rent arrears ending on the date the tenancy ended. Unlike orders for arrears and termination where the tenant is in possession of the unit on the hearing date, the order would not provide the tenant with an opportunity to continue the tenancy by paying all of the arrears by a specified date. As there is a finding that the tenancy has ended, the tenant's rent deposit and interest owing on it will be deducted from the arrears and compensation ordered to the landlord.

4. I also took the liberty to review the calculations of arrears of rent set out in the order. In doing so, I am satisfied that the amount calculated is correct based on the evidence adduced at the hearing.
5. 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. As such, the Tenant's request to review the order is denied.

**It is ordered that:**

1. The request to review order TSL-21121-21 issued on February 23, 2022, is denied. The order is confirmed and remains unchanged.

**April 27, 2022**  
**Date Issued**

  
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Dawn Wickett  
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.