



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

Citation: Akhtar v Clarke, 2023 ONLTB 76423

Date: 2023-11-28 **File Number:** LTB-L-074594-22-RV-2

In the matter of: 604, 1255 BAYLY ST
PICKERING ON L1W0B6

Between: Mohammad Akhtar Landlord

And

Chad Clarke Tenant

Review Order

Mohammad Akhtar (the 'Landlord') applied for an order to terminate the tenancy and evict Chad Clarke (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 Application).

This application was resolved by order LTB-L-074594-22 issued on September 26, 2023.

On September 28, 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 October 24, 2023, interim order LTB-L-074594-22-RV-IN was issued, staying the order issued on September 26, 2023.

This request for review application was heard in by videoconference on November 9, 2023 at 1:00 pm.

The Landlord and the Tenant attended the hearing.

Determinations:

1. The Tenant testified that he was unable to reasonably participate in the previous hearing owing to the fact his father passed away and he was out of the country settling his affairs. He also testified that he was prepared to proceed with a new hearing immediately.



2. Given the Landlord offered no evidence or testimony to refute the Tenant's testimony I directed that I would grant the review and hear the matter de novo immediately as indicated by the Tenant.

De Novo L1 Application

3. The Landlord 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.
4. As of the hearing date, the Tenant was still in possession of the rental unit.
5. The lawful rent is \$2,550.00. It is due on the 1st day of each month.
6. Based on the Monthly rent, the daily rent/compensation is \$83.84. This amount is calculated as follows: \$2,550.00 x 12, divided by 365 days.
7. The Tenant has not made any payments since the application was filed.
8. The uncontested rent arrears owing to November 30, 2023 are \$40,600.00.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. The Landlord collected a rent deposit of \$2,550.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
11. Interest on the rent deposit, in the amount of \$104.10 is owing to the Tenant for the period from March 24, 2022 to November 9, 2023.
12. The amount of rent arrears owing by the Tenant exceeds the monetary jurisdiction of the Board. Section 207(1) of the *Residential Tenancies Act, 2006* ("Act") limits the monetary jurisdiction of the Board to that of the Small Claims Court. At this time that amount is \$35,000.00, and proceeding with an application with the Board extinguishes any rights the Landlord may have to pursue the full amount owing at the Superior Court. The Landlord was made aware of the Board's monetary jurisdiction and chose to proceed with this application.
13. While the Board cannot order a person to pay more than \$35,000.00 in accordance with s. 207(1) of the Act, I find that this does not apply to the "stay and pay" option set out in paragraph 2 the order below. In the recent decision of *Galaxy Real Estate Core Ontario LP v. Kirpichova et al.*, 2023 ONSC 4356, the Divisional Court confirmed that the Board's monetary jurisdiction does not apply to the amount the Tenants must pay if they choose to void the order and continue the tenancy in accordance with section 74(4) of the Act. Therefore, the Tenant must pay the full arrears owing, plus the Landlord's costs, if they want to void the order and continue this tenancy.



14. If the Tenant chooses not to pay the full amount owing and continue the tenancy, then this order terminates the tenancy and requires the Tenants to pay the amount up to the Board's monetary jurisdictional limit of \$35,000.00 plus the cost of filing the application.
15. 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 Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
16. Specifically, the Tenant testified that they had already secured a new rental property and intended to vacate stipulating that they would only require until December 2, 2023.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$40,796.00 if the payment is made on or before November 30, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
 - \$43,336.00 if the payment is made on or before December 9, 2023. See Schedule 1 for the calculation of the amount owing.
3. 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 December 9, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. **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 December 9, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$35,000.00. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and represents the maximum jurisdiction of the Board as stipulated above. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$83.84 per day for the use of the unit starting November 10, 2023 until the date the Tenant moves out of the unit.



7. If the Tenant does not pay the Landlord the full amount owing on or before December 9, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 10, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 9, 2023, then starting December 10, 2023, 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 December 10, 2023.

November 28, 2023

Date Issued

Kelly Delaney

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 June 10, 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 November 30, 2023

Rent Owing To November 30, 2023	\$40,600.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$40,796.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 9, 2023

Rent Owing To December 31, 2023	\$43,150.00
---------------------------------	-------------



Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$43,336.00

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

Rent Owing To Hearing Date	\$38,839.36
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,550.00
Less the amount of the interest on the last month's rent deposit	- \$104.10
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord as per the maximum jurisdiction of the Board	\$35,000.00
Plus daily compensation owing for each day of occupation starting November 10, 2023	\$83.84 (per day)