



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

**Citation:** Brogno v Ross, 2023 ONLTB 76509

**Date:** 2023-11-22

**File Number:** LTB-L-055886-23-RV-2

**In the matter of:** 304, 634 Connaught Ave  
Sault Ste Marie Ontario P6C2E2

**Between:** Jim Brogno Landlord

**And**

Bobbie-Lynn Ross Tenant

### Review Order

Jim Brogno (the 'Landlord') applied for an order to terminate the tenancy and evict Bobbie-Lynn Ross (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-055886-23 issued on September 6, 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 September 29, 2023, interim order LTB-L-055886-23-RV-IN was issued, staying the order issued on September 6, 2023.

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

The Landlord Agent Richard Hall and the Tenant attended the hearing.

### Determinations:

1. Order LTB-L-055886-23 was issued on September 6, 2023, following an uncontested hearing held on August 29, 2023. The order directs that the tenancy between the Landlord and tenant be terminated effective September 17, 2023, unless the Tenant voids the order by paying to the Landlord \$7,150.00 on or before September 17, 2023.
2. The Tenant testified that they were not reasonably able to participate owing to their inexperience with technology. She testified that she had attempted to login to the August 29, 2023, hearing to no avail and that following that she attended a legal aid clinic where they assisted her in submitting her request for review and showed her how to use zoom for today's hearing.



3. Canvassing the Landlord Agent, he testified that he had no evidence or testimony to contest that of the Tenant. He further testified he was prepared to the matter again before. Therefore, I find that the Tenant was not reasonably able to participate in the hearing held on August 29, 2023. As a result, the request to review is granted and a new hearing will be held to consider the Landlord's application.

### L1 Application

4. 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.
5. As of the hearing date, the Tenant was still in possession of the rental unit.
6. The alleged lawful rent is \$1,295.00. It is due on the 1st day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$42.58. This amount is calculated as follows: \$1,295.00 x 12, divided by 365 days.
8. The Tenant has not made any payments since the application was filed.
9. The alleged rent arrears owing to November 30, 2023, are \$9,540.00.
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

### Section 82 Issues

11. In response to the Landlord Agents evidence the Tenant testified that they believed the rent arrears owing were not as alleged. Specifically, it was her position that the lawful monthly rent was not as claimed, and she was owed an abatement due to the following section 82 issues.

#### Lawful rent

12. The Tenant testified that she had an oral agreement with the Landlord in which they agreed the monthly rent would be \$1,000.00 and that they came to this agreement over the phone.
13. In response the Landlord Agent testified that rent is \$1,295.00 a month but there was an agreement that in December 2022, that the Tenant could start paying \$1,000.00 month and would spend the next several months catching up on the arrears that she already accumulated. However, when she failed to make any payments towards the arrears as promised, the Landlord directed, they file the application for non-payment of rent.

#### Closet doors

14. The Tenant testified that since moving into the rental unit she has not had closet doors in any of the bedrooms. It was her testimony that she called the Landlord's wife at the start of the Tenancy and again to remind her.



15. In response the Landlord Agent confirmed there were no closet doors in the rental unit or any of the Landlord's rental units. It was his testimony that he was never made aware of the issue and if had been he could have easily arranged for the doors to be affixed.

Mould under kitchen sink.

16. The Tenant testified in April 2022 she informed the Landlord that the kitchen sink leaked and there was mould growing underneath it and had failed to address it. This was supported by pictures from beneath the sink entered in evidence.

17. In response the Landlord Agent testified that he was made aware of the issue and had purchased a new sink to replace the leaking one but when he went to installed and remediate the mould the Tenant became aggressive and refused him entry. He further testified that he was still prepared to fix the sink and remediate the mould.

18. The Tenant confirmed this was the case, testifying that Landlord Agent was condescending and aggressive and she didn't like dealing with him. The Landlord Agent denied these claims.

Leak in living room and bedroom ceilings.

19. The Tenant testified that there had been water damage due to leaks in the ceilings of both living room and bedroom. This was supported by pictures submitted that showed cracks in both ceilings.

20. In response the Landlord agent testified that he was aware of the living room ceiling and that the leak occurred prior to the installation of the new roof. He also testified that he had verified the leak didn't persist and addressed the crack in the living room. As to the crack in the bedroom ceiling this was the first that he heard of it and was prepared to address it.

Stove and toilet.

21. The Tenant testified she had ongoing issues with the fan and two burners on the stove but had never informed the Landlord. Similarly, she also testified to having issues with the toilet but couldn't remember when she informed the Landlord.

22. In response the Landlord Agent testified that he had no knowledge of there being issues with the stove but again was prepared to address them.

### Final submissions

23. The tenant testified that she wished to maintain the tenancy and proposed a payment plan in which she would pay the rent and \$500.00 towards the arrears each month. She also testified that she received \$1,300.00 a month from Ontario Disability Support Program and her adult son made an additional \$1,900.00 a month.

24. In response the Landlord Agent testified that they would be opposed to a payment plan and that they were directed by the Landlord to seek eviction.



25. Regarding the issue of lawful rent, despite the Tenants testimony I am not satisfied on the balance of probabilities that the Landlord agreed to changing the lawful rent from \$1,295.00 to \$1,000.00 a month. Specifically, in the absence of any supporting evidence, I find it more likely than not that what was agreed to was as the Landlord Agent submitted, that the Tenant could pay less for a period while making payments towards the arrears until they were caught up. Accordingly for this reason I am satisfied that the Lawful rent is \$1,295.00 as claimed by the Landlord Agent and noted in the N4 Notice served on the Tenant and the application filed with the Board.
26. Section 20(1) of the *Residential Tenancies Act, 2006* (the “Act”) states:
- 20 (1)** A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.
27. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, the Court of Appeal held that it is necessary to take a contextual approach to determining whether a landlord has breached its maintenance obligations under section 20(1) of the Act and a landlord will not be found liable for such a breach if the landlord responded to the maintenance issue reasonably in the circumstances.
28. Applying this test to the circumstances here, I am not satisfied on the balance of probabilities that the Landlord failed to meet their maintenance obligations.
29. First regarding the closet doors, the Tenant failed to provide any details such as date and time when they informed the Landlord, or the Landlord’s wife as claimed. Continually, given the Landlord Agents testimony, I am more than satisfied that if were indeed made aware he would have addressed the issue. Additionally, I cannot overlook that the Tenant also failed to provide any testimony or submissions as to how the lack of closet doors impeded her habitation or health and safety. Accordingly, I cannot find that the Landlord failed to meet his maintenance obligations regarding this matter.
30. Regarding the mould under the kitchen sink, the Tenant didn’t dispute the fact that they denied the Landlord Agent access to address the issue. As to her allegations that he was aggressive and threatening she offered no details to support her claims. Accordingly given these facts I cannot find the Landlord was derelict in his obligations as the Tenant actively prevented the Landlord Agent from addressing them.
31. In regard to the alleged water damage due to leaks in the ceiling, the pictures provided showed no sign of ongoing leaking or water damage, this coincides with the Landlord Agent testimony that the issue, specifically, in the Living room was already addressed when they replaced the roof. Further, given the lack of details surrounding the alleged leak and damage in the bedroom, I am more accepting of the Landlord Agent’s testimony in that the Tenant never told the Landlord or him of the issue so that it could be addressed, if in fact it was extant.
32. Finally, given the Tenant testified that she never informed the Landlord of the issues surrounding the stove and couldn’t remember telling him about the toilet, I cannot find the



Landlord failed to meet his maintenance obligations as he was never informed of them in the first place. Accordingly, for these reasons and those above, I am not satisfied that the Tenant has proved that the Landlord failed to meet his maintenance obligations and therefore is entitled to an abatement of rent as sought. Therefore, the rent arrears owing to November 30, 2023 are \$9,540.00 as claimed.

33. As to the Tenants request for a payment plan, given consideration to the their finances I am not satisfied that any payment plan imposed would be successful without prejudicing the Landlord due to the length of time it would required.
34. There is no last month's rent deposit.
35. 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 December 31, 2023 pursuant to subsection 83(1)(b) of the Act.
36. Specifically, I am satisfied that a brief postponement to allow the Tenant to secure financial assistance and or a new rental unit is warranted.

**It is ordered that:**

1. The Request to review LTB-L-055886-23 issued on September 6, 2023 is granted.
2. LTB-L-055886-23-RV-IN issued on September 29, 2023 is cancelled and replaced with the following.
3. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
4. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$9,726.00 if the payment is made on or before November 30, 2023. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$11,021.00 if the payment is made on or before December 31, 2023. See Schedule 1 for the calculation of the amount owing.
5. 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 31, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
6. **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 31, 2023**
7. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$8,814.22. 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.



8. The Tenant shall also pay the Landlord compensation of \$42.58 per day for the use of the unit starting November 10, 2023 until the date the Tenant moves out of the unit.
9. If the Tenant does not pay the Landlord the full amount owing on or before December 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 1, 2024, at 7.00% annually on the balance outstanding.
10. If the unit is not vacated on or before December 31, 2023, then starting January 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
11. 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 January 1, 2024.

**November 22, 2023**  
**Date Issued**

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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 4, 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	\$9,540.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord 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>\$9,726.00</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 31, 2023**

Rent Owing To December 31, 2023	\$10,835.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord 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>\$11,021.00</b>

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

Rent Owing To Hearing Date	\$8,628.22
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<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 deposit	- \$0.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$0.00



<b>Less</b> the amount the Landlord 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 Landlord</b>	<b>\$8,814.22</b>
Plus daily compensation owing for each day of occupation starting November 10, 2023	\$42.58 (per day)

3. 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 the [Landlord/Tenant] was not reasonably able to participate in the proceeding.

**November 22, 2023**  
**Date Issued**

\_\_\_\_\_  
Kelly Delaney  
Member, Landlord and Tenant Board

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Toronto ON M7A 2G6

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