



Order under Section 21.2 of the Statutory Powers Procedure Act And Section 69 of the Residential Tenancies Act, 2006

Citation: Barker v Horvath, 2023 ONLTB 74512

Date: 2023-11-14 **File Number:**
LTB-L-007053-23-RV

In the matter of: 3, 215 TALBOT RD Delhi
ON N4B2A1

Between: Craig Barker Landlord

And

Rodney Horvath Tenants
Melissa Cowan

Review Order

Craig Barker (the 'Landlord') applied for an order to terminate the tenancy and evict Rodney Horvath and Melissa Cowan (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard on August 14, 2023 and resolved by order LTB-L-007053-23 issued on August 29, 2023.

On September 21, 2023 the Tenants requested a review of the order and that the order be stayed until the request to review the order is resolved.

On September 22, 2023 interim order LTB-L-007053-23-RV-IN was issued, staying the order issued on August 29, 2023 and directing the matter to a review hearing.

This request was heard by videoconference on November 2, 2023. The Landlord and the Tenant Rodney Horvath attended the hearing.

Determinations – Review Request:

1. The Tenants request for review alleges that the Tenants were not reasonably able to participate in the August 14, 2023 hearing date. The Tenant Rodney Horvath testified that

on the hearing date, he had to attend a heart specialist appointment and as such was unable to attend the hearing. The Tenant also stated that he confused his dates and thought that the hearing was scheduled for August 15, 2023 (the following day).

2. The Landlord opposed the Tenants review request stating that the Tenant ought to have known the hearing date as they received notice of hearing from the Board.
3. The Tenant testified that on the hearing date, he spoke with the Landlord on the telephone and advised the Landlord that he was attending a specialist appointment on that date and that the Landlord did not mention the hearing scheduled for 1:00pm the same date. The Landlord could not recall having a discussion with the Tenant on this date, but confirmed that he and the Tenant have communicated over the last several months.
4. Based on the evidence before the Board, I find that the Tenants were not reasonably able to participate in the proceedings. In *King-Winton v. Doverhold Investments 2008 CanLII 60708 (ON SCDC) ('King-Winton')* the Divisional Court stated that "Being reasonably able to participate in the proceeding must be interpreted broadly, natural justice requires no less." The facts of this case are similar to the facts in *King-Winton*, as the Tenants believed that the hearing date was for August 15th instead of the 14th. I find that the Tenants had a genuine intention of attending the hearing and that the non-attendance was due to confusion with the dates.
5. As such, the Tenant's request for review is granted and the matter proceeded to be heard De Novo (anew).

Determinations - L1 application:

6. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants 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.
7. As of the hearing date, the Tenants were still in possession of the rental unit.
8. The lawful rent is \$1,453.45. It is due on the 1st day of each month.
9. Based on the Monthly rent, the daily rent/compensation is \$47.78. This amount is calculated as follows: \$1,453.45 x 12, divided by 365 days.
10. The Tenants have not made any payments since the application was filed.
11. The rent arrears owing to November 30, 2023 are \$32,235.95.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
13. The Landlord collected a rent deposit of \$1,400.00 from the Tenants 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.

14. Interest on the rent deposit, in the amount of \$62.92 is owing to the Tenants for the period from July 10, 2020 to November 2, 2023.
15. 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 November 30 2023 pursuant to subsection 83(1)(b) of the Act.
16. The arrears of rent are substantial and approaching the Board's monetary jurisdiction. The Tenants have made no payments to the Landlord in over 17 months and did not propose any repayment plan at the hearing. The Tenant present at the hearing stated that the Tenants cannot financially sustain the tenancy and requested additional time to vacate the rental unit. The Tenant requested until December 31 2023 to vacate.
17. I find that it would be unfair to delay beyond November 30, 2023. In this case, the Tenants have had more than enough time to find alternate housing throughout their 17 months of non-payment to the Landlord. To delay further would only result in additional arrears owing and prejudice to the Landlord.

It is ordered that:

1. The request to review order LTB-L-007053-23 issued on August 29, 2023 is granted. The order is cancelled and replaced with the following.
2. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
3. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$32,421.95 if the payment is made on or before November 30, 2023. See Schedule 1 for the calculation of the amount owing.
4. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after November 30, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
5. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before November 30, 2023**
6. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$29,601.14. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.

7. The Tenants shall also pay the Landlord compensation of \$47.78 per day for the use of the unit starting November 3, 2023 until the date the Tenants move out of the unit.
8. If the Tenants do not pay the Landlord the full amount owing on or before November 30, 2023, the Tenants will start to owe interest. This will be simple interest calculated from December 1, 2023 at 7.00% annually on the balance outstanding.
9. If the unit is not vacated on or before November 30, 2023, then starting December 1, 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 December 1, 2023.

November 14, 2023

Date Issued

Fabio Quattrociochi

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 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 November 30, 2023

Rent Owing To November 30, 2023	\$32,235.95
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	\$32,421.95

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

Rent Owing To Hearing Date	\$30,878.06
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	- \$1,400.00
Less the amount of the interest on the last month's rent deposit	- \$62.92
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	\$29,601.14
Plus daily compensation owing for each day of occupation starting November 3, 2023	\$47.78 (per day)