



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

Citation: Camsta (No.1) Limited Partnership c/o DMS Property Management Ltd. v Earl, 2023 ONLTB 74536

Date: 2023-11-09 **File Number:** LTB-L-015417-23-RV

In the matter of: 503, 43 FOREST AVE
HAMILTON ON L8N1X2

Between: Camsta (No.1) Limited Partnership c/o DMS Landlord
Property Management Ltd.

And

Charles Earl Tenant
Jessica Flegg

Review Order

Camsta (No.1) Limited Partnership c/o DMS Property Management Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Charles Earl and Jessica Flegg (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-015417-23 issued on August 16, 2023 based on a hearing that took place on July 19, 2023 where the Tenant was not present.

On August 22, 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 August 23, 2023 interim order LTB-L-015417-23-RV-IN was issued, staying the order issued on August 16, 2023.

This application was heard in by videoconference on October 11, 2023.

The Landlord and the Tenant attended the hearing. The Landlord was represented by Frank Calcagni.

Determinations:

REQUEST TO REVIEW



1. As the Landlord consented to the Tenant's request to review, the review was granted and I proceeded to hear the merits of the Landlord's L1 application.

L1 APPLICATION

2. The Tenant has not paid the total rent the Tenant was required to pay for the period from November 1, 2022 to January 31, 2023. Because of the arrears, the Landlord served a Notice of Termination effective January 23, 2023.
3. As of the hearing date, the Tenant remains in possession of the rental unit.
4. The lawful monthly rent is \$1,789.34 and is due on the first day of each month.
5. The Tenant has made payments totalling \$2,101.00 since the application was filed.
6. The Landlord is not holding a last month rent deposit.
7. The arrears and costs owing to October 31, 2023 total \$16,990.94.
8. The Landlord seeks a standard, voidable, eleven-day order.

Tenant's Request for Relief

9. The Tenant does not dispute the arrears as claimed by the Landlord.
10. The Tenant explains that the reason they accrued further arrears is because the firstnamed Tenant lost his job and has only regained employment the week of the hearing.
11. The Tenants seek to preserve their tenancy and are able to commit to paying the rent on time starting November 2023 but were not able to commit to making payments towards the arrears.
12. The Tenant submits they have lived in the rental unit for the past three years and have a child who lives with them on a part-time basis. As such, they prefer to stay in the their home.
13. However, in the alternative, the Tenant seeks a delay in eviction of two months to secure alternative accommodation.
14. The Landlord opposes the Tenant's request for relief as the arrears have only accrued since the original hearing and there is no immediate prospect of money for the Tenant. The Landlord submits that it is clear the Tenant cannot afford the rental unit.

ANALYSIS



15. Based on the evidence before the Board, I find the arrears and costs owing to October 31, 2023 total \$16,990.94. This is undisputed by the parties.
16. The problem with the Tenant's request for relief is that repayment plans are granted to allow a tenant to catch up on the arrears while continuing to pay their monthly rent. Here the Tenant's own evidence suggests that any repayment plan would be unrealistic and put the Tenant in further financial distress.
17. Therefore, I cannot grant the Tenant's request for a repayment plan as I am not satisfied the Tenants will be able to make payments towards the arrears – although towards the end of the hearing, they proposed \$1,000.00 each month.
18. However, I can consider whether to delay eviction under the circumstances.
19. Given the length of this tenancy and the Tenant's personal circumstances combined with the quantum of rent arrears owing, I find a delay in eviction to November 30, 2023 to be appropriate.
20. The Landlord collected a rent deposit of \$1,745.70 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.
21. Interest on the rent deposit, in the amount of \$33.95 is owing to the Tenant for the period from January 1, 2023 to October 11, 2023.
22. 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 not be unfair to postpone the eviction until November 30, 2023 pursuant to subsection 83(1)(b) of the Act.
23. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The request to review order LTB-L-015417-23 issued on August 16, 2023 is granted and replaced with the following order.
2. The interim order issued on August 23, 2023 is cancelled.
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 Board in trust:**
 - \$16,990.94 if the payment is made on or before October 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$18,780.28 if the payment is made on or before November 30, 2023. See Schedule 1 for the calculation of the amount owing.
5. The Tenant may also make a motion at the Board 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 November 30, 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 November 30, 2023.**
7. If the Tenant does not void the order, the Tenant owes the Landlord \$12,119.69. 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 Tenant. See Schedule 1 for the calculation of the amount owing.
8. The Tenant shall also pay the Landlord compensation of \$58.83 per day for the use of the unit starting October 12, 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 November 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 1, 2023 at 7.00% annually on the balance outstanding.
10. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
11. 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.
12. 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 9, 2023

Date Issued

Sonia Anwar-Ali

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.



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 October 31, 2023

Rent Owing To October 31, 2023	\$ 18,905.94
Application Filing Fee	\$ 186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$ 2,101.00
Total the Tenant must pay to continue the tenancy	\$ 16,990.94

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B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made after October 31, 2023 but on or before November 30, 2023

Rent Owing To November 30, 2023	\$ 20,695.28
Application Filing Fee	\$ 186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$ 2,101.00
Total the Tenant must pay to continue the tenancy	\$ 18,780.28

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

Rent Owing To Hearing Date	\$ 15,814.34
Application Filing Fee	\$ 186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$ 2,101.00
Less the amount of the last month's rent deposit	- \$ 1,745.70
Less the amount of the interest on the last month's rent deposit	- \$33.95
Total amount owing to the Landlord	\$ 12,119.69
Plus daily compensation owing for each day of occupation starting October 12, 2023	\$ 58.83 (per day)