



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

Citation: Oliveira v Maynard, 2023 ONLTB 67884

Date: 2023-10-26

File Number: LTB-L-044657-22-RV

In the matter of: BASEMENT UNIT, 43 BACK ST
BRADFORD ON L3Z1W8

Between: Manuel Oliveira Landlord

And

Jaime Maynard Tenant
Danny Lee

Manuel Oliveira (the 'Landlord') applied for an order to terminate the tenancy and evict Jaime Maynard and Danny Lee (the 'Tenant') because the Tenants have been persistently late in paying the Tenants' rent. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was resolved by order LTB-L-044657-22 issued on May 25, 2023. Only the Tenant Jaime Maynard was in attendance at the hearing May 18, 2023 hearing.

On June 25, 2023, the Tenant Danny Lee requested a review of the order and that the order be stayed until the request to review the order is resolved. The Tenant Danny Lee submits he was not reasonably able to participate in the May 18, 2023 hearing.

On June 30, 2023, interim order LTB-L-044657-22-RV-IN was issued, staying the order issued on May 25, 2023.

This application was heard by videoconference on September 28, 2023.

The Landlord, the Landlord's representative R. Bianchi and the Tenants attended the hearing.

Determinations:

Review

1. The Tenant Danny Lee (DL) requested a review of order LTB-L-044657-22, issued May 25, 2023 alleging he was not reasonably able to participate in the hearing which was conducted on May 18, 2023 and that as a result, a serious error occurred.

2. At the review hearing, DL stated he had a mandatory in-person court matter to attend on May 18, 2023 and thus he was unable to attend the LTB hearing. DL produced documentation, confirming he had a court matter scheduled for May 18, 2023.
3. The Landlord denied the Tenant DL was not reasonably able to participate in the hearing and submitted the Tenant Jaime Maynard (JM) attended and represented DL at the hearing. DL responded he had received a “no contact order” with JM prior to the hearing, resulting in the Tenants being unable to communicate for some time prior. As a result, DL submits that JM did not have his authority to represent him and/or speak on his behalf, at the LTB hearing.
4. In *King-Winton v. Doverhold Investments Ltd.*, 2008 CanLII 60708, the Divisional Court held that “being reasonably able to participate in the proceeding must be interpreted broadly, natural justice requires no less.” Interpreting this situation broadly, and given the testimony that DL’s court matter had taken place at the same time of the LTB hearing, I find on a balance of probabilities, the Tenants were not reasonably able to participate in the proceedings.
5. For the reasons above, the Tenant’s request for a review is granted and the Landlord’s application was heard *de novo*.

L2/N8 Application

6. The Landlord served the Tenants with a Form N8 notice of termination for persistently late payments. The notice was served on July 21, 2022 and contained a termination date of September 30, 2022. The Landlord’s application was filed on August 9, 2022.
7. The Tenant DL disputed the alleged late payments noted in the Landlord’s Form N8. While the onus to prove the allegations rests with the Landlord, the Tenants did not produce any documentary evidence to dispute the detailed ledger of payments provided by the Landlord. At one point, the Tenant DL referenced an arrears ledger taken for the Landlord’s arrears of rent application which simply showed whether rent was paid or not. I do not find this ledger to be too relevant to this application as it did not stipulate the actual date of payment, simply whether rent was paid.
8. Later, DL stated that payments were paid late as the Landlord wanted the Tenants to pay by cash. In reply, however, the Landlord produce a letter given to the Tenants in March 2023 advising that rent can be paid by e-transfer. Based upon the evidence presented, including supporting corresponding receipts submitted by the Landlord, I find, on a balance of probabilities, that the Tenant has persistently failed to pay the rent on the date it was due. Rent is due on the 1st day of each and every month. For the 12 months leading up to the service of the Form N8, rent was paid late in 7 months, with no rent paid in 4 months. As such, rent was only paid on time once.

Per diem Compensation

9. The Tenant shall pay to the Landlord \$13,103.80, which represents compensation for the use of the unit from October 1, 2022 to September 28, 2023.

10. The Tenant shall also pay the Landlord compensation of \$36.10 per day for the use of the unit starting September 29, 2023 until the date the Tenant moves out of the unit.
11. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.

Section 83

12. Section 83 requires that I consider all the circumstances, including the Tenants and the Landlord's situations to determine if it would be appropriate to grant section 83 relief from eviction.
13. The Landlord seeks termination of the tenancy. The Landlord's representative indicated her client is elderly and that the Tenants' inconsistent payments have been very stressful. It was noted that the arrears outstanding as of September 30, 2023 exceeded \$19,000.00. and that there has been no rent paid since February 2, 2023. The Landlord's application was filed in August 2022 and thus, it was submitted the Tenants have had several months to locate alternative accommodations.
14. The Tenants have resided at the rental unit for 12 years and the Tenants have an 11-year-old child who attends school nearby. DL also indicated he has suffered from health issues in the past.
15. DL indicated there were serious health and safety maintenance issues at the rental unit, but such issues were resolved in 2019. According to DL, the Tenants never filed a maintenance application because he was "under the impression" they were too late to do so. There was insufficient evidence before me to determine the Landlord is currently in serious breach of the Landlord's obligations under the lease agreement or the Act.
16. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006*(the 'Act'), including the Tenants' personal and financial circumstances, their payment history, and balanced this with any potential prejudice to the Landlord.
17. In the circumstances, I find the Tenant's repeated failure to pay rent on time - or any rent over a period of several months - suggests an inability and/or unwillingness to comply with a repayment plan moving forward and accordingly, the tenancy is not sustainable. Notwithstanding the foregoing, I find that it would not be unfair to postpone the eviction until November 24, 2023 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The request to review order LTB-L-044657-22 issued May 25, 2023 is granted. The order is cancelled and replaced with this order.
2. The tenancy between the Landlord and the Tenants is terminated on November 24, 2023. The Tenants must move out of the rental unit on or before November 24, 2023.
3. If the unit is not vacated on or before November 24, 2023, then starting November 25, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

4. 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 November 25, 2023.
5. The Tenant shall pay to the Landlord \$13,103.80, which represents compensation for the use of the unit from October 1, 2022 to September 28, 2023.
6. The Tenant shall also pay the Landlord compensation of \$36.53 per day for the use of the unit starting September 29, 2023 until the date the Tenant moves out of the unit.
7. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
8. The total amount the Tenant owes the Landlord is \$13,289.80.
9. If the Tenant does not pay the Landlord the full amount owing on or before November 6, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 7, 2023 at 7.00% annually on the balance outstanding.

October 26, 2023

Date Issued

Peter Nicholson

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 of the Tenants expires on May 25, 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.