



**Order under Section 69  
Residential Tenancies Act, 2006**

**Citation:** Asman v Mckinnon, 2023 ONLTB 56337

**Date:** 2023-08-11

**File Number:** LTB-L-022009-23

**In the matter of:** 570 STONECLIFFE RD OAKVILLE  
ON L6L4N9

**Between:** Asman, 2827564 Ontario Inc and 2827564 Ontario Inc Landlord

**And**

Melissa Mckinnon Tenant

Asman, 2827564 Ontario Inc and 2827564 Ontario Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Melissa Mckinnon (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on August 3, 2023. The Tenant attended the hearing. The Landlord was represented at the hearing by Ali Golabgir.

The Landlord and the Tenant attended the hearing.

**Determinations:**

*Preliminary Issue – Adjournment*

1. Prior to the hearing the Tenant requested an adjournment so this matter may be heard concurrently with application LTB-T-058374-23.
2. *LTB Interpretation Guideline 1* sets out the factors a Member may consider when deciding whether to grant an adjournment. These factors include:
  1. the reason for the adjournment and position of the parties;
  2. the issues in the application;
  3. any prejudice that may result from granting or denying the request;

4. the history of the proceeding including other adjournments or rescheduling;
5. the LTB's obligation to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.

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3. I have reviewed LTB-T-058374-23. I do not find the issues are such that these applications need to be heard together. The Tenant's application alleges the Landlord began sending her invalid notices termination beginning May 15, 2022. Yet, application itself was not filed until July 23, 2023.
4. Further, the arrears owing to the Landlord are substantial. I considered the prejudice to the Landlord if the matter were to be unnecessarily delayed, and the LTB's obligation to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter
5. When I considered the factors outlined in *Guideline 1*, I found it to be appropriate to deny the adjournment request and proceeded with the hearing.

#### L1 Application

6. The Tenant does dispute the amount of rent arrears. The issue before the Board is whether it is appropriate to grant relief from eviction pursuant to s.83 of the *Residential Tenancies Act 2006*, (the 'Act')
7. According to s. 83 of the Act when the Board hears an application for an order evicting a tenant, the Board must consider whether there are any circumstances that support granting relief from eviction.
8. The Tenant proposed to pay the arrears in twelve equal installments. The Landlord does not believe the Tenant will be able to comply with the requested payment plan.
9. The Act is remedial legislation and the courts have determined that evicting a tenant is a remedy of last resort. In the cases of *Sutherland v. Lamontagne*, [2008] O.J. No. 5763 (Div. Ct.) and *Paderewski Society v. Ficyk*, [1998], the Divisional Court stated, "to put somebody out of their home must, in my view, call for clear and compelling circumstances that it's no longer possible for the arrangement to continue." I find that the circumstances in this application do not rise to that level.

10. I find that it would not be unfair to grant the Tenant's request. While the arrears are substantial, the Tenant's payment plan seems realistic and not unduly lengthy.
11. I find that a conditional order allowing the Tenant to pay the arrears over twelve months balances, the prejudice to each of the parties and it would preserve the tenancy.
12. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

**It is ordered that:**

1. The Tenant shall pay to the Landlord \$24,222.25, which represents the arrears of rent and costs outstanding for the period ending August 12, 2023.
2. The Landlord's application for eviction is denied on the condition Tenant shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:

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| <b>Date Payment Due</b>  | <b>Payment Amount</b> |
|--|-----------------------|
| The 13 <sup>th</sup> day of each month beginning August 13, 2023, and ending June 13, 2024 | \$2018                |
| July 13, 2024  | \$2024.28             |

3. The Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period August 13, 2023, to August 12, 2024, or until the arrears are paid in full, whichever date is earliest.
4. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after August 12, 2023.

**August 9, 2023**

**Date Issued**

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**Bryan Delorenzi**

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.

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