



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

Citation: AMALADE ESTATES LTD. v Raycraft, 2023 ONLTB 49120

Date: 2023-07-12

File Number: LTB-L-002817-21

2023 ONLTB 49120 (CanLII)

In the matter of: 18, 18 Holland St
ST.THOMAS ON N5R4S2

Between: AMALADE ESTATES LTD. Landlord

And

Marie Raycraft Tenant

AMALADE ESTATES LTD. (the 'Landlord') applied for an order to terminate the tenancy and evict Marie Raycraft (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. The matter was resolved with the issuance of order LTB-L-002817-21 (the 'Order') on April 20, 2023, following a hearing. The Order dismissed the Landlord's application as abandoned, as no one appeared at the hearing on behalf of the Landlord.

The Landlord requested that the Order be reviewed. The matter was directed to a hearing.

This application was heard by videoconference on May 18, 2023.

Only A. Borisenko ('AB'), for the Landlord, attended the hearing.

As of 1:18 pm, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

Request for Review Granted

1. AB requested that the Order be reviewed on the basis that the Landlord was not reasonably able to participate in the hearing. The Board's notice of hearing was sent to AB by email. AB testified that there had been a problem with his email and that he did not received the Board's email notice either in the inbox or in the junk folder. He was not familiar with the procedure for using the Board's portal and so had not thought to check the portal for notice of a hearing date.
2. He was not aware of the hearing until he received a copy of the Order by email. The rental arrears are substantial and the Landlord fully intended to participate in the hearing of the application.
3. I find AB's explanation about missing the Notice of Hearing to be credible, particularly in light of the relatively recent introduction of the portal procedures. I granted the Landlord's request for review and proceeded to hear the application de novo.

The 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 lawful rent is \$974.00. It is due on the 1st day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$32.02. This amount is calculated as follows: \$974.00 x 12, divided by 365 days.
8. The Tenant has paid \$1,450.00 to the Landlord since the application was filed.
9. The rent arrears owing to May 31, 2023, as of the date of the hearing, were \$15,770.00.
10. The Landlord incurred costs of \$244.00 for filing the application and is entitled to reimbursement of those costs.
11. There is no last month's rent deposit.
12. AB had no information as to why the Tenant has not been making rental payments. He did not know why the Tenant did not attend the review hearing but indicated that he had personally slipped a copy of the notice of hearing under the door of the unit in advance of the hearing.
13. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$17,962.00 if the payment is made on or before July 23, 2023. See Schedule 1 for the calculation of the amount owing.
3. 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 July 23, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. **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 July 23, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$15,616.36. 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.
6. The Tenant shall also pay the Landlord compensation of \$32.02 per day for the use of the unit starting May 19, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before July 23, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 24, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before July 23, 2023, then starting July 24, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 July 24, 2023.

July 12, 2023

Date Issued

Lynn Mitchell

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 January 24, 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 July 23, 2023

Rent Owing To July 31, 2023	\$19,168.00
Application Filing Fee	\$244.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,450.00
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	\$17,962.00

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

Rent Owing To Hearing Date	\$16,822.36
Application Filing Fee	\$244.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,450.00
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	- \$
Less the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord	\$15,616.36
Plus daily compensation owing for each day of occupation starting May 19, 2023	\$32.02 (per day)