



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

**Citation:** Susheelendra v Edwards, 2023 ONLTB 39867

**Date:** 2023-05-25

**File Number:** LTB-L-031419-22

2023 CanLII 88628 (ON LTB)

**In the matter of:** 107, 200 MALTA AVE  
BRAMPTON ON L6Y6H8

**Between:** Abilash Susheelendra and Divya Varma Landlords

**and**

Kaylee-Ann Marissa Edwards Tenant

Abilash Susheelendra and Divya Varma (the 'Landlords') applied for an order to terminate the tenancy and evict Kaylee-Ann Marissa Edwards (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-0141922 (the 'Order') on April 21, 2023, following a hearing held on March 23, 2023.

On May 1, 2023 the Tenant requested that the Order be reviewed and that the Order be stayed until the request to review the order was resolved. Interim Order LTB-L-031419-22-RV-IN was issued May 2, 2023, staying the Order and directing that a hearing be scheduled to hear the Tenant's request for review.

The request for review was heard by videoconference on May 18, 2023.

The Landlords, the Landlords' representative, L. Barder, and the Tenant attended the hearing.

**Determinations:**

*Request for Review Granted:*

1. The Tenant requested that the Order be reviewed on the basis that she was not reasonably able to participate in the hearing on March 23, 2023. She testified that she had

had difficulty accessing the hearing by way of Zoom and obtained access to the hearing room just as the hearing of the Landlords' application drew to a close. She was unable to make herself heard in the hearing room, such that the hearing concluded without any input from her and without the Member being aware that she was present.

2. The Landlords' representative did not expressly contest the Tenant's testimony about the appearance except to say that the Landlords were not aware that the Tenant had joined the hearing room that day.
3. I find that the Tenant's description of events is credible in light of the difficulty experienced by various parties in accessing virtual hearings. I granted the Tenant'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 \$2,750.00. It is due on the 1st day of each month.
7. Based on the monthly rent, the daily rent/compensation is \$90.41. This amount is calculated as follows: \$2,750.00 x 12, divided by 365 days.
8. The Tenant has not made any payments since the application was filed.
9. The rent arrears owing to May 31, 2023 were \$38,500.00 as of the date of the hearing.
10. The Tenant did not dispute the amount of arrears, once the Landlords confirmed that the arrears amount claimed included credit for one month's rent payment following the Tenant's payment of first and last month's rent at the commencement of the tenancy.
11. The Tenant indicated that serious mental and physical health issues and lack of employment had prevented her from making the rent payments. She testified, however, that she was about to come into significant funds from two sources: first, she was due to receive an income tax refund in excess of \$19,000.00 within a week's time and; second, she was to receive more than \$80,000.00 from the government as a disability award within 6 weeks' time.
12. I note that the communications between the Landlords' representative or the Landlords on one hand and the Tenant on the other over the past year show a pattern of attempts by the Landlord to make arrangements for payments. The Tenant has made no payments whatsoever against rent since the payment following the first month of the tenancy. Arrears now exceed the Board's \$35,000.00 monetary jurisdiction, as further set out below.

13. There was some discussion during the hearing about an arrangement by which the Tenant would pay \$15,000.00 in a week's time and void any order by payment in full of arrears by June 30, 2023.
14. Any further postponement of a termination date for voiding the order would put the Landlords at real risk of writing off even more rent, at the rate of \$2,750.00 per month, over and above the Board's \$35,000.00 limit.
15. Such postponement might be justified if the Tenant were to produce evidence to support her claims of the impending cash inflows. The Tenant did not, however, produce any documentary or other supporting evidence of her claims. She initially offered, in the hearing, to produce written confirmation about both the income tax refund and the disability award. Following a short break, the Tenant testified that she was unable to access her Canada Revenue Agency account online during the hearing and that the document which she had about the disability award did not include any reference to the amount. She did not have a copy of her income tax return showing the claimed refund as the return was in the hands of her accountant and otherwise only available to her online.
16. I find that, absent solid evidence of prospective sizeable payments in the short term, no additional postponement of termination past the standard termination time line is warranted in the circumstances.
17. The Landlord incurred costs of \$244.00 for filing the application and is entitled to reimbursement of those costs.
18. The Landlord collected a rent deposit of \$2,750.00 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.
19. Interest on the rent deposit, in the amount of \$88.15 is owing to the Tenant for the period from February 5, 2022 to May 18, 2023.
20. 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.
21. I note that the amount of arrears owing as of the date of the hearing exceeds the Board's monetary jurisdiction of \$35,000.00. The monetary jurisdiction of the Board is set out in subsection 207(1) of the Act, which provides that the Board may order the payment of an amount up to the monetary jurisdiction of the Small Claims Court, which is \$35,000.00.
22. Section 74 of the Act, being the Act's voiding provision, provides that an eviction order for non-payment of rent is void if the tenant pays to the landlord or to the Board, before the termination date in the order, the total of various amounts set out in that section.
23. I find that section 207(1) of the Act prohibits the Board from ordering the Tenant to pay more than \$35,000.00 (plus the Landlord's application filing fee) in the event the tenancy is terminated but the Tenant has the choice of whether to pay the amount required to void a termination order. Setting an amount for the Tenant's election in that regard does not

constitute an order compelling the Tenant to pay an amount over the Board's monetary jurisdiction. The order to pay in the event of termination is subject to the \$35,00.00 (plus application filing fee) limit but the terms of the order setting out the voiding provision is not subject to that same limit.

**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 Board in trust:**  
  
\$44,244.00 if the payment is made on or before July 17, 2023. See Schedule 1 for the calculation of the amount owing.
3. 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 July 17, 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 17, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$34,783.23. 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.
6. The Tenant shall also pay the Landlord compensation of \$90.41 per day for the use of the unit starting May 19, 2023 until the date the Tenant moves out of the unit, to a maximum total payment of \$35,244.00 further to the statutory maximum payment order which may be ordered by the Board.
7. If the Tenant does not pay the Landlord the full amount owing on or before July 17, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 18, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before July 17, 2023, then starting July 18, 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 18, 2023.

**July 6, 2023**

**Date Issued**

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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 17, 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.

\*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

**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 17, 2023**

Rent Owing To May 31, 2023	\$44,000.00
Application Filing Fee	\$244.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$44,244.00</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before June 5, 2023**

Rent Owing To Hearing Date	\$37,377.00
Application Filing Fee	\$244.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00

<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	-\$2,750.00
<b>Less</b> the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$34,783.23</b>
Plus daily compensation owing for each day of occupation starting May 19, 2023 (to maximum \$35,000,00 statutory limit plus \$244.00 application filing fee)	\$90.41 (per day) to maximum \$35,186.00