



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

**Citation:** P.A.M. GARDENS NON-PROFIT HOUSING INC. v Sylvie Baron, 2023 ONLTB 47390

**Date:** 2023-07-05

**File Number:** LTB-L-001976-22-RV

**In the matter of:** 21, 1367 COMMISSIONERS RD W LONDON  
ON N6K1E2

**Between:** P.A.M. GARDENS NON-PROFIT HOUSING Landlord  
INC.

**And**

Sylvie Baron

Tenant

P.A.M. GARDENS NON-PROFIT HOUSING INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Sylvie Baron (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-001976-22 issued on August 17, 2022.

On September 7, 2022, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On September 7, 2022 interim order LTB-L-001976-22-RV-IN was issued, staying the order issued on August 17, 2022, if not enforced.

This review was heard by videoconference on September 27, 2022 and on June 22, 2023.

On September 27, 2022 the Landlord's Legal Representative Thomas Schoenleber, the Tenant and the Tenant's Legal Representative Allison Darling attended the hearing.

On June 22, 2023, the Landlord's Legal Representative Thomas Schoenleber and the Tenant attended the hearing. The Board received an email communication on June 16, 2023 indicated that the Tenant's Legal Representative Allison Darling was no longer representing the Tenant.

**Determinations:**

*The Review Hearing:*

1. The Tenant submitted that they did not receive the notice of hearing in the mail and therefore was not reasonably able to participate in the hearing conducted on July 18, 2022.
2. The Tenant has resided in the rental until since June 2021 and states that she did not receive any documentation from the Board pertaining to this hearing and that she receives her mail in a community mailbox. Photographs tendered at the review hearing show the condition of the mailbox and the Tenant submits that due to the hole, she can pull mail out from the hole and has previously had issues with getting her mail.
3. The Landlord's witness Robert Murphy ('RM') testified that he is a maintenance technician and that the community mailbox is located on the main laneway coming into area where the 20 rental units are located. RM stated that he has not received any complaints regarding mail being not received in approximately 10 years and states it would be impossible to pull mail out from the hole that was in the mailbox.
4. The Board's records indicate that the notice of hearing package was mailed to the Tenant on May 27, 2022 and was not returned to the Board.
5. 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."
6. Interpreting this situation broadly, I find on a balance of probabilities, that the Tenant was not reasonably able to participate in the proceedings. The Tenant indicated that had she received the Notice of Hearing, she would have attended the hearing.
7. For the reasons above, at the hearing I granted the request for a review. A hearing of the Landlord's application proceeded *de novo* (anew) on June 22, 2023 as the matter was adjourned to provide the Tenant with an opportunity to compile documentation pertaining to possibly receiving subsidization. An interim order was issued on October 5, 2022.

*The L1 Hearing:*

8. 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.
9. As of the hearing date, the Tenant was still in possession of the rental unit.
10. The lawful rent is \$830.00. It is due on the 1st day of each month.
11. Based on the Monthly rent, the daily rent/compensation is \$27.29. This amount is calculated as follows:  $\$830.00 \times 12$ , divided by 365 days.
12. The Tenant has not made any payments since the application was filed.

13. Interim order LTB-L-001976-22-RV-IN2 was issued October 5, 2022 wherein it was ordered that the Tenant was to pay to the Landlord the amount of \$129.00 per month, which was the subsidized amount, on or before the first day of each month commencing October 1, 2022 until the matter was finalized. The Landlord's Legal Representative submitted that the Tenant had not abided by the terms of the interim order and has not paid any rent.
14. The Tenant did not dispute that she has not paid any rent to the Landlord and submits that she was confused because she received a letter from the Landlord in January stating rent had been increased to \$830.00 per month. The Tenant did acknowledge that before receipt of the letter from the Landlord in January, 2023, she had received the interim order and did not pay the \$129.00 per month as ordered.
15. The rent arrears owing to June 30, 2023 are \$14,829.00. The Tenant states that she is willing to pay the arrears but provided no information as to what type of payment plan she could enter into. The Tenant submits that she has not applied for any subsidy and just assumed others would on her behalf. The Tenant stated she did not contact the Landlord or the Landlord's Legal Representative for any assistance.
16. Based on the evidence and submissions before me, on a balance of probabilities, I am satisfied that the Tenant has not paid the total rent the Tenant was required to pay. The Tenant was afforded an opportunity to pay what she believed would be a subsidized amount towards rent and to provide documentation to the Landlord in order to apply for a subsidy, if applicable, and despite that opportunity, the Tenant did not pay any rent.
17. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
18. The Landlord collected a rent deposit of \$129.00 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 \$1.01 is owing to the Tenant for the period from March 1, 2023 to June 22, 2023.

*Relief from eviction:*

20. The Tenant stated that she has three children, ages 22, 19 and 5 years old. The Tenant stated that her two older children are living with her and she is currently involved in proceedings regarding custody of the 5 year old. The Tenant indicated that she has nowhere to go if evicted and has no friends or family to assist her.
21. The Tenant has provided no reasonable explanation for:
  - failing to provide the documentation as requested in a timely manner;
  - why she did not contact the Landlord, Landlord's Legal Representative or any social agency for assistance;

- why she did not abide with the terms of the interim order, particularly paying any rent to the Landlord when due; and
- why the tenancy should be preserved and any proposed payment plan.

22. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act') and I am not satisfied that it would be unfair to the Landlord to give the Tenant some additional time to move in light of the circumstances. Given the quantum of the arrears, I am not prepared to grant a delay of more than three weeks. As a result, the eviction will be delayed to July 21, 2023.

**It is ordered that:**

1. The request to review order LTB-L-001976-22 issued August 17, 2022 is granted.
2. Order LTB-L-001976-22 issued on August 17, 2022 is cancelled and replaced with the following.
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 LTB in trust:**
  - \$15,845.00 if the payment is made on or before July 21, 2023. See Schedule 1 for the calculation of the amount owing.
5. 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 21, 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 July 21, 2023.**
7. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$14,655.37. 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 \$27.29 per day for the use of the unit starting June 23, 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 July 16, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 17, 2023 at 6.00% 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 July 21, 2023, then starting July 22, 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 July 22, 2023.

**July 5, 2023**  
**Date Issued**

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Heather Chapple

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 22, 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 21, 2023**

Rent Owing To July 31, 2023	\$15,659.00
Application Filing Fee	\$186.00
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>\$15,845.00</b>

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

Rent Owing To Hearing Date	\$14,599.38
Application Filing Fee	\$186.00
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	- \$129.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$1.01
<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>\$14,655.37</b>
Plus daily compensation owing for each day of occupation starting June 23, 2023	\$27.29 (per day)