



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

**Citation:** Elm Place Inc. v Robert Kish, 2023 ONLTB 47218

**Date:** 2023-06-30 **File Number:**  
LTB-L-055150-22-RV

**In the matter of:** 608, 1460 GHENT AVE  
BURLINGTON ON L7S1X7

**Between:** Elm Place Inc. Landlord

**And**

Robert Kish Tenant

### Review Order

Elm Place Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Robert Kish (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-055150-22 issued on May 12, 2023.

On May 19, 2023, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On May 23, 2023 interim order LTB-L-055150-22-RV-IN was issued, staying the order issued on May 12, 2023.

This application was heard in by videoconference on June 19, 2023.

The Landlord's Representative, Debbesha Morris and the Tenant attended the hearing. Andrea Jones attended as a witness for the Landlord.

### Determinations:

Review:

1. The Tenant stated that his mailbox was broken and Canada Post did not leave mail in his box because it was unsecure. As such, the Notice of Hearing the Board mailed to the Tenant was unreceived.



2. On a balance of probability, I find that the Tenant was not able to adequately participate in the hearing because he was not notified of the hearing held on April 11, 2023. The mailbox was repaired on April 27, 2023 which the Landlord does not dispute. I find it is reasonable cause and corroborates the Tenant's testimony that he did not receive the Notice.
3. I am satisfied that the Tenant was not reasonably able to participate in the proceeding held on April 11, 2023, therefore the review of the order issued on May 12, 2023 is granted.

### L1 Application

1. 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.
2. As of the hearing date, the Tenant is still in possession of the rental unit.
3. The lawful rent is \$1,620.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$53.26. This amount is calculated as follows: \$1,620.00 x 12, divided by 365 days.
5. The Tenant has paid \$10,920.00 to the Landlord since the application was filed.
6. The rent arrears owing to June 30, 2023, are \$5,380.80
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,620.00 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.
9. 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 not be unfair to grant relief from eviction subject to the condition(s) set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act. The Tenant proposed a reasonable payment plan and the Landlord was not opposed to the payment schedule that he pay \$1,000.00 towards the arrears on the 20<sup>th</sup> day of each month until the outstanding balance is paid.
10. The Tenant raised his own issues related to parking which was not considered. I have no jurisdiction to consider the Tenant's claim because advanced disclosure was not given to the Landlord before the hearing, as required under section 82 of the Act. If the Tenant has enough evidence to support his claim, he may consider filing his own application.



**It is ordered that:**

1. The request to review order LTB-L-055150-22 issued on May 12, 2023, is granted. The order is cancelled and cannot be enforced.
2. Order LTB-L-055150-22 issued on May 12, 2023, is replaced as follows.
3. The Tenant shall pay the Landlord \$5,566.80, which represents the arrears owing to June 30, 2023, and the cost of the application fee, as follows:
  - a) \$1,000.00 (arrears) on the 20th day of each month, for a period of five months starting July 20, 2023, to November 20, 2023; and
  - b) \$566.80 (balance of arrears) on or before December 20, 2023.
4. The Tenant shall also pay the Landlord rent owing for the month of July 2023 to December 2023 no later than first day of each month or until the outstanding balance of the arrears is paid.
5. 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 3 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant apply to the Board 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 June 30, 2023.

**June 30, 2023**  
**Date Issued**

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Sandra Macchione  
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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