



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

Citation: Iraj Keshavarz Mashhouri v Melissa Dholah, 2023 ONLTB 41811

Date: 2023-06-06 **File Number:**
LTB-L-043744-22-RV

In the matter of: Basement, 319 TAYLOR MILLS DR N
RICHMOND HILL ON L4C2T8

Between: Iraj Keshavarz Mashhouri Landlord

And

Melissa Dholah Tenant

REVIEW ORDER

Iraj Keshavarz Mashhouri (the 'Landlord') applied for an order to terminate the tenancy and evict Melissa Dholah (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-043744-22 issued on March 14, 2023.

On March 23, 2023, the Landlord requested a review of the order.

On April 14, 2023 interim order LTB-L-043744-22-RV-IN was issued, staying the order issued on March 14, 2023.

This application was heard by videoconference on May 3, 2023. Only the Landlord, the Landlord's legal agent, A. Asghari (AA), and the Landlord's legal representative, M. Tchavoshi, attended the hearing. As of 1:31 p.m., 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 to review

1. The Landlord's application was heard on March 1, 2023. The Landlord, AA and the Tenant attended the hearing. The hearing member found that the Landlord accepted three months' rent as a deposit, contrary to section 106(2) and 134(1) of the *Residential Tenancies Act*,

2006 (the 'Act'). As such, the hearing member determined the Tenant was not in arrears at the time the application was filed, and the application was dismissed.

2. The Landlord submitted that the hearing member made the following serious errors:
 - (a) The hearing member erred in dismissing the application based on the deposit. The Court in *Corvers v. Bumbia*¹ has found that a tenant is not prohibited from voluntarily prepaying rent to a landlord and a landlord is not prohibited from accepting prepaid rent voluntarily offered by the tenant. The evidence before the Board was that the Tenant voluntarily offered prepaid rent to compete with other prospective tenants.
 - (b) The Landlord requested an arrears only order. The hearing member did not consider the request. AA testified that this request was made at the hearing. Submitted into evidence was an email dated February 22, 2023 from the Landlord to the Board requesting to amend the application from an L1 to L9.
3. On a balance of probabilities, I find that the order contains a serious error. The believable and credible evidence of the Landlord is that there was a request to amend the application to an L9. I base this on AA's consistent testimony and the email dated February 22, 2023 email. While a hearing member has the discretion to deny such a request, nowhere in the order does it mention that the Landlord wanted to proceed with an arrears only order. It is unclear whether the hearing member considered the request to amend or the reasons for denying it. As such, I find there are insufficient reasons to support the dismissal of the application.
4. As a result, the order is cancelled, and the Landlord's application was heard afresh.

De Novo

5. The Landlord served the Tenant with a Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Landlord conceded that the N4 Notice was defective. 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.
6. The Tenant was in possession of the rental unit on the date the application was filed.
7. The Tenant vacated the rental unit on May 2, 2023. Rent arrears are calculated up to the date the Tenant vacated the unit.
8. The lawful rent is \$1,700.00. It was due on the 15th day of each month.
9. The Tenant has not made any payments since the application was filed.
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. The Landlord collected a last month's rent deposit of \$1,700.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.

12. Interest on the rent deposit, in the amount of \$27.23 is owing to the Tenant for the period from May 15, 2022 to May 2, 2023.
13. The rent arrears owing to May 2, 2023 are \$16,306.02.
14. The Landlord made a request for arrears to July 14, 2023 pursuant to section 88 of the Act. For the reasons set out below, the Landlord's request is denied.
15. The Landlord submitted that the Tenant vacated the unit on May 2, 2023 without providing any notice. Given that the N4 Notice given was defective, the Landlord is entitled to proper notice to vacate. As the Tenant failed to provide proper notice, the Landlord is entitled to arrears of rent to the period that ends on the earliest termination date that could have been specified in the notice.

16. Subsection 88(1) of the Act states as follows:

If a tenant abandons or vacates a rental unit without giving notice of termination in accordance with this Act and no agreement to terminate has been made **or the landlord has not given notice to terminate the tenancy**, a determination of the amount of arrears of rent owing by the tenant shall be made in accordance with the following rules: [emphasis added].

17. Subsection 88 of the Act specifies that for the section to apply, the Landlord must not have given a notice to terminate the tenancy. It was undisputed that a notice to terminate the tenancy was given. The Landlord's argument that the notice was defective is immaterial. Subsection 88 of the Act does not specify that the exception is only for valid notices of termination. Further, to accept the Landlord's position would be untenable as the Landlord would benefit from their own error. It would be unfair to allow a landlord to serve notice on a tenant to terminate the tenancy, convey their intent to proceed with the notice by filing an application, a tenant to act on this notice by vacating the unit and then for the landlord to collect on rent after the tenancy has ended.

It is ordered that:

1. The request to review order LTB-L-043744-22 issued on March 14, 2023 is granted. The order is cancelled and replaced with the following:
2. The tenancy between the Landlord and the Tenant is terminated as of May 2, 2023, the date the Tenant moved out of the rental unit
3. The Tenant shall pay to the Landlord \$14,764.79. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
4. If the Tenant does not pay the Landlord the full amount owing on or before June 17, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 18, 2023 at 6.00% annually on the balance outstanding.

June 6, 2023

Date Issued

Camille Tancioco

Member, Landlord and Tenant Board

15 Grosvenor St, 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.

*Note: When the LTB 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 as the tenancy is terminated

Rent Owing To Move Out Date	\$16,306.02
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	- \$1,700.00
Less the amount of the interest on the last month's rent deposit	- \$27.23
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	\$14,764.79