



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

Citation: 2608726 Ontario Inc. v Moorehead, 2023 ONLTB 39873

Date: 2023-05-29 **File Number:**
LTB-L-012461-23-RV

In the matter of: 8418 WILLOUGHBY DR
NIAGARA FALLS ON L2G6X5

Between: 2608726 Ontario Inc. and Marlon Brand Landlord

And

Donna Moorehead and James Hanrahan Tenantss

2608726 Ontario Inc and Marlon Brand (the 'Landlord') applied for an order to terminate the tenancy and evict Donna Moorehead and James Hanrahan (the 'Tenantss') and for an order to have the Tenants pay the rent they owe because the Tenantss failed to meet a condition specified in the order issued by the Board on April 6, 2023, with respect to application LTB-L012461-23.

This application was resolved by order LTB-L-012461-23 issued on April 6, 2023.

On April 25, 2023, the Landlord requested a review of the order.

On April 27, 2023, interim order LTB-L-012461-23-RV-IN was issued, staying the order issued on April 6, 2023.

This application was heard in by videoconference on May 17, 2023.

The Landlord's legal representative, Curt Anderson, and the Tenants, James Hanrahan, attended the hearing. James Hanrahan will be referred to as the Tenant singular in this order. The Tenant consulted with tenant duty counsel before the hearing.

Preliminary issue:

1. The Tenant requested an adjournment of the hearing in order to obtain legal representation. The Tenant stated that he received the Notice of Hearing one and a half

weeks ago and he had attempted to contact a legal clinic, but was told that they were unable to help him.

2. The Landlord opposed the Tenant's request to adjourn the hearing. The Landlord's position was that it was a delay tactic of the Tenants. The issue before the Board was discreet, namely whether the Tenants breached the consent order LTB-L-010530-22 issued on September 2, 2022, and if so, whether there were any circumstances warranting relief from eviction. In addition, these applications are normally dealt with on an ex-parte basis; however, this application came before the Board by way of a request to review by the Landlord due to technical issues with respect to filing the application.
3. I denied the Tenant's request to adjourn the hearing. The Tenant's' right to legal counsel is not absolute. The issue is discreet and the application is a result of a breach of the parties' consent order, which is normally dealt with on an ex parte basis. The hearing was stood down, however, so that the Tenant could consult with tenant duty counsel. The hearing proceeded after the Tenant had the benefit of consultation with tenant duty counsel.

Determinations:

Landlord's Request to Review:

4. The Landlord submitted that a serious error occurred in the proceedings because the Landlord's L4 application was dismissed on the grounds that the Landlord did not file the L4 application within 30 days of the alleged breach as required by the *Residential Tenancies Act, 2006* (the 'Act').
5. The Landlord's evidence was that the Landlord logged into the LTB portal on January 26, 2023 to file the L4 application for breach of a consent order.
6. Upon clicking "save L4 and continue" all of the application details to review were wiped out, as if nothing had been filled into the application form. The Landlord returned to the application the following day in an attempt to file the application via the portal again, hoping that the technical error may have been remedied overnight. However, the next day the Landlord encountered the same difficulties. As such, the Landlord emailed a copy of the L4 to the Board and mailed another copy.
7. The Board dismissed the Landlord's application stating that the Landlord failed to file the application within the prescribed 30 day period after the alleged breach of January 1, 2023. The Board relied on the receipt of the mailed application which was received by the Board on February 3, 2023.
8. At the review hearing the Landlord presented evidence that the L4 application was emailed to the Board on January 27, 2023, that is within the prescribed 30 day period. As such, I

find that by dismissing the Landlord's application because it was allegedly not filed in time, is a serious error in the proceedings.

9. The Landlord's request to review is granted, the order issued on April 6, 2023 is canceled, and the Landlord's L4 application was heard de novo.

Landlord's L4 application:

10. The order LTB-L-010530-22 provided that the Landlord could apply to the Board under section 78 of Act without notice to the Tenants to terminate the tenancy and evict the Tenants if the Tenants did not meet certain condition(s) specified in the order.
11. According to the Landlord, the Tenants failed to pay the rent for January 1, 2023 on or before January 1, 2023 and \$600.00 towards arrears on or before January 1, 2023.
12. The Tenant denied the breach; however, he had no supporting evidence to establish that the Tenants paid the amounts set out in the consent order. The Tenant submitted that his wife took care of the payments and that she paid the Landlord by money order, every two weeks. The Tenant could not state what and when was paid to the Landlord. When asked for copies of the money orders, the Tenant stated that the copies were at home whereas he was at work. The Tenant's wife was not present at the hearing.
13. The Tenant further stated that the Tenants did not receive any paper work after they attended at the Board on August 30, 2022, where they engaged in mediation with the Landlord which resulted in the consent order LTB-L-010530-22 issued on September 2, 2022. I note, however, that the consent order states that the parties understood the consequences of the order even if payments came due before they received the order.
14. The Landlord submitted that the Tenants had been complying with the consent order until December 2022; however, they did not pay anything since December 2022.
15. Based on the evidence before me, I am not satisfied that the Tenants complied with the order issued on September 2, 2022. When asked why they did not comply, the Tenants provided no reasonable explanation, aside from a blanket denial of the breach. The Tenants provided no satisfactory explanation as to when and how much they paid to the Landlord. As such, I find the Tenants breached the consent order LTB-L-010530-22 issued on September 2, 2022 by failing to pay rent on or before January 1, 2023 and \$600.00 in arrears of rent.
16. The order below replaces order LTB-L-010530-22.
17. The Tenants were required to pay \$6,561.60 for rent arrears and the application filing fee in the previous order. The amount that is still owing from that order is \$4,181.60 and that amount is included in this order.

18. Since the date of the previous order, the Tenants have failed to pay the full rent that became owing for the period from January 1, 2023 to May 17, 2023.
19. The Landlords collected a rent deposit of \$850.00 from the Tenants and this deposit is still being held by the Landlords.
20. Interest on the rent deposit is owing to the Tenants for the period from August 1, 2016 to May 17, 2023.
21. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenants are required to pay.
22. The Landlords are entitled to daily compensation from the date after the hearing to the date the Tenants move out of the unit at a daily rate of \$29.94. This amount is calculated as follows: $\$910.80 \times 12$, divided by 365 days.

Relief from eviction:

23. Pursuant to section 83 of the Act I must consider whether, having regard to all the circumstances, it would be unfair to grant relief from eviction.
24. I have considered the Tenants' circumstances and the Landlord's circumstances. The Tenants have been residing in the rental unit since 2016. Their income is limited and their rent is low. They will have difficulties finding alternate housing within the range of their affordability. On the other hand, the Tenants were given an opportunity to pay off their arrears by way of a payment plan, which they agreed upon and were able to comply with until December 2022. After December 2022, they failed to comply with payment plan they agreed to. The Tenants offered no alternative payment plan.
25. Based on the evidence before me, I am not satisfied that the Tenants have the ability to pay or comply with the payment plan agreed upon. The evidence supports the conclusion that the Tenants are unable to pay the arrears and the monthly rent.
26. The Landlord submitted that the mounting arrears of rent were causing financial prejudice to the Landlord. As such the Landlord opposed any delay of eviction.
27. Considering all of the disclosed circumstances, including the length of the tenancy and the current rental market, I find that it is more likely than not that the Tenants will face difficulties finding alternate housing. As such, the eviction shall be delayed to June 19, 2023.
28. The Tenant was informed at the hearing that the tenancy will be terminated, so that the Tenants could begin searching for new housing immediately.

It is ordered that:

1. The request for review is granted. Order LTB-L-012461-23 issued on April 6, 2023 is cancelled and replaced by the following order.
2. Order LTB-L-010530-22 issued on September 2, 2022 is cancelled and replaced with the following order.
3. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before June 19, 2023.
4. If the unit is not vacated on or before June 19, 2023, then starting June 20, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
5. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after June 20, 2023.
6. The Tenants shall pay to the Landlord \$7,394.64*. This amount represents the rent owing up to May 17, 2023 and the cost of filing the previous application, less the rent deposit and interest the Landlords owe on the rent deposit.
7. The Tenants shall also pay to the Landlords \$29.94 per day for compensation for the use of the unit starting May 18, 2023 to the date the Tenants move out of the unit.
8. If the Tenants do not pay the Landlords the full amount owing on or before June 19, 2023, the Tenants will start to owe interest. This will be a simple interest calculated from June 20, 2023 at 6.00% annually on the balance outstanding.

June 5, 2023

Date Issued

Jana Rozehnal

Member, Landlord and Tenants 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 December 20, 2023 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.

* Refer to the attached Summary of Calculations.

Summary of Calculation

Amount the Tenantss must pay the Landlords:

Reason for amount owing	Period	Amount
Amount owing from previous order.	Up to August 31, 2022	\$4,181.60
New Arrears	January 1, 2023 to May 17, 2023	\$4,152.18
Less the rent deposit:		-\$850.00
Less the interest owing on the rent deposit	August 1, 2016 to May 17, 2023	-\$89.14
Plus daily compensation owing for each day of occupation starting May 18, 2023		\$29.94 (per day)
Total the Tenantss must pay the Landlords:		\$7,394.64 +\$29.94 per day starting May 18, 2023

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