



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

Citation: Zhang v Beth Bertrand, 2023 ONLTB 33428

Date: 2023-05-12 **File Number:**

LTB-L-041165-22-RV

In the matter of: Upper Floor, 1377 Merrittville Highway Thorold ON
L3B 4N5

Between: Biao Zhang Landlord

And

Jeffrey Ralph Passmore Tenants Sarah Beth Bertrand

Review Order

Biao Zhang (the 'Landlord') applied for an order to terminate the tenancy and evict Jeffrey Ralph Passmore and Sarah Beth Bertrand (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-041165-22 issued on March 8, 2023. On March 24, 2023, the Tenants requested a review of the order and that the order be stayed until the request to review the order is resolved. The Tenant alleged that they were not reasonably able to participate in the proceeding and that the order contains a serious error.

On March 28, 2023, interim order LTB-L-041165-22-RV-IN was issued, staying the order issued on March 8, 2023.

This application was heard in by videoconference on April 18, 2023. The Landlord's Legal Representative, J. Wang, and the Tenants attended the hearing.

Preliminary Issue:

The Tenants requested an opportunity to speak with Duty Counsel but none was available at the hearing. The Notice of Hearing instructs Tenants to seek legal advice prior to the hearing because there is no guarantee that Duty Counsel would be present on the day of the hearing.

Determinations:

The Request

1. The Landlord and Tenant Board Interpretation Guideline 8 states that “*The LTB will only exercise its discretion to grant a review when it is satisfied the order contains a serious error, a serious error occurred in the proceeding or the requestor was not reasonably able to participate in the proceeding*”.
2. The Tenants alleged that they were not reasonably able to participate in the original proceeding of February 27, 2023, which resulted in order LTB-L-041165-22 terminating the tenancy for nonpayment of rent. They also claimed that the order contains a serious error.
3. Although the Tenants claimed in their request that they received the Notice of Hearing after February 27, 2023, during the hearing, they testified that it was received on February 24, 2023. I am not satisfied that the Tenants were not reasonably able to participate in the proceeding.
4. On the claim of a serious error, the parties agreed that on July 8, 2022, they reached an agreement for the Landlord to reduce the rent by \$350.00 each month, to a maximum of \$1,600.00, in exchange for the maintenance of the lawn. Although the Landlord claimed that the Tenants reneged on the agreement by not cutting the grass and that led to a fine from the city, no evidence was provided to substantiate the claim. I find the Tenants were entitled to the agreed upon amount of \$1,600.00.
5. Based on the submissions made in the request, I am satisfied that that the order contains a serious error. The Landlord’s application was heard afresh as a result.

The L1 Application

6. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants 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.
7. As of the hearing date, the Tenants were still in possession of the rental unit.
8. The lawful rent is \$2,000.00. It is due on the 15th day of each month.
9. The Tenants alleged that they made three payments to the Landlord on March 12, 2022 (\$3,000.00), April 10, 2022 (\$2,000.00), and June 29, 2022 (\$2,500.00) but the Landlord has not acknowledged the payments. While the first two payments may have been made prior to the service of the notice of termination, no evidence was provided to substantiate the claim for the relevant date, June 29, 2022.

10. Based on the Monthly rent, the daily rent/compensation is \$65.75. This amount is calculated as follows: \$2,000.00 x 12, divided by 365 days.
11. The Tenants have not made any payments since the application was filed.
12. The Tenants are awarded a credit of \$1,600.00 for lawn maintenance based on their agreement with the Landlord.
13. The rent arrears owing to May 14, 2023 are \$19,806.75.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlord collected a rent deposit of \$2,000.00 from the Tenants 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.
16. Interest on the rent deposit, in the amount of \$54.79 is owing to the Tenants for the period from March 15, 2022 to April 18, 2023.

Relief from Eviction

17. The Tenants alleged that the city attended the residential complex on an unspecified date, probably November 2022, and removed industrial batteries belonging to the Tenants all valued at approximately \$14,000.00. The Landlord argued that the items were strewn all over the residential complex and following complaints from neighbours, the city removed the items. The Tenants provided no evidence to substantiate the cost, quality, or quantity of the materials or a basis for finding the Landlord responsible for the removal. Therefore, they are not entitled to any monetary compensation.
18. The Tenants requested relief from eviction stating that they would pay the outstanding amount. One of the Tenants is employed while the other has a scrap metal business with an unknown income. The Tenants have resided in the unit for a little over a year and have amounted substantial arrears that they are unlikely to pay.
19. I have considered all the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The amount outstanding is substantial, and the Tenants have not paid any rent since the application was filed.

It is ordered that:

1. The request to review order LTB-L-041165-22 issued on March 8, 2023, is granted. The order cannot be enforced by the Landlord.
2. The interim order issued on March 28, 2023, is cancelled, and replaced with this order.
3. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
4. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$19,992.75 if the payment is made on or before May 14, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$21,992.75 if the payment is made on or before May 23, 2023. See Schedule 1 for the calculation of the amount owing.
5. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after May 23, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
 6. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before May 23, 2023**
 7. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$16,228.46. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
 8. The Tenants shall also pay the Landlord compensation of \$65.75 per day for the use of the unit starting April 19, 2023 until the date the Tenants move out of the unit.
 9. If the Tenants do not pay the Landlord the full amount owing on or before May 23, 2023, the Tenants will start to owe interest. This will be simple interest calculated from May 24, 2023 at 6.00% annually on the balance outstanding.
 10. If the unit is not vacated on or before May 23, 2023, then starting May 24, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
 11. 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 May 24, 2023.

May 12, 2023**Date Issued**

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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 November 24, 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.

Schedule 1 SUMMARY OF CALCULATIONS**A. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before May 14, 2023**

| | |
|---|--------------------|
| Rent Owing To May 14, 2023 | \$21,406.75 |
| Application Filing Fee | \$186.00 |
| Less the amount of the credit that the Tenants are entitled to | - \$1,600.00 |
| Total the Tenants must pay to continue the tenancy | \$19,992.75 |

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before May 23, 2023

| | |
|---|--------------------|
| Rent Owing To June 14, 2023 | \$23,406.75 |
| Application Filing Fee | \$186.00 |
| Less the amount of the credit that the Tenants are entitled to | - \$1,600.00 |
| Total the Tenant must pay to continue the tenancy | \$21,992.75 |

C. Amount the Tenants must pay if the tenancy is terminated

| | |
|--|----------------------|
| Rent Owing To Hearing Date | \$19,697.25 |
| Application Filing Fee | \$186.00 |
| Less the amount of the last month's rent deposit | - \$2,000.00 |
| Less the amount of the interest on the last month's rent deposit | - \$54.79 |
| Less the amount of the credit that the Tenants are entitled to | - \$1,600.00 |
| Total amount owing to the Landlord | \$16,228.46 |
| Plus daily compensation owing for each day of occupation starting April 19, 2023 | \$65.75 (per day) |