



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

**Citation:** Enrietti-Zoppo v Delic, 2023 ONLTB 35990

**Date:** 2023-05-11 **File Number:**  
LTB-L-055207-22-RV

**In the matter of:** Upper, 50 OXFORD ST  
TORONTO ON M5T1N9

**Between:** Maria Cristina Enrietti -Zoppo Landlord

**And**

Andrew Delic and Paul Radvanov Tenants

Maria Cristina Enrietti-Zoppo (the 'Landlord') applied for an order to terminate the tenancy and evict Andrew Delic and Paul Radvanov (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

This L1 application was resolved by order LTB-L-055207-22 issued on January 25, 2023.

On February 6, 2023, the Landlord requested a review of the order, alleging that she was not reasonably able to participate in the proceedings on January 16, 2023 and that there is a serious error in the order issued.

This application was heard by videoconference on February 27, 2023.

Only the Landlord attended the hearing.

As of 1:45 p.m., the Tenants were 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 resides at 48 Oxford Street Toronto, she submitted that she did not receive the notice of hearing, noting that there are four (4) Oxford mailing addresses within Toronto and one in Richmond Hill, and that the notice may have been delivered to

the wrong address. She submitted that she did not receive the notice by email either, however that it could have gone into the spam folder which she does not monitor.

2. The first time the Landlord became aware of the hearing was when receiving an email from the Board communicating the order of January 25, 2023, declaring the matter as abandoned. Noting that since the Tenants did not participate in that hearing, their notice may also have not been delivered.
3. In *Kathryn King-Winton v. Doverhold Investments* [2008 CanLII 60708](#) (ON SCDC), the Divisional Court stated: “*Being reasonably able to participate in the proceeding must be interpreted broadly, natural justice requires no less.*” In *King-Winton*, there was evidence to suggest that the tenant missed her hearing because of her honest but mistaken belief in an incorrect hearing date.
4. Earlier, in *Ennasr v. Ottawa (City)*, [2003 CanLII 19592](#) (ON SCDC), it was found that justice had been denied in circumstances in which a party was absent from a hearing because he had been misdirected by tribunal staff about the hearing date.
5. I also note that the only serious error as alleged by the Landlord in the request for review is with respect to the Board order that dismissed the matter as abandoned. The Landlord had every intention of attending if not for the fact that she was not notified of the impending hearing date.
6. In the review request before me, I find that on a balance of probabilities, the Landlord was not reasonably able to participate in the January 16, 2023 hearing; with regard to the above case law citations, I must give a broad interpretation of the right to be heard, particularly since I have no definitive evidence in the Boards record to inform me if the notice was delivered to the Landlord. I informed the Landlord that the request-to-review was therefore granted, and I directed the matter to a re-hearing of the L1 application, de novo.

#### L1 Application – de novo

7. 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.
8. As of the hearing date, the Tenant was still in possession of the rental unit.
9. The lawful rent is \$2,400.00. It is due on the 1st day of each month.
10. Based on the Monthly rent, the daily rent/compensation is \$78.90. This amount is calculated as follows: \$2,400.00 x 12, divided by 365 days.
11. The Tenant has paid \$9,800.00 to the Landlord since the application was filed.
12. The rent arrears owing to February 28, 2023 are \$16,600.00.

13. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
14. There is no last month's rent deposit.
15. The Landlord's L1/L9 Application Update alleges a balance owing of \$32,200.00 plus \$201.00 for the application filing for a total of \$32,401.00. The Landlord explains that this amount is reflective of past Board orders for rental arrears that have not be paid to the Landlord.
16. The Order as issued is reflective only of the amounts as served upon the Tenants in the N4 notice and additional arrears arising from this L1 application filing, past amounts previously adjudicated by the Board and allegedly not paid by the Tenants can not be considered in this application.
17. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenants failed to attend the hearing to provide evidence of their circumstances and the Landlord testified that she is unaware of any circumstances that would cause me to delay or deny an eviction.
18. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$24,001.00 if the payment is made on or before May 22, 2023. See Schedule 1 for the calculation of the amount owing.
3. 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 22, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **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 22, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$16,531.30. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$78.90 per day for the use of the unit starting February 28, 2023 until the date the Tenants moves out of the unit.

7. If the Tenants do not pay the Landlord the full amount owing on or before May 22, 2023, the Tenants will start to owe interest. This will be simple interest calculated from May 23, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before May 22, 2023, then starting May 23, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 23, 2023.

**May 11, 2023**

**Date Issued**

\_\_\_\_\_  
Alicia Johnson

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 23, 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 22, 2023**

Rent Owing To May 31, 2023	\$33,600.00
Application Filing Fee	\$201.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$9,800.00
<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>\$24,001.00</b>

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

Rent Owing To Hearing Date	\$26,130.30
Application Filing Fee	\$201.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$9,800.00
<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	- \$
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord</b>	<b>\$16,531.30</b>
Plus daily compensation owing for each day of occupation starting February 28, 2023	\$78.90 (per day)