



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

Citation: Deloreto v Ali, 2023 ONLTB 35979

Date: 2023-05-08 **File Number:**
LTB-L-026321-22-RV

In the matter of: 20 BRITANNIA AVE
HAMILTON ON L8H1W4

Between: Antonio Deloreto Landlord

And

Paulette Ali Tenant

Antonio Deloreto (the 'Landlord') applied for an order to terminate the tenancy and evict Paulette Ali (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This L1 application was resolved by order LTB-L-026321-22 issued on January 23, 2023.

On February 3, 2023, the Tenant requested a review of the order, alleging that she was not reasonably able to participate in the proceedings on January 16, 2023.

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

The Tenant, the Landlord and the Landlord's representative Anthony Corso attended the hearing.

Determinations:

Request-to-Review

1. The tenant submitted that while she was in receipt of the notice of hearing, she had inadvertently written down the hearing date as January 23 not January 16 and that she had every intention of participating in the hearing as she has young children and would face homelessness.
2. As soon as she found out that she had missed the hearing, the Tenant went to the legal clinic to get assistance with making a submission for the request to review with the Board.

3. The Landlord's representative submitted that he personally dropped off an L1/L9 update and a copy of the hearing notice to the mailbox of the Tenant's residence on January 9, 2023. The Tenant submitted that she had not received the package.
4. 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.
5. 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.
6. In the review request before me, I find that on a balance of probabilities, the Tenant 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. I informed the parties that the request-to-review was therefore granted, and I directed the parties 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 \$1,500.00. It is due on the 1st day of each month.
10. Based on the Monthly rent, the daily rent/compensation is \$49.32. This amount is calculated as follows: \$1,500.00 x 12, divided by 365 days.
11. The Tenant has not made any payments since the application was filed.
12. The rent arrears owing to February 28, 2023 are \$24,000.00.
13. The Landlord collected a rent deposit of \$1,500.00 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.
14. Interest on the rent deposit, in the amount of \$33.41 is owing to the Tenant for the period from October 1, 2021 to February 27, 2023.
15. 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 postpone the eviction until May 31, 2023 pursuant to subsection 83(1)(b) of the Act. In arriving at the delay from eviction I take into consideration the Tenant's submissions that she has two young children residing with her ages 6 and 9 and that she had recently lost her job. I also take into

consideration the Landlord's submissions that while awaiting to take possession of the home he also has had to make concession in respect of his living accommodations. Lastly, I take into consideration the quantum of arrears. A repayment plan would not be appropriate in this circumstance based on the amount of arrears outstanding and the capacity of the Tenant to repay those to the Landlord in timely manner while also making the lawful rent payments ongoing.

It is ordered that:

1. The Tenant's request to review is granted.
2. Order LTB-L-026321-22 issued on January 23, 2023 is cancelled and replaced with the following:
3. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
4. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**

\$28,500.00 if the payment is made on or before May 31, 2023. See Schedule 1 for the calculation of the amount owing.
5. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after May 31, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
6. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before May 31, 2023**
7. The Tenant shall also pay the Landlord compensation of \$49.32 per day for the use of the unit starting February 28, 2023 until the date the Tenant moves out of the unit.
8. If the Tenant does not pay the Landlord the full amount owing on or before May 19, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 20, 2023 at 6.00% annually on the balance outstanding.
9. If the unit is not vacated on or before May 31, 2023, then starting June 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 June 1, 2023.

May 8, 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 December 1, 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 31, 2023

Rent Owing To May 31, 2023	\$28,500.00
Application Filing Fee	\$0.00
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 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 the Tenant must pay to continue the tenancy	\$28,500.00

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

Rent Owing To Hearing Date	\$23,831.64
Application Filing Fee	\$0.00
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	- \$1,500.00
Less the amount of the interest on the last month's rent deposit	- \$33.41
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	\$22,298.23

Plus daily compensation owing for each day of occupation starting February 28, 2023	\$49.32 (per day)
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