



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

**Citation:** Bradley v Stewart, 2023 ONLTB 34159

**Date:** 2023-05-03 **File Number:**  
LTB-L-005365-22-RV

**In the matter of:** 3 SMITH LANE  
AJAX ON L1T3M6

**Between:** Ajax Municipal Housing Corporation and Landlord  
Kevin Bradley

**And**

Petrona Stewart Tenant

### Review Order

Ajax Municipal Housing Corporation and Kevin Bradley (the 'Landlord') applied for an order to terminate the tenancy and evict Petrona Stewart (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-005365-22 issued on March 22, 2023.

On March 29, 2023, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On March 30, 2023 interim order LTB-L-005365-22-RV-IN was issued, staying the order issued on March 22, 2023.

The review was heard by videoconference on April 20, 2023.

The Landlord's Representative Gail Collymore and the Tenant attended the hearing.

### Determinations:

1. The Tenant requests a review of order LTB-L-005365-22 issued on March 22, 2023 as they were not reasonably able to participate in the October 12, 2022 hearing.
2. The Tenant testified that she did not receive the notice of hearing. The Tenant testified that she checks her mail every day, but she has had trouble with mail going missing in the past.



She also testified that she has a son with disabilities who may have opened the notice of hearing and misplaced it.

3. The Board's records reflect that the notice of hearing was mailed to the Tenant as of September 23, 2022. The Landlord also mailed the Tenant a letter that stated the amount of outstanding arrears.

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4. The Landlord was opposed to the review request.
5. Section 209(2) expressly permits the LTB to review orders on the basis the requestor was not reasonably able to participate in the proceeding.
6. In *King-Winton v. Doverhold Investments Ltd.*, 2008 CanLII 60708 the Divisional Court held that being reasonably able to participate in the proceeding must be interpreted broadly, natural justice requires no less. I found the Tenant credible that she did not receive the notice of hearing. Interpreting reasonably able to participate broadly, the review request was granted, and the hearing proceeded de novo.

### The L1 Application

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 \$1,402.00. It is due on the 1st day of each month.
10. Based on the Monthly rent, the daily rent/compensation is \$46.09. This amount is calculated as follows: \$1,402.00 x 12, divided by 365 days.
11. The Tenant has paid \$17,509.00 to the Landlord since the application was filed.
12. The rent arrears owing to April 30, 2023 are \$3,503.25.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. There is no last month's rent deposit.
15. The Tenant requested relief from eviction in the form of a repayment plan. The Tenant testified that she could pay \$300.00 - \$400.00 a month towards the arrears each month.
16. The Tenant's household income is \$2,714.00. Herself and her son both receive \$1,357.00 from ODSP each month. The Tenant testified that her monthly expenses include:



1. Rent - \$1,402
  2. Car Payments - \$848.00
  3. Groceries – \$800.00
  4. Internet – \$165.00
  5. Gas Bill – \$82.00
  6. Hydro Bill – \$81.13
  7. Hot Water Tank Rental – \$64.00
17. The Tenant's approximate total monthly expenses are \$3,442.13, but her household income is \$2,714.00. The Tenant also has arrears for her car payments and her credit card. The Tenant testified that she would focus on rent and not the car payments or credit card debt. However, even without the monthly car payment the Tenant's monthly expenses are \$2,594.13 which does not leave enough for the suggested \$300.00 - \$400.00 rent arrears payment.
18. I do not think it would be fair in the circumstances to impose a repayment plan because I am not satisfied that the Tenant would abide by it. I am not satisfied that the Tenant will be able to pay the \$300.00 - \$400.00 monthly arrears payment.
19. However, 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 June 18, 2023 pursuant to subsection 83(1)(b) of the Act. The Tenant and her son's only source of income is ODSP. The Tenant has a grandchild who also stays part time in the rental unit. The Tenant indicated that she spoke to the housing stability program in Durham and they indicated that if she can get the rental arrears down to \$2,400.00 they will provide her with assistance. Delaying the eviction gives the Tenant an opportunity to pay off the arrears to void this order. However, I have declined to postpone the eviction any further than June 18, 2023 because of the amount of outstanding arrears and because the Landlord has been waiting a significant time for repayment.
20. In my decision to delay or deny the eviction I also considered the Tenant's testimony that she was told by someone in the Landlord's office that the Landlord would not fix maintenance issues until the Tenant paid their rent. However, the Tenant also testified that the Landlord indicated his staff member should not have said that, and since then the Landlord has addressed some of her maintenance concerns and is working on others. I am satisfied that the Landlord is not in serious breach of their obligations pursuant to section 83(3)(a) of the Act.

**It is ordered that:**



1. The request to review order LTB-L-005365-22 issued on March 22, 2023 is granted.
2. Order LTB-L-005365-22 issued on March 22, 2023 is cancelled and replaced by 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:**
  1. \$5,091.25 if the payment is made on or before May 31, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

  2. \$6,493.25 if the payment is made on or before June 18, 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 June 18, 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 June 18, 2023.**
7. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$3,209.05. 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.
8. The Tenant shall also pay the Landlord compensation of \$46.09 per day for the use of the unit starting April 21, 2023 until the date the Tenant moves out of the unit.
9. If the Tenant does not pay the Landlord the full amount owing on or before May 14, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 15, 2023 at 6.00% annually on the balance outstanding.
10. If the unit is not vacated on or before June 18, 2023, then starting June 19, 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 June 19, 2023.



**May 3, 2023**  
**Date Issued**

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**Amanda Kovats**  
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 19, 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.

2023 ONL TB 34159 (CanLII)

**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	\$22,414.25
Application Filing Fee	\$186.00
NSF Charges	\$0.00



<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$17,509.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$5,091.25</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before June 18, 2023**

Rent Owing To June 30, 2023	\$23,816.25
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$17,509.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$6,493.25</b>

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

Rent Owing To Hearing Date	\$20,532.05
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$17,509.00
<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	- \$0.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$3,209.05</b>
Plus daily compensation owing for each day of occupation starting April 21, 2023	\$46.09 (per day)