



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

Citation: Adikaibe v Weiser, 2023 ONLTB 29166

Date: 2023-04-05 **File Number:**
LTB-L-035056-22-RV

In the matter of: Upper Level, 166 CLARENCE ST BRAMPTON
ON L6W1S9

Between: Andy Adikaibe Landlords
Chizoba Chiona Adikaibe

And

Kemar Weiser Tenants Malaika Drepaul

Andy Adikaibe and Chizoba Chiona Adikaibe (the 'Landlords') applied for an order to terminate the tenancy and evict Kemar Weiser and Malaika Drepaul (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

This application was resolved by order LTB-L-035056-22 issued on February 8, 2023.

On February 17, 2023, the Landlords requested a review of the order and that the order be stayed until the request to review the order is resolved. The Landlords say they were not reasonably able to participate in the hearing that took place on February 1, 2023.

On February 24, 2023, interim order LTB-L-035056-22-RV-IN was issued, staying the order issued on February 8, 2023.

This Landlords' request for review was heard via video conference on March 23, 2023.

Only second-named Landlord and the Landlords' legal representative, Angela Orjiqwuru, attended the hearing.

The hearing was scheduled to begin at 9:00am. I called this matter forward at 10:00am but the Tenants were not present. I canvassed the virtual hearing room, the virtual waiting room and the

virtual breakout rooms but the Tenants were present. The hearing block ended at approximately 12:00pm but the Tenants failed to appear at any point during the block.

Determinations:

The Request for Review

1. The Landlords say they were not reasonably able to participate in the hearing that took place on February 1, 2023, because they did not receive the notice of hearing.
2. The Board file indicates that the notice of hearing was emailed to the Landlords' previous legal representative on December 14, 2022. The notice of hearing was not sent by mail and it was not sent to the Landlords personally.
3. At the review hearing, the Landlords' legal representative explained that she replaced the Landlords' previous legal representative and she notified the Board of this change prior to the February 1, 2023, hearing. The previous representative is no longer with the law office and their email account is not monitored.
4. Based on the evidence before me, I am satisfied that the Landlords were not reasonably able to participate in the February 1, 2023, hearing because they did not receive the notice of hearing. This means the Landlords' request for review must be granted.

The Application for Non-Payment of Rent

5. The Landlords 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.
6. As of the hearing date, the Tenants was still in possession of the rental unit.
7. The lawful rent is \$1,600.00. It is due on the first day of each month.
8. Based on the monthly rent, the daily compensation owing is \$52.60 per day. This amount is calculated as follows: \$1,600.00 x 12, divided by 365 days.
9. The Tenants has not made any payments since the application was filed.
10. The rent arrears owing on the application to June 30, 2022, are \$9,600.00.
11. The Landlords incurred costs of \$158.00 for filing the application and they are entitled to reimbursement of those costs.
12. The Landlords collected a rent deposit of \$1,600.00 from the Tenants and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
13. I have considered all of 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 Landlords attempted to negotiate a repayment agreement with the

Tenants, and I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The Landlords' request to review order LTB-L-035056-22 issued on February 8, 2023, is granted. The order is cancelled and replaced with the following order:
2. The tenancy between the Landlords and the Tenants is terminated unless the Tenants void this order.
3. **The Tenants may void this order and continue the tenancy by paying to the Landlords or to the LTB in trust:**
 - \$25,758.00 if the payment is made on or before April 16, 2023. See Schedule 1 for the calculation of the amount owing.
4. 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 April 16, 2023, but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
5. **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 April 16, 2023.**
6. If the Tenants do not void the order, the Tenants shall pay to the Landlords **\$22,138.73**. 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 Landlords owes on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
7. The Tenants shall also pay the Landlords compensation of \$52.60 per day for the use of the unit starting March 24, 2023, until the date the Tenants moves out of the unit.
8. If the Tenants does not pay the Landlords the full amount owing on or before April 16, 2023, the Tenants will start to owe interest. This will be simple interest calculated from April 17, 2023, at 6.00% annually on the balance outstanding.
9. The Landlords or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
10. If the unit is not vacated on or before April 16, 2023, then starting April 17, 2023, the Landlords 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 Landlords on or after April 17, 2023.

April 5, 2023

Date Issued

Laura Hartsliet

Member, Landlords 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 October 17, 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 April 16, 2023

Rent Owing To April 30, 2023	\$25,600.00
Application Filing Fee	\$158.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$0.00
Total the Tenants must pay to continue the tenancy	\$25,758.00

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

Rent Owing To Hearing Date	\$23,609.80
Application Filing Fee	\$158.00
NSF Charges	\$0.00
Less the amount of the last month's rent deposit	- \$1,600.00
Less the amount of the interest on the last month's rent deposit	- \$29.07
Total amount owing to the Landlords	\$22,138.73
Plus daily compensation owing for each day of occupation starting March 24, 2023	\$52.60 (per day)