



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

**Citation:** Muma v Smith, 2023 ONLTB 29350

**Date:** 2023-04-04 **File Number:**  
LTB-L-040344-22-RV

**In the matter of:** 181 WOODWORTH AVE  
ST THOMAS ON N5P3K8

**Between:** Barbara Muma Landlords  
Michael Muma

**And**

Richard Smith Tenant

### Review Order

Barbara Muma and Michael Muma (the 'Landlords') applied for an order to terminate the tenancy and evict Richard Smith (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-040344-22 issued on February 28, 2023. The hearing took place on February 16, 2023, but the Tenant failed to attend that hearing.

On March 3, 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 7, 2023, interim order LTB-L-040344-22-RV-IN was issued, staying the order issued on February 28, 2023

The request for review was heard via videoconference on March 23, 2023.

The Landlords, the Landlords' legal representative, Amy Dale, and the Tenant attended the hearing.

### Determinations:



### The Request for Review

1. For the following reasons, I find that the Tenant's request for review should be granted. I gave this ruling orally at the review hearing.
2. The Tenant says that he was not reasonably able to participate in the hearing that took place on February 16, 2023, because he mistakenly thought the hearing date was February 17, 2023. The Tenant provided detailed testimony regarding how he initially read out of the notice of hearing and he thought it said February 17, 2023. The Tenant failed to look at the notice of hearing again until February 17, 2023, and only then did he notice that the hearing date was actually February 16, 2023. The Tenant then contacted the Board and obtained information regarding how to file a request for review.
3. The Tenant provided his testimony in a clear, detailed and consistent manner and I have no reason to disbelieve him. I would also note that, according to the leading case in this area, *King-Winton v. Doverhold Investments Ltd.*, 2008 CanLII 60708 (ON SCDC), the Divisional Court has ruled that the right to participate in a hearing must be interpreted and applied broadly.
4. For these reasons, I granted the Tenant's request for review at the hearing and I proceeded to hear the merits of the Landlord's application for non-payment of rent.

### The Application for Non-Payment of Rent

5. 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.
6. As of the hearing date, the Tenant was still in possession of the rental unit.
7. The lawful rent is \$739.57. It is due on the first day of each month.
8. Based on the monthly rent, the daily rent/compensation is \$24.31. This amount is calculated as follows:  $(\$739.57 \times 12) \div 365$  days.
9. The Tenant has paid \$5,530.00 to the Landlords since the application was filed.
10. The rent arrears owing to March 31, 2023, are \$6,968.85.



11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. There is no last month's rent deposit.
13. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'). In particular, I have considered that this is a very long-term tenancy as the Tenant has lived in the rental unit for approximately 10 years. This means the Tenant is currently paying below market rent. I have also considered that the Tenant is a single parent and is living in the rental unit with his 14 year old son.
14. At the hearing, I conducted a detailed examination of the Tenant's monthly income and expenses. Based on this examination, it appears that the Tenant currently has a monthly surplus of approximately \$839.00. This figure explains why the Tenant has been making additional partial payments towards the rent for the last several weeks.
15. The Tenant says that he fell into arrears because his previous employment was sporadic and he could not predict when his shifts would be cut. The Tenant explained that this was due to supply issues at his local automotive plant. The Tenant further explained that, due to this seniority in the company, he has now been given a better job with more stable hours and many opportunities for overtime. This means that his monthly income has increased and is more stable. The Tenant presented his testimony on these points in a clear, detailed and consistent manner and I have no reason to disbelieve him.
16. Furthermore, I am satisfied that the Tenant's increased hours at work will not likely result in additional childcare expenses. This was discussed in detail at the hearing, and the Tenant presented a viable plan to avoid increasing his monthly expenses in this regard.
17. Finally, based on the Tenant's description of his monthly expenses, I am satisfied that he is willing and able to pay his monthly rent, while also paying installments towards the outstanding arrears. While this may take some time, I am satisfied that the Tenant's financial situation has sufficiently improved that he will be able to pay the outstanding arrears in \$500.00 per month increments. I would also note that the Tenant has already showed good faith by making almost weekly payments towards the arrears since the original hearing such that the outstanding arrears are now significantly lower than they were during the original hearing on February 16, 2023.
18. Conversely, although the Landlords say that they are unwilling to agree to a payment plan, they presented no testimony or evidence to establish that they are experiencing severe financial hardship as a result of the outstanding arrears. For example, there is no evidence



before me that the Landlords are having difficulty paying their mortgage or bills or have defaulted on any loans because of the Tenant's outstanding arrears.

19. For all of these reasons, I find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act. However, the Tenant is cautioned that he must strictly adhere to these conditions; if he misses any one payment by either one day or one dollar, the Landlords are entitled to file an application with the Board to terminate the tenancy and that application is designed to be resolved quickly and without a hearing.

20. This order contains all the reasons within it and no further reasons will be issued.

**It is ordered that:**

1. The Tenant's request to review order LTB-L-040344-22 issued on February 28, 2023, is granted. The order is cancelled and replaced with the following order:
2. The Tenant shall pay to the Landlord \$7,153.85 for arrears of rent up to March 31, 2023, and costs.
3. The Tenant shall pay to the Landlord the amount set out in paragraph 2 of this order in accordance with the following schedule:
  - a) \$500.00 on or before May 15, 2023;
  - b) \$500.00 on or before June 15, 2023;
  - c) \$500.00 on or before July 15, 2023;
  - d) \$500.00 on or before August 15, 2023;
  - e) \$500.00 on or before September 15, 2023;
  - f) \$500.00 on or before October 15, 2023;
  - g) \$500.00 on or before November 15, 2023;
  - h) \$500.00 on or before December 15, 2023;
  - i) \$500.00 on or before January 15, 2024;
  - j) \$500.00 on or before February 15, 2024;
  - k) \$500.00 on or before March 15, 2024;
  - l) \$500.00 on or before April 15, 2024;
  - m) \$500.00 on or before May 15, 2024;
  - n) \$500.00 on or before June 15, 2024; and
  - o) \$153.85 on or before July 15, 2024.



4. The Tenant shall also pay to the Landlord new rent in full on or before the first day of each month for the period commencing April 1, 2023, to July 31, 2024.
5. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 2 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the Board pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after March 31, 2023. The Landlord must make this application no later than 30 days after the Tenant's failure to make a payment.

**April 4, 2023**  
**Date Issued**

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Laura Hartslief  
Member, Landlords and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.