



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

Citation: Parkplace Properties (London) Ltd. v Newman, 2023 ONLTB 29201

Date: 2023-04-04 **File Number:**

LTB-L-026974-22-RV

In the matter of: A, 442 GREY ST
LONDON ON N6B1H3

Between: Parkplace Properties (London) Ltd . Landlord

And

Keshia Newman and Thomas Murray Tenants

Parkplace Properties (London) Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Keshia Newman and Thomas Murray (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

This application was resolved by order LTB-L-026974-22 issued on February 7, 2023. The application was heard on February 2, 2023, but the Landlord failed to attend that hearing.

On February 8, 2023, the Landlord requested a review of the order and that the order be stayed until the request to review the order is resolved. The Landlord says they were not reasonably able to participate in the hearing that took place on February 2, 2023.

On February 9, 2023, interim order LTB-L-026974-22-RV-IN was issued, staying the order issued on February 7, 2023.

This request for review was heard by videoconference on March 23, 2023.

The Landlord's legal representative, Andy Lail, and the second-named Tenant attended the hearing.

Determinations:

The Request for Review

1. The Landlord says that they attempted to attend the hearing that took place on February 2, 2023, but they experienced technical difficulties and were unable to attend. The Landlord's legal representative described attempting to log into the video conference through Zoom, but being unable to do so. The Landlord says this was likely due to internet connectivity issues.
2. The Landlord says they then attempted to call into the hearing using a phone but the call was repeatedly dropped and they were unable to access the hearing. The Landlord says they tried using both phone numbers provided, but their calls were not successful.
3. At the review hearing, the Tenant had no objection to the Landlord's testimony, nor did they provide any evidence or submissions to contradict the Landlord's version of events.
4. Based on the evidence before me, I am satisfied that the Landlord was not reasonably able to participate in the hearing that took place on February 2, 2023, and their request for review must be granted.

The Application for Non-Payment of Rent

5. The Landlord 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 were still in possession of the rental unit.
7. The lawful rent is \$1,553.19. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$51.06. This amount is calculated as follows: \$1,553.19 x 12, divided by 365 days.
9. The Tenants have paid \$10,600.00 to the Landlord since the application was filed.
10. The rent arrears owing to March 31, 2023, are \$7,213.29.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$1,485.00 from the Tenants 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.
13. Interest on the rent deposit, in the amount of \$26.16 is owing to the Tenants for the period from March 19, 2021, to March 23, 2023.
14. 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 the Tenants have lived in the rental unit since March 2021 along with their 5 children. The children are ages 2 months, 2 years, 3 years, 4 years and 14 years old.

15. I have also considered the Tenants' financial circumstances. After a detailed examination of the Tenants' monthly income and expenses, it appears that there is a monthly surplus of just over \$1,400.00. However, the arrears have been steadily increasing since January 2022.
16. The Tenant says that they fell into arrears because he had a short period of unemployment between June to September 2022 and because they were driving a vehicle they could not afford. However, a detailed examination of the Landlord's update sheet shows that the arrears have been growing since well-before the Tenant's alleged period of unemployment. In fact, the Landlord's update sheet indicates that, since January 2022, the Tenants have only paid their monthly rent in full 4 times. Even then, those payments were made late or were paid by the Salvation Army, who was assisting the Tenants at the time.
17. All of this evidence suggests to me that the Tenants are either unwilling or unable to pay their monthly rent in full and on time. This means the tenancy is no longer sustainable.
18. The Landlord is seeking a "standard order" which, based on the Board's current order issuance process, would have seen the Tenants evicted by April 15, 2023. However, based on the number of children in this household, and considering how young the children are, I find that it would not be unfair to postpone the eviction until May 31, 2023, pursuant to subsection 83(1)(b) of the Act, subject to the Tenants' right to void the order by paying all of the outstanding arrears.
19. This order contains all the reasons within it and no further reasons will be issued.

It is ordered that:

1. The Landlord's request for review is granted. The order LTB-L-026974-22 issued on February 7, 2023, is cancelled and replaced with the following order.
2. The tenancy between the Landlord and the Tenants is terminated unless the Tenants voids this order.
3. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$8,952.48 if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.

OR

 - \$10,505.67 if the payment is made on or before May 31, 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 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 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 May 31, 2023**
6. If the Tenants do not void the order, the Tenants shall pay to the Landlord **\$5,509.32**. 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 Landlord 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 Landlord compensation of \$51.06 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 do not pay the Landlord the full amount owing on or before April 15, 2023, the Tenants will start to owe interest. This will be simple interest calculated from April 16, 2023, at 6.00% annually on the balance outstanding.
9. The Landlord 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 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.
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 1, 2023.

2023 ONL TB 29201 (CanLII)

April 4, 2023

Date Issued

Laura Hartsliel

Member, Landlord 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 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before April 30, 2023

Rent Owing To April 30, 2023	\$19,366.48
Application Filing Fee	\$186.00

NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$10,600.00
Total the Tenants must pay to continue the tenancy	\$8,952.48

B. Amount the Tenants 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	\$20,919.67
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$10,600.00
Total the Tenants must pay to continue the tenancy	\$10,505.67

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

Rent Owing To Hearing Date	\$17,434.48
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$10,600.00
Less the amount of the last month's rent deposit	- \$1,485.00
Less the amount of the interest on the last month's rent deposit	- \$26.16
Total amount owing to the Landlord	\$5,509.32
Plus daily compensation owing for each day of occupation starting March 24, 2023	\$51.06 (per day)