



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

Citation: Boardwalk General Partnership v Granger, 2023 ONLTB 29171

Date: 31-March-2023

File Number: LTB-L-000598-22-RV-2

In the matter of: 308, 40 CONWAY DR
LONDON ON N6E2Y9

Between: Boardwalk General Partnership Landlord

And

Khadija Granger Tenant

Review Order and *De Novo* L1 Written Hearing Order

Boardwalk General Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Khadija Granger (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-000598-22 issued on August 31, 2022. The Tenant alleges they were not reasonably able to participate in the hearing held on July 4, 2022, because she did not receive the notice of hearing nor any other communication from the Landlord which informed her of the hearing date.

On September 15, 2022, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On September 16, 2022, interim order LTB-L-000598-22-RV-IN was issued, staying the order issued on August 31, 2022.

On September 12, 2022, the Tenant filed a request to change the hearing format from electronic to written because they would experience challenges participating in an electronic hearing due to their accommodation needs.

On September 19, 2022, the Board issued another Interim Order (LTB-L-000598-22-RV-IN-2) by Vice Chair Henry, granting the Tenant the accommodation under the *Human Rights Code*, R.S.O. 1990, c. H. 19, as amended. This Interim Order also granted the written hearing format.

This review application was conducted by written hearing. The final date for submissions was November 28, 2022.



Determinations:

Tenant's Request for Review GRANTED

1. The Tenant submitted an affidavit stating that she was unable to participate in the hearing on July 4, 2022, as she did not receive the notice of hearing from the Board nor any communication from the Landlord about the hearing. I note that the obligation to serve the Notice of Hearing is on the Board, not the Landlord.
2. The Tenant stated in her affidavit that back in April 2022 the email address on the Landlord's file was jisellegranger.q2@gmail.com; however, she stated she lost access to this email address and replaced it with a new email address grakha1004@gmail.com. The Tenant advised the Landlord of this change in August 2022.
3. The Board's procedure is to send a Notice of Hearing by email only with prior consent of the Tenant to use email. Normally service is done by regular mail. In this case, I note that the Board emailed the Notice of Hearing to the Tenant, albeit to the first email address which she stated she lost access to. The Board also did not have prior consent from the Tenant to use her first email address for service. This was simply used because the Landlord included it in the L1 application.
4. I will note that the Board's records do not show any certificate of service from Board staff that the Notice of Hearing was mailed to the Tenant. Normally, even if email is used, the Board also mails the Notice of Hearing package to the Tenant, usually to the rental unit address. The Board's records contain no explanation why staff did not mail the notice.
5. The Tenant admits she received the N4 notice from the Landlord. But states she did not receive the Notice of Hearing for the July 4, 2022 hearing date.
6. The Tenant submits her mail is delivered in a box; she describes it as a large wall with many other mailboxes. She states she is diligent in checking her mailbox every 2-3 days and she remains unclear what happened to her Notice of Hearing. She submitted she would have participated and explained her situation try to preserve her tenancy, if she had received notice.
7. The Board's power to review a decision may be exercised if a party to a proceeding was not reasonably able to participate in the proceeding. The case law from Divisional Court generally instructs the Board that the meaning of the phrase "not reasonably able to participate" should be interpreted broadly, to ensure natural justice, and where a party



shows a genuine intent to participate in a hearing but was prevented from doing so, they should be entitled to a hearing through the review process. A party's genuine intent to participate must be borne out by the evidence which clearly demonstrates the party's intent to participate in the hearing.

8. 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.
9. When I see that the Board's file lacks a certificate of service, combined with the submissions of the Tenant, I find on a balance of probabilities that she did not receive the Notice of Hearing.
10. On a balance of probabilities, I find that the Tenant was not reasonably able to participate in the original L1 hearing.
11. Since the Board did not issue an order denying the review request (as per paragraph 5 of the Interim Order of Vice Chair Henry), I am granting the Tenant's request for review. A *de novo* L1 written hearing will be conducted below.
12. The prior L1 hearing order (LTB-L-000598-22) issued on August 31, 2022 is cancelled and replaced by this order.

Preliminary Issue:

13. The parties requested an extension on the deadline for the November 17, 2022 submission date. Both parties requested an extension of 4 days to satisfy the deadline in the Interim Order, issued on September 19, 2022, by Vice Chair Henry.
14. I will grant the extension of 4 days to both parties for reply and rebuttal evidence.
15. Based on the above decision in granting the extension, I am satisfied both parties met the Interim Order requirements for reply and rebuttal evidence.

De Novo L1 Hearing

16. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Nonpayment 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.



17. As of the final submission date for the written hearing, the Tenant was still in possession of the rental unit.
18. The lawful rent is \$1,476.51. It is due on the 1st day of each month.
19. Based on the Monthly rent, the daily rent/compensation is \$48.54. This amount is calculated as follows: \$1,476.51 x 12, divided by 365 days.
20. The Landlord submitted that as of October 28, 2022, the Tenant has paid \$2,617.51 to the Landlord since the application was filed. The Tenant made no submissions that any additional amounts were been paid.
21. The rent arrears owing to October 28, 2022, are \$12,987.53. The Tenant did not dispute this or make any submissions about the rent arrears owing.
22. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
23. The Landlord collected a rent deposit of \$1,459.00 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.
24. Interest on the rent deposit was last paid out to the Tenant up to June 18, 2022. No further interest is owing on the deposit because the Landlord paid out the interest beyond the termination date in the N4.
25. The Landlord submitted an electronic history of the parties' communication on the Yuhu platform. This correspondent satisfies me that the Landlord attempted to contact the Tenant to address the rent arrears owing and to offer resolution options.
26. The Landlord submitted that between January 1, 2022 to October 28, 2022, they received less than 2 full months rent from the Tenant during this 10-month period.
27. The Landlord submitted an L1/L9 update sheet, where the grand total outstanding to October 28, 2022, was \$13,173.53, inclusive of rent arrears (\$12,987.53) and costs (\$186.00) of filing the application.

Tenant's Reply Evidence submitted November 8, 2022

28. Much of the Tenant's submissions were about her email and Yuhu communications with the Landlord. Since I already granted the Tenant's request for review, the Tenant's submissions regarding her electronic communications with the Landlord were not relevant to the L1 *de novo* hearing.
29. The Tenant made no submission in the 1st affidavit rebutting the Landlord's submissions about the rent arrears owing.



The Landlord's Rebuttal Evidence submitted November 17, 2022

30. Much of the Landlord's rebuttal evidence was not applicable to the L1 *de novo* hearing.
31. The Landlord submitted that the Tenant had not paid the arrears to void the notice. The Landlord stated that the Tenant had not made any rent payments from February 17, 2022 to August 2022.
32. The Landlord submitted that the Tenant knew how to contact them, since the Tenant did so when she was locked out and had a maintenance request.
33. There were declarations submitted, made by the employees of the Landlord, but they were not relevant to the issues in the L1 *de novo* hearing.

Tenant's Rebuttal Evidence submitted December 2, 2022

34. The Tenant submitted that she had been approved in principle for \$606.25 from the City to put towards her rent related expenses. Nothing was in writing but she attached an email dated November 29, 2022 from Brenda Boyle. The email stated: "from what I can see it looks like you have been approved for \$606.25 effective October 1, 2022..". Ms. Boyle acknowledged no eligibility letter was sent to the Tenant and she provided the Tenant with instructions to contact PHB (Portable Housing Benefit) for more details.
35. The Tenant explained that on November 30, 2022, she went to view a new apartment but was unable to secure it.

Relief from Eviction Analysis

36. The Landlord asked for a standard eviction order because they wanted to mitigate their substantial losses.
37. The Tenant submitted that she is a single mother of 2 children. The Tenant requested that the Board deny eviction and consider her proposed payment plan of \$400 per month towards the arrears for a period of 36 months, subject to section 78 clause.
38. Further, the Tenant stated if the Board did not feel it appropriate to exercise its discretion and deny the eviction, she asked to delay the eviction for at least 2 months to allow her to find suitable replacement accommodation.



39. I also considered that the Tenant stated she was not on social assistance, but she was behind on all her bills, including telephone. The Tenant also submitted she has very little energy to complete daily tasks and has been focused on her children.
40. I have considered all of the disclosed circumstances of both parties. I find a standard eviction order would be fair in the circumstances.
41. One of my considerations was the fact that the Tenant only paid 2 months of rent in a 10month period up to the end of October 2022. The Tenant did not dispute this fact.
42. Although the Tenant proposed a repayment plan of \$400.00 extra per month, she made no good faith payments of any amount to get the arrears paid down. I was not convinced that the Tenant could stick to any repayment plan because she had made no payments after proposing her plan.
43. The Tenant did not have to wait for a Board order to start paying her rent arrears. If she was serious about repaying the arrears and preserving this tenancy, in good faith, she could have made at least some partial payments to the Landlord. I was provided no evidence to prove that her repayment plan was realistic or affordable for her.
44. Although the Tenant described herself as a single mother with 2 children, there were no details as to why she needed a 2-month postponement to move her family out.
45. There was no evidence that the Tenant had paid any normal monthly rent due on the 1st for several months. I had no evidence to convince me that even the monthly rent was affordable for the Tenant, let alone any additional repayment amounts for arrears.
46. I also considered the Landlord's circumstances. The proposed payment plan from the Tenant would have taken 3 years to complete. I did not find this was a reasonable plan based on the Landlord's submissions they have suffered a substantial loss.
47. I had no submissions from the Tenant about her income or her current financial situation other than the fact that she was behind on all her bills, and that she was not on social assistance. I did not receive any submissions about the Tenant's income sources or amounts. I was not convinced that the Tenant would be able to continue paying normal monthly rent plus any amount towards the arrears. For this reason, an eviction is being ordered instead of a conditional order.



48. 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 Landlord attempted to negotiate a repayment plan agreement with the Tenant) and 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 Tenant's request for review was granted above.
2. The previous L1 order LTB-L-000598-22 is cancelled and replaced with this order.
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:**
 - **\$21,671.49** if the payment is made on or before April 11, 2023 (less any amounts the Tenant may have paid between October 28, 2022 and March 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 April 11, 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 April 11, 2023.**
7. If the Tenant does not void the order, the Tenant shall pay to the Landlord **\$9,097.02**. 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 Tenant. See Schedule 1 for the calculation of the amount owing.
8. The Tenant **shall also pay** the Landlord compensation of **\$47.97 per day** for the use of the unit **starting November 1, 2022**, 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 April 11, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 12, 2023, at 6.00% annually on the balance outstanding.
10. All of the above calculations shall be reduced by any amount the Tenant paid the Landlord after December 2, 2022.



11. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
12. If the unit is not vacated on or before April 11, 2023, then starting April 12, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
13. 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 April 12, 2023.
14. All my reasons for the determinations made in this order have been included, and no further reasons shall be provided.

March 31, 2023

Date Issued

Anthony Bruno

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 October 12, 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 April 11, 2023

Rent Owing To April 30, 2023	\$24,103.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord between the date the application was filed and December 2, 2022	- \$2,617.51
Total the Tenant must pay to continue the tenancy	\$21,671.49

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

Rent Owing to October 31, 2022	\$12,987.53
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Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord between the date the application was filed and December 2, 2022	- \$2,617.51
Less the amount of the last month's rent deposit	- \$1,459.00
Total amount owing to the Landlord	\$9,097.02
Plus daily compensation owing for each day of occupation starting November 1, 2022	\$47.97 (per day)