



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

Citation: 1156495 Ontario Ltd. v Joneit, 2023 ONLTB 26398

Date: March 20, 2023

File Number: LTB-L-017832-22_RV

In the matter of: 3495 HIGHWAY #3
SIMCOE, ON N3Y 4K6

Between: 1156495 Ontario Ltd. Landlord

and

Henry Joneit Tenant

REVIEW ORDER & HEARING ORDER

Procedural History

1156495 Ontario Ltd. (the 'Landlord') applied in a L1 application for an order to terminate the tenancy and evict Henry Joneit (the 'Tenant') because the Landlord claimed the Tenant did not pay the rent that he owes.

The Landlord also applied in a L2 application for an order to terminate the tenancy and evict the Tenant because the Landlord claimed the Tenant committed illegal acts, which behaviour seriously impaired the safety at the residential complex.

The L1/L2 application was heard by videoconference on June 6, 2022 and was resolved by order LTB-L-017832-22 issued on June 7, 2022, which was a voidable L1 eviction order (the L2 application was withdrawn). The Tenant did not attend the L1/L2 hearing.

On July 20, 2022, the Tenant requested a review of the L1/L2 order, claiming he was not reasonably able to participate in the June 6, 2022 hearing.

On July 21, 2022, interim order LTB-L-017832-22_RV_IN was issued, granting a review hearing to determine whether the Tenant was reasonably able to participate in the proceedings, and staying the eviction order issued on June 7, 2022.

The review hearing was heard by videoconference on September 13, 2022. At that hearing I orally determined that the review was denied. After that hearing, before my written order was sent to the parties, further evidence was discovered in the Board's file, which was a returned mail envelope from Canada Post. Based on the new evidence, I reconvened the review hearing.

The reconvened review hearing was heard by videoconference on March 7, 2023. The Landlord's legal representative Peter Karsten attended the hearing with the Landlord's agent/witness Alan Williamson. The Tenant also attended the hearing.

Determinations:

Tenant's Request for Review GRANTED

1. The Tenant re-iterated that he had never received a Notice of Hearing for the June 6, 2022 hearing date.
2. I advised both parties that the envelope mailed by the Board to the Tenant had been returned to the Board by Canada Post. The envelope had been stamped on June 6, 2022 and there was a stamp indicating the recipient had moved. There was also a pen stroke across Mr. Joneit's name and address with a question mark. "Simcoe" and the postal code underlined. Someone had written in "Delhi?". The Tenant advised that Delhi was a town nearby but he had never seen this envelope and had not written anything on it.
3. The Tenant testified that he was always intending to participate in the L1/L2 hearing, but he did not learn anything had happened at the Board until he received the sheriff's eviction notice on his door.
4. The Landlord's legal representative submitted that the Tenant should have known about the rent arrears and behaviour complained of in the N6 and N7 Notices of Termination, so the Tenant should have followed up with the Board regarding a hearing date, or he should have reached out to the Landlord to deal with the proceedings.
5. 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.

6. 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.
7. When I considered the returned envelope from Canada Post, it is clear that the Tenant did not actually open this package, so he could not have known before the June 6, 2022 hearing, that the Landlord’s applications were being heard at the LTB.
8. Even though the Landlord had served the N4, N6 and N7 Notices, and the Tenant should have known about rent arrears and other behaviour that the Landlord complained about (illegal acts regarding firearms, serious impairment to safety, etc), the evidence in the Board’s file shows the Tenant did not properly receive the Notice of Hearing package regarding the June 6, 2022 hearing.
9. On a balance of probabilities, I find that the Tenant was not reasonably able to participate in the original L1/L2 hearing. As a result, his request for review was granted and a de novo (new) L1/L2 hearing was conducted.
10. The prior hearing order (LTB-L-017832-22) issued on June 7, 2022 is cancelled and replaced by this order.

De Novo (new) L1 Hearing

11. 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 L1 application was filed.
12. When the L1 application was filed, and as of the hearing date, the Tenant is still in possession of the rental unit.
13. The lawful monthly rent is due on the 1st day of each month. The N4 Notice claimed rent arrears starting from December 1, 2020. The parties agreed that the lawful monthly rent has always been \$1050.00 per month for the entire time of rent arrears claimed in this L1 application.
14. Based on the monthly rent, the daily rent/compensation is \$34.52. This amount is calculated as follows: \$2050 x 12 months, divided by 365 days.
15. The Tenant paid \$8,400.00 between the filing of the L1 application (October 13, 2021) and the hearing of March 7, 2023. (the full monthly rent of \$1050.00 was paid for the months of November and December in 2021, February, October, November and December in 2022, and January and February in 2023).

16. The parties agreed that the current rent arrears owing at the time of the March 7, 2023 hearing (up to March 31, 2023) is \$11,550.00. The current rent arrears are from 11 total months of unpaid rent.
17. The Landlord incurred costs of \$203.00 for filing the L1 application and is entitled to reimbursement of these costs.
18. The parties confirmed there is no last month's rent deposit.

Relief from Eviction Analysis

19. The Landlord's agent Mr. Williamson testified that the Tenant's non-payment of rent was not a "one-off" but a recurring problem. Several attempts had been made to reach out to the Tenant, by himself, his father Drew, and his legal representative, but they were all unfruitful. He advised the total arrears were not a "minimal amount". Various financial costs such as sheriff's fees had already been incurred. He also testified about the non-financial negative impact of the situation – such as the frustration and aggravation from dealing with this Tenant. Mr. Williamson testified that the arrears were making it challenging to meet the financial carrying costs for the property. The Landlord requested an eviction. He was willing to give the Tenant up to the end of April, 2023 to move out.
20. The Tenant testified that he wanted to continue to live here and was hoping for a payment plan instead of eviction. He advised the tenancy started around October 1, 2015. He and his wife live here with his adult son who is staying in the basement until he finds his own place. The only household income comes from his new job as a truck driver, and his wife's ODSP income. Their combined net monthly income is approximately \$3000.00 per month. The Tenant said the reason he ran into trouble paying rent was because he lost his job of 18 years when his old boss closed his shop. He started a new fulltime job as a truck driver in September 2022. He advised he has been paying rent since Oct 2022 to Feb 2023. He has the cheque ready for March 2023 but just needs to get the rent cheque to the Landlord. He and his wife are in their early 60's. He has other debts to pay (hydro and gas bills are in arrears) so they are living "paycheque to paycheque". He was willing to pay \$1,300.00 total each month to get caught up (normal monthly rent plus \$250 extra each month towards arrears). He understood that it would take about 4 years to pay off all the arrears according to his proposed repayment plan.
21. The Tenant also testified that he has no family or friends living nearby. His new job is only 4 minutes away so the location of the rental unit is very convenient for him. His mother lives in Woodstock. He and his wife along with his son would have nowhere to go if they could not stay in this tenancy. He stated that if he was forced to leave, it would take at least 6 or 8 months to arrange his affairs and move out.
22. 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 Tenants), and find that it would be fair to grant a postponed eviction effective May 31, 2023, pursuant to subsection 83(1)(b) of the Act.

23. The reason I have not ordered a conditional payment plan as the Tenant requested, is because a payment plan would be unrealistic according to the Tenant's budget. He was only able to contribute \$250 a month towards arrears. This would take 4 years for the rent arrears to be paid off in full, which would take too long and cause financial hardship to the Landlord. Since the Tenant testified that he lives paycheque to paycheque, I find that it would be unrealistic to expect he could stick to a payment plan while continuing to pay ongoing rent on time and in full. It was concerning to me that on the hearing date (March 7, 2023), the rent for March 2023 was already a week late. Although the Tenant said this was due to being unable to coordinate a drop-off time for the cheque, the Tenant is responsible to make sure rent is paid on time, even if it means putting it in the mail or dropping it off earlier than the 1st day of each month.
24. Having considered all the disclosed circumstances of both parties, I find that a standard eviction order (11 days from the order issuance date) would not be fair and not give enough time for this Tenant. The Landlord was willing to extend eviction until the end of April 2023. I am extending it one month longer to May 31, 2023, due to the Tenant's wife being disabled, and the fact that they have lived here nearly 8 years. The Tenant was explained that instead of being evicted, he could pay off the total balance owing by May 31, 2023 – which would void the eviction order.

L2 Hearing Withdrawn

25. Having obtained a voidable eviction order to resolve the L1 application, the Landlord's legal representative advised that the Landlord would like to withdraw the L2 application. Consent was provided to withdraw the L2 application and that application is now closed.

It is ordered that:

26. The prior hearing order (LTB-L-017832-22) issued on June 7, 2022 is cancelled and replaced by this order.
27. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.

Pay and Stay Option

28. The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:
- \$11,753.00* if the payment is made on or before March 31, 2023. See Schedule 1 (chart A) for the calculation of the amount owing
 - \$12,803.00** if the payment is made after March 31, 2023 but on or before April 30, 23. See Schedule 1 (chart A) for the calculation of the amount owing.
 - \$13,853.00*** if the payment is made after April 30, 2023 but on or before May 31, 2023. See Schedule 1 (chart A) for the calculation of the amount owing.
29. 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 May 31, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.

Pay and Go Option

30. 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 May 31, 2023.
31. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$11,753.00****. This amount includes rent arrears owing at the time of the hearing (\$11,550.00), plus the cost of filing the application (\$203.00) less the rent deposit (\$0.00), less the interest the Landlord owes on the rent deposit (\$0.00). See Schedule 1 (chart B) for the calculation of the amount owing.
32. The Tenant shall also pay the Landlord compensation of \$34.52 per day for the use of the unit starting April 1, 2023 until the date the Tenant actually moves out of the unit or get evicted by the sheriff.
33. If the Tenant does not pay the Landlord the full amount owing on or before May 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 1, 2023 onwards at 5.00% annually on the balance outstanding.
34. 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.
35. 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.

March 20, 2023

Date Issued

Michelle Tan

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 1-888-3323234.

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

PAY AND STAY OPTION:

- A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before March 31, 2023

Rent Owing To March 31, 2023	\$19,950.00
Application Filing Fee	\$203.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$8,400.00
Total the Tenant must pay to continue the tenancy	\$11,753.00*

Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made after March 31, 2023 but on or before April 30, 2023

Rent Owing To April 30, 2023	\$21,000.00
Application Filing Fee	\$203.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$8,400.00

Total the Tenant must pay to continue the tenancy	\$12,803.00**
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Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made after April 30, 2023 but on or before May 31, 2023

Rent Owing To May 31, 2023	\$22,050.00
Application Filing Fee	\$203.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$8,400.00
Total the Tenant must pay to continue the tenancy	\$13,853.00****

PAY AND GO OPTION

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

Rent Owing To Hearing Date (up to March 31, 2023)	\$19,950.00
Application Filing Fee	\$203.00
Less the amount the Tenant paid to the Landlord since the application was filed	\$8,400.00
Less the amount of the last month's rent deposit	-\$0.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
Total amount owing to the Landlord	\$11,753.00*****
Plus daily compensation owing for each day of occupation <u>starting April 1, 2023</u>	\$34.52 (per day)