



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

Citation: Kamalanathan v Babalola and Taiwo, 2023 ONLTB 25895

Date: 2023-03-14 **File Number:**
LTB-L-026799-22-RV

2023 ONLTB 25895 (CanLII)

In the matter of: 51 TERRY CLAYTON AVE BEAVERTON
ON L0K1A0

Between: Premraj Kamalanathan Landlord

And

Olasunkanmi Ola Babalola Tenants
Temitope Adebisi Taiwo

Review Order

Premraj Kamalanathan (the 'Landlord') applied for an order to terminate the tenancy and evict Olasunkanmi Ola Babalola ('OB') and Temitope Adebisi Taiwo ('TT', the 'Tenants') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-026799-22, issued on February 3, 2023.

On February 13, 2023, the Tenants requested a review of the order and that the order be stayed until the request to review the order is resolved.

On February 14, 2023 interim order LTB-L-026799-22-RV-IN was issued, staying the order issued on February 3, 2023.

The review request was heard in vide conference room 102 on March 8, 2023.

The Landlord, the Landlord's legal representative Paul Balram, and the Tenants attended the hearing.



Determinations:

The Review Request

1. The Landlord consented to the Tenants' request to review the February 3, 2023 order, on the basis that the Tenants were not reasonably able to participate in the original January 16, 2023 hearing. A hearing de novo of the Landlord's application was held on March 8, 2023. out of

The Landlord's Application

2. The Tenants do not contest the Landlord's evidence, that the Tenants have not paid \$4,600.00 in rent for the period ending March 14, 2023. The Tenants testified that confusion about rental payments arose when the Landlord began attributing payments to municipal water bills. The Tenants agreed that they were in arrears of rent.
3. At the hearing, I instructed the Landlord and his legal representative to give evidence relating only to rental arrears, without evidence of water charge arrears. The Landlord gave evidence that the Tenants paid all the rent required from July 15, 2022 to January 14, 2023. The Landlord claimed rental arrears for the period January 15, 2023 to March 14, 2023.
4. I am satisfied from the parties' evidence, including the Tenants' concession that they have not paid all the rent required, that the Tenants have not paid the Landlord \$4,600.00. This amount represents two months' rent. Although the Landlord's legal representative described the Tenants as having paid the Landlord \$17,300.00 after the application was filed, it is apparent from the totality of the Landlord's evidence that the Tenants have not paid two months' worth of rent; and that the Tenants paid the Landlord \$23,100.00 since the L1 application was filed, or before that time and were not properly credited for the payment(s). In arriving at this finding, I am mindful that the Landlord's representative conceded that the Landlord had not credited the Tenants with payments made before the Landlord filed his application with the Board. It was also evident that the Landlord's representative had omitted information in the L1/L9 Application Information Update form he was required to submit before the March 8, 2023 hearing.
5. The Landlord's L1/L9 Application Information Update form shows the Landlord paid \$186.00 for the cost of filing the application. The total amount the Tenants must pay the Landlord for the period ending March 14, 2023 is therefore \$4,786.00.
6. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and 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.

7. At the hearing, the Landlord requested an order requiring the Tenants to pay the rental arrears within two months. At first, the Tenant OB agreed to pay the amount owed within that time. However, it became apparent that he misunderstood when he proposed paying the Landlord \$500.00 a month. After speaking with the Tenant TT, who manages the household's finances, the Tenants proposed paying the Landlord \$1,150.00 a month toward rent arrears, until their balance with the Landlord reaches \$0.00. The Tenants asked that their first rent arrears payment be postponed until April 25, 2023 to give the Tenants time to arrange their household finances.
8. The Landlord did not oppose the Tenants' request for a payment plan, starting April 25, 2023. However, OB immediately asked to change the proposed payment schedule. OB asked that the Tenants not be required to pay \$1,150.00 on May 25, 2023, with the promise that the Tenants will pay \$2,300.00 on June 25, 2023. The Landlord opposed OB's request to vary the Tenants' proposed payment plan.
9. After discussing the issue between themselves, the Tenant TT confirmed that the Tenants can afford to pay \$1,150.00 a month to the Landlord, starting on April 25, 2023. TT also confirmed that the Tenants can pay the rent as it comes due and payable. OB testified that it is the Landlord's usual practise to allow the Tenants to pay rent up to the 20th day of each month.
10. With respect to subsection 83(6) of the Act, the Landlord's representative gave evidence that he proposed a payment plan to the Tenants on or about January 3, 2023, shortly before the January 16, 2023 hearing. The Landlord did not have reliable evidence of an effort to negotiate a settlement of the Tenants' rental arrears before January 3, 2023. The Tenants, by contrast, testified that both the Landlord and the Landlord's representative have refused to speak with the Tenants for approximately six months.
11. I find from the evidence that the Landlord did not in good faith attempt to negotiate with the Tenants a resolution of their rental arrears. Proposing a last-minute payment plan, while allowing rental arrears at the time to accrue to a substantial amount, does not represent a meaningful attempt to settle a dispute.
12. The Tenants have four children and have resided at the rental unit since June 15, 2020. In the circumstances, I find it is not unfair to issue a conditional order that requires the Tenants to pay \$4,786.00 to the Landlord in monthly installments of \$1,150.00 for the period April 25, 2023 to July 25, 2023, and \$186.00 on August 25, 2023. The Tenants shall also be required to pay the full rent as it comes due and payable on the 15th day of each month for the period March 15, 2023 to August 15, 2023. I explained to the Tenants that the Landlord may file an application under section 78 of the Act for an order to terminate the tenancy and evict the Tenants, if the Tenants fail to comply with any of the



scheduled payments in this order. The Landlord must make such an application within 30 days of a breach.

13. In exercising my discretion, I am also mindful that the Landlord did not have reliable evidence to determine that he has experienced undue financial hardship because of the Tenants' failure to pay two months' rent. As the Landlord did not oppose the Tenants' proposed payment plan, it is not unfair to grant the Tenants conditional relief from eviction.
14. All the reasons for this order are contained herein.

It is ordered that:

1. The request to review order LTB-L-026799-22, issued on February 3, 2023, is granted. The February 3, 2023 order is cancelled and replaced with the following order:
2. The Tenants shall pay the Landlord \$4,786.00*, which represents rent arrears for the period ending March 14, 2023 and the Landlord's Board filing costs, as follows:
 - a. \$1,150.00 on April 25, 2023;
 - b. \$1,150.00 on May 25, 2023;
 - c. \$1,150.00 on June 25, 2023;
 - d. \$1,150.00 on July 25, 2023; and
 - e. \$186.00 on August 25, 2023.
3. The Tenants shall also pay the Landlord rent owing for the period March 15, 2023 to August 15, 2023, no later than the 15th day of each month.
4. If the Tenants 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 Tenants to the Landlord pursuant to paragraph 2 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenants apply to the Board pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenants and requiring that the Tenants pay any new arrears, NSF fees and related charges that became owing after March 8, 2023.

March 14, 2023

Date Issued

15 Grosvenor Street, Ground Floor Toronto
ON M7A 2G6

Harry Cho
Vice Chair, Landlord and Tenant Board



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

Schedule 1 SUMMARY OF CALCULATIONS

A. Amount the Tenants must pay to void the eviction order and continue the tenancy

| | |
|----------------------------------------------------------------------------------------|------------------|
| Rent Owing To March 14, 2023 | \$27,700.00 |
| Application Filing Fee | \$186.00 |
| NSF Charges | \$0.00 |
| Less the amount the Tenant paid to the Landlord since the application was filed | - \$23,100.00 |
| Less the amount the Tenant paid into the LTB since the application was filed | - \$0.00 |
| Less the amount the Landlord owes the Tenant for an{abatement/rebate} | - \$0.00 |
| Less the amount of the credit that the Tenant is entitled to | - \$0.00 |
| Total the Tenant must pay to continue the tenancy | \$4786.00 |

