



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: The Effort Trust Company v Mountenay, 2023 ONLTB 20106

Date: 2023-02-17

File Number: LTB-L-034550-22

In the matter of: 315, 33 KING ST E
DUNDAS ON L9H5R1

Between: The Effort Trust Company Landlord

And

Michael Mountenay Tenant

The Effort Trust Company (the 'Landlord') applied for an order to terminate the tenancy and evict Michael Mountenay (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 1, 2023.

Only the Landlord's agent, Danielle Molloy, attended the hearing.

Determinations:

PRELIMINARY ISSUE: TENANT NOT REASONABLY ABLE TO PARTICIPATE

1. This application was heard at 9:53am. At the time the file was called, I asked if anyone in the hearing room was Michael Mountenay and if so, to make me aware as the file was about to be called. I checked the docket and at the time of the hearing the Tenant had not signed in to the hearing with the moderator and the hearing proceeded as uncontested.
2. The block had ended at 12:00m however I was hearing the last few files on the docket past 12:00pm. At approximately 12:45pm, I notice the Tenant had been placed in my room. The Tenant identified himself and I informed the Tenant his file had been heard earlier in the morning. I checked the docket and the Tenant had signed in at 11:58am.
3. I asked to the Tenant as to why he was not available at the time the file was called and the Tenant submitted that he had to work and he was the only one available to work that day.
4. The Tenant submitted that he got the notice of hearing a week prior and was unable to miss work in order to attend the hearing.

2023 ONLTB 20106 (CanLII)

THE BOARD'S INTERPRETATION GUIDELINES AND ANALYSIS

5. Interpretation Guideline 1: Adjourning and Rescheduling Hearings

Failing to Attend the Hearing

Section 7 of the SPPA provides that a tribunal may proceed with a hearing in the absence of any party.

Where the **respondent** fails to appear, a notice of hearing has been sent to the parties and the matter has not been adjourned or rescheduled, the Member will proceed with the hearing, and will make a decision based on the evidence provided by the applicant at the hearing.

[emphasis added]

6. For the following reasons I am not granting an adjournment based on the Tenant's absence and reason he was not reasonably able to participate.
7. Pursuant to the Board's Interpretation Guideline 1 regarding the respondent failing to appear the Board Member is permitted to proceed if the parties have been given a notice of hearing.
8. The Tenant submitted that he received a notice of hearing from the Board the week before the hearing. The Tenant had a working device and had the information required to call into the hearing and have the moderator sign him in. There was no technology barrier preventing the Tenant from participating.
9. The Tenant claims he had to go to work in the absence of any other employees, but did not provide any evidence to support his claim. Even if this were true and the Tenant was unable to get time off work to attend the hearing, the Tenant had other options available to him that he failed to explore.
10. If the Tenant was unable to attend the hearing due to work, the Tenant had ample time and opportunity to make arrangements to have someone attend on his behalf in his absence. The Tenant failed to do this.
11. The Tenant could have contacted the Landlord or the Landlord's agent to request an adjournment prior to the hearing, or inform the Landlord's agent he would not be available.
12. The Tenant did not make an attempt to contact the Landlord or the Landlord's agent. This is supported by the Landlord's agent's testimony when I inquired if the Landlord's agent had any knowledge of why the Tenant did not attend the hearing. The Landlord's agent submitted she had no knowledge. Further the Landlord's agent submitted that an email was sent to the Tenant on January 12, 2023 reminding him of the hearing and offering to discuss payment arrangements and there was no response from the Tenant.
13. I am not persuaded by the Tenant's submission that he was unable to participate in the hearing because he had to work, and that is reason enough to adjourn the hearing. The Tenant was provided with a notice of hearing, and was able to call in the day of the hearing. The Tenant's failure to explore other options available to him is not, in my opinion,

grounds for an adjournment and this order shall be issued with the uncontested evidence provided by the Landlord's agent at the time of the hearing.

LANDLORD'S APPLICATION

14. 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.
15. As of the hearing date, the Tenant was still in possession of the rental unit.
16. The lawful rent is \$1,027.00. It is due on the 1st day of each month.
17. Based on the Monthly rent, the daily rent/compensation is \$33.76. This amount is calculated as follows: \$1,027.00 x 12, divided by 365 days.
18. The Tenant has paid \$6,198.00 to the Landlord since the application was filed.
19. The rent arrears owing to February 28, 2023 are \$3,872.00.
20. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
21. The Landlord collected a rent deposit of \$850.00 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.
22. Interest on the rent deposit, in the amount of \$37.87 is owing to the Tenant for the period from September 1, 2019 to February 1, 2023.
23. 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, including submissions from the Landlord's agent that the Tenant does not have young children or any persons with special needs that the Board needs to consider living with them, and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
24. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
25. This order contains all reasons for the determinations and order made. No further reasons will be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:
 - \$4,058.00 if the payment is made on or before February 28, 2023. See Schedule 1 for the calculation of the amount owing.
3. 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 February 28, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. 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 February 28, 2023
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$2,176.89. 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.
6. The Tenant shall also pay the Landlord compensation of \$33.76 per day for the use of the unit starting February 2, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before February 28, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 1, 2023 at 5.00% annually on the balance outstanding.
8. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
9. If the unit is not vacated on or before February 28, 2023, then starting March 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 March 1, 2023.

February 17, 2023**Date Issued**_____
Greg Brocanier

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 September 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.

*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

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 February 28, 2023

Rent Owing To February 28, 2023	\$10,070.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,198.00
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	\$4,058.00

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

Rent Owing To Hearing Date	\$9,076.76
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$6,198.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$850.00
Less the amount of the interest on the last month's rent deposit	- \$37.87
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 amount owing to the Landlord	\$2,176.89
Plus daily compensation owing for each day of occupation starting February 2, 2023	\$33.76 (per day)

