



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

**Citation:** Metcap Living Management Inc v Hubler, 2023 ONLTB 16077

**Date:** 2023-02-01

**File Number:** LTB-L-011417-22-RV

**In the matter of:** 104, 182 CHURCH ST E  
BRAMPTON ON L6V1H2

**Between:** Metcap Living Management Inc Landlord

**And**

Aaron Hubler Tenants  
Jessica White

**Review Order**

Metcap Living Management Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Aaron Hubler and Jessica White (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-011417-22 issued on December 14, 2022.

On December 23, 2022, the Tenants requested a review of the order and that the order be stayed until the request to review the order is resolved. The Tenants alleged that the order contains a serious error.

On December 28, 2022, interim order LTB-L-011417-22-RV-IN was issued, staying the order issued on December 14, 2022.

This application was heard in by videoconference on January 17, 2023. The Landlord's Agent, M. Estolas, the Landlord's Legal Representative, M. Forrester, and the Tenants attended the hearing.

**Preliminary Issue:**

The Tenants intended to raise issues pursuant to section 82 of the Residential Tenancies Act, 2006 ('the Act'). However, neither the Board nor the Landlord were informed of the issues prior to the hearing although the Tenant sent some pictures as evidence. The Landlord was not prepared to respond to the unknown allegations and the Tenants have had sufficient time since they spoke with Duty Counsel on August 31, 2022 to inform the Landlord about their intention to raise the issues at the hearing. The hearing proceeded without a consideration of the issues but that does not prevent the Tenants from filing their own application at a future date.

**Determinations:****The Request**

1. The Tenants alleged that the order which terminated the tenancy for nonpayment of rent contained a serious error because they were present at the hearing but speaking to Duty Counsel at the time the application was heard in their absence.
2. The order shows the application was heard at 9:37 a.m., and at 10:43 a.m., the Tenants came into the hearing room.
3. Based on the submissions made in the request, I am satisfied that there is a serious error in the order.

**The Application**

4. 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.
5. As of the hearing date, the Tenant was still in possession of the rental unit.
6. The lawful rent is \$1,668.78.
7. Based on the Monthly rent, the daily rent/compensation is \$54.86. This amount is calculated as follows:  $\$1,668.78 \times 12$ , divided by 365 days.
8. The Tenant has paid \$6,750.00 to the Landlord since the application was filed.
9. The rent arrears owing to January 31, 2023 are \$13,305.68.
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. The Tenants, who initially claimed to have made some payments which turned out to be untrue, testified that the male Tenant stopped working in November 2022 and was expected to return the week after the hearing. No evidence was provided to support this claim. The female Tenant earns \$2,400.00 monthly and they have resided in the rental unit for over three years.
12. As of the hearing date, the rent for the month of January 2023 was yet to be paid. Hence, I was not satisfied that the Tenants could comply with their proposed plan to pay \$250.00 or \$300.00 monthly in addition to ongoing rent each month.
13. The Landlord collected a rent deposit of \$1,649.00 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.
14. Interest on the rent deposit, in the amount of \$21.71 is owing to the Tenant for the period from January 1, 2022 to January 17, 2023.
15. I have considered all 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

postpone the eviction until February 28, 2023 pursuant to subsection 83(1)(b) of the Act. As stated at the hearing, additional time is given to the Tenants to either secure alternative accommodation or pay the outstanding amount.

**It is ordered that:**

1. The request to review order LTB-L-011417-22 issued on December 14, 2022, is granted. The order cannot be enforced by the Landlord.
2. The interim order issued on December 29, 2022, 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:**
  - \$15,160.46 if the payment is made on or before February 28, 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 February 28, 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 February 28, 2023**
7. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$11,084.81. 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 \$54.86 per day for the use of the unit starting January 18, 2023 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 February 12, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 13, 2023 at 5.00% annually on the balance outstanding.
10. 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.
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 March 1, 2023.

**February 1, 2023**  
Date Issued

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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.

**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	\$21,724.46
Application Filing Fee	\$186.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$6,750.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$15,160.46</b>

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

Rent Owing To Hearing Date	\$19,319.52
Application Filing Fee	\$186.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$6,750.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,649.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$21.71
<b>Total amount owing to the Landlord</b>	<b>\$11,084.81</b>
Plus daily compensation owing for each day of occupation starting January 18, 2023	\$54.86 (per day)