



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

Citation: Wilson v Cavers, 2023 ONLTB 16466

Date: 2023-01-24

File Number: LTB-L-014214-22-RV

In the matter of: 427 BAY ST
PORT PERRY ON L9L1M7

Between: Scott Wilson and Wilson Elizabeth Landlord

And

Ian Page, Jamie Page and Terri Cavers Tenant

Review Order

Scott Wilson and Wilson Elizabeth (the 'Landlord') applied for an order to terminate the tenancy and evict Ian Page, Jamie Page and Terri Cavers (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-014214-22 issued on November 22, 2022.

On December 7, 2022, the Landlord requested a review of the order.

This Landlord's request to review was heard by videoconference on January 18, 2023.

The Landlord, the Landlord's legal representative T. Sivapatham, and the Tenant Terri Cavers, attended the hearing. The Tenant Terri Cavers attended the hearing on behalf of the named Tenants.

Determinations:

1. In their request to review, the Landlord submitted that there is a serious error in the order because the presiding Member awarded a remedy that was unreasonable in the circumstances and was not supported by the evidence before the Member. In addition, the Member did not provide a clear path as to how he arrived at the remedy ordered.
2. The issue to be decided by the Board is whether the Member exercised his discretion under s.83 of the *Residential Tenancies Act, 2006* unreasonably.
3. Based on the evidence and submissions before me, I am satisfied that the Member's exercise of discretion under section 83 of the Act was unreasonable and was not supported by the evidence before him.

Background:

4. The hearing of the Landlord's application took place on September 26, 2022. At the time of the hearing, the arrears of rent were \$26,120.60. The Tenants have not paid any rent to the Landlord since March 7, 2021. At the hearing, the Tenants proposed a payment plan according to which it would take over five years to pay off the arrears. The Tenants proposed to pay \$400.00 in addition to their monthly rent of \$1,400.00, plus \$3,500.00 every three months. The Landlord requested a standard order 11-day order, as the Tenants have not paid any rent since the application was filed and did not respond to the Landlord's attempts to negotiate a payment plan before the hearing. The evidence before the Member was that the Tenants were unable to pay back the arrears any faster than their proposed payment plan. The Tenants further submitted that they had two young children 2 and 4 years old. This is reflected in the order issued on November 22, 2022 in paragraph 11, which states:

"The Tenant claimed he was laid off as a carpenter at the University of Toronto and returned to work on September 13, 2022. The Tenant received CERB benefits while he was laid off, but his wife was on maternity leave from August 2020 and returned to work on July 14, 2022. IA testified that they would not be able to pay back the arrears any faster than proposed in as proposed as they are taking care of have two young children, ages 2 and 4."[sic]

5. However, in paragraph 13 of the order, the Member finds and delays the eviction to March 3, 2023:

"On balance, postponing the eviction until March 3, 2023, pursuant to subsection 83(1)(b), is appropriate as it allows the Tenant to make a monthly payment in a shorter period, as requested by the Landlord."

Analysis:

6. This determination is inconsistent with the evidence before the Member. The Tenants testified that they were unable to adhere to a more aggressive payment plan than the one they proposed at the hearing, which was unreasonably lengthy. As such, it is unreasonable to expect that the Tenants would be able to pay off the arrears of rent by March 3, 2023, that is in five months, rather than in the five years they had proposed. Moreover, the fact that the eviction was delayed for five months after the date of the hearing (and for over three months from the date of the order issued on November 22, 2022) deprived the Landlord of any remedy until March 3, 2023, if the Tenants made no payments in the interim. This delay is extremely prejudicial to the Landlord and appears not to have been considered by the Member.
7. Section 83 of the Act requires that the Board in exercising its discretion must take into account all the circumstances, that is the Tenants' circumstances and the Landlord's circumstances. In this instance, the Member did not seem to have considered the absence of a timely remedy and the impact of the delayed eviction on the Landlord. That is an unreasonable exercise of discretion, and a serious error.
8. As such, the Landlord's request to review shall be granted.

9. The facts, and the arrears of rent, were not in dispute. The Tenants made no payments to the Landlord since the application was filed. The arrears of rent on the day of the review hearing were \$31,352.36.
10. As such, the only issue before the Board was the Member's use of discretion resulting in delay in eviction. Accordingly, the order issued on November 22, 2022 shall be varied by changing the termination date from March 3, 2023, to February 4, 2023 (this is consistent with a standard 11-day voiding period).
11. The Tenants have already had the benefit of extra time to secure funds or find alternate housing, neither of which the Tenants secured by the time of the review hearing on January 18, 2023.
12. In order to provide the Tenants with as much notice as possible, I informed the Tenant present at the hearing, that the Landlord's request to review shall be granted and a varied standard order will issue in the next few days. I explained to the Tenant, that the Tenants will have 11 days from the day the order was issued to void it, failing which the Landlord may file the order with the Sheriff and seek eviction.

It is ordered that:

1. The request to review order LTB-L-014214-22 issued on November 22, 2022 is granted. The order is varied as follows: paragraphs 1 to 9 of "It is ordered that:" portion of order LTB-L-014214-22 issued on November 22, 2022 are cancelled and replaced with the following paragraphs:
2. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
3. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$32,386.00 if the payment is made on or before **February 4, 2023**. See Schedule 1 for the calculation of the amount owing.
4. 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 4, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
5. **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 4, 2023.**
6. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$31,538.36. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
7. The Tenant shall also pay the Landlord compensation of \$46.03 per day for the use of the unit starting January 19, 2023 until the date the Tenant moves out of the unit.
8. If the Tenant does not pay the Landlord the full amount owing on or before February 4, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 5, 2023 at 5.00% annually on the balance outstanding.

9. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
10. If the unit is not vacated on or before February 4, 2023, then starting February 5, 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 February 5, 2023.

January 24, 2023
Date Issued

Jana Rozehnal
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 August 5, 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 4, 2023

Rent Owing To February 6, 2023	\$32,200.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	\$32,386.00

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

Rent Owing To Hearing Date	\$31,352.36
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
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	- \$
Less the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord	\$31,538.36
Plus daily compensation owing for each day of occupation starting January 19, 2023	\$46.03 (per day)