



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

**Citation:** Shah v Ann Mullin, 2023 ONLTB 15143

**Date:** 2023-01-16

**File Number:** LTB-L-020921-22-RV

**In the matter of:** Basement # 1, 70 BROWN WOOD DR  
BARRIE ON L4M6M6

**Between:** Manazar Hussain Shah Landlord

**And**

Shelley Ann Mullin Tenant

### Review Order

Manazar Hussain Shah (the 'Landlord') applied for an order to terminate the tenancy and evict Shelley Ann Mullin (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-020921-22 issued on November 14, 2022.

On December 9, 2022, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On December 12, 2022 interim order LTB-L-020921-22-RV-IN was issued, staying the order issued on November 14, 2022.

This review was heard by videoconference on January 9, 2023.

The Landlord's Agent (daughter) Nida Batool, the Tenant and the Tenant's Agent Bryn-Ann Mullin (daughter) attended the hearing.

### Determinations:

#### *Preliminary Matter:*

1. At the hearing, the Tenant advised that Laura Lynn Vanderkooy is a minor and should not be a party to this matter. There was no opposition by the Landlord's Agent to the request to remove this individual from the title of proceedings. The title of proceedings have been amended to remove "Laura Lynn Vanderkooy".



*Review Hearing:*

2. The Tenant's request for review is based on the ground of being not reasonably able to participate in the hearing. At the review hearing, the Tenant testified that she did not receive any notice of hearing for the hearing that was held on October 26, 2022.
3. The Board's records show that the Board sent the notice of hearing to the Tenant by regular mail on October 13, 2022. There is no indication in the Board's records that the notice of hearing package was returned by Canada Post.
4. The Tenant's Agent stated that the Tenant did not have access to her mail as she received her mail at a community mailbox which required a key to access. The Landlord never provided a key to the Tenant in order to access her mail but initially provided mail to the Tenant.
5. The Tenant's Agent stated that in March, 2022, the Landlord ceased providing any mail to the Tenant and that the Tenant then made arrangements for her government issued mail to be delivered to another address, which happened to be the ODSP office. The Tenant submits that the Landlord withheld the Tenant's mail for over a year.
6. The Tenant's Agent stated that as a result of the Landlord withholding the Tenant's mail, the Tenant never received the notice of hearing.
7. The Landlord's Agent submitted that the Tenant is lying and that while the Landlord had withheld the Tenant's mail for approximately 2 weeks in the past, the Landlord had resumed providing the Tenant with her mail and she did receive the notice of hearing. The Landlord's Agent stated that when the Landlord received the notice of hearing in the mail, the Tenant also received an envelope of similar size from the Board. Based on the size of the envelope addressed to the Tenant from the Board, the Landlord believes the notice of hearing was contained in that envelope.

*Analysis:*

8. In *King-Winton v. Doverhold Investments Ltd.*, 2008 CanLII 60708, the Divisional Court held that "being reasonably able to participate in the proceeding must be interpreted broadly, natural justice requires no less."
9. Interpreting this situation broadly, I find on a balance of probabilities, that the Tenant was not reasonably able to participate in the proceedings. The fact that the Notice of Hearing package was not returned by Canada Post does not necessarily mean that the Tenant received the package, especially in the face of the Tenant's testimony to the contrary.
10. Based on the submissions at the hearing and as set out in the request for review, at the hearing I granted the Tenant's request for a review. A hearing of the Landlord's application proceeded *de novo* (anew).

*The L1/L9 hearing:*

11. The Tenant does not dispute the amount of arrears owing up to December 14, 2022 as she vacated the rental unit on that date but asks for additional time to pay the rent arrears.



12. The Tenant was in possession of the rental unit on the date the application was filed.
13. The Tenant vacated the rental unit on December 14, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit.
14. The lawful rent is \$1,800.00. It was due on the 1st day of each month.
15. The Tenant has paid \$1,800.00 to the Landlord since the application was filed.
16. The rent arrears owing to December 14, 2022 are \$19,228.52.
17. The Landlord incurred the cost of \$186.00 for filing the application and is entitled to reimbursement of those costs.
18. The Landlord collected a rent deposit of \$2,100.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
19. Interest on the rent deposit, in the amount of \$30.38 is owing to the Tenant for the period from October 1, 2020 to December 14, 2022.

**It is ordered that:**

1. The request to review order LTB-L-020921-22 issued on November 14, 2022 is granted. The order is cancelled and replaced with the following order.
2. The tenancy between the Landlord and the Tenant is terminated as of December 14, 2022, the date the Tenant moved out of the rental unit
3. The Tenant shall pay to the Landlord \$15,484.14. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
4. If the Tenant does not pay the Landlord the full amount owing on or before March 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 1, 2023 at 5.00% annually on the balance outstanding.

**January 16, 2023**  
**Date Issued**

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Heather Chapple  
Member, Landlord and Tenant Board

15 Grosvenor St, 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.



**Schedule 1  
SUMMARY OF CALCULATIONS**

**A. Amount the Tenant must pay as the tenancy is terminated**

Rent Owing To Move Out Date	\$19,228.52
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$1,800.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$2,100.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$30.38
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$15,484.14</b>