



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

Citation: MONTCREST APARTMENTS v EARL, 2023 ONLTB 14314

Date: 2023-01-11 **File Number:**
LTB-L-054835-22-RV

In the matter of: 1408, 655 BROADVIEW AVE TORONTO
ON M4K2P3

Between: Moncrest Apartments Landlord

And

James T. Earl Tenant

Moncrest Apartments (the 'Landlord') applied for an order to terminate the tenancy and evict James T. Earl (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-054835-22 issued on November 16, 2022.

On December 2, 2022, the Landlord requested a review of the order.

On December 7, 2022, interim order LTB-L-054835-22-RV-IN was issued, staying the order issued on November 16, 2022

This application was heard by videoconference on January 4, 2023. Only the Landlord's legal representative, M. Anderson, attended the hearing.

As of 1:34 p.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Preliminary Issue:

1. The Landlord sought to amend the application to remove the Tenant "Billie-Jo Crystal Janicki" from the application. This Tenant vacated the unit before the application was filed. In accordance with Rule 15.4 of the Board's Rules of Procedure, the Landlord's request is granted.

Determinations:

Request to Review

2. The hearing of this application was scheduled for October 27, 2022. The Landlord did not attend the hearing in support of the application. The application was dismissed as abandoned.
3. At the review hearing, the Landlord's legal representative stated that he did not receive the Notice of Hearing (the 'Notice') in the mail until October 31, 2022, three days after the hearing. He stated that he attends his post office box 2-3 times a week but did not see the Notice. He also states that the Landlord did not receive the Notice.
4. I find that the Landlord was not reasonably able to participate because they were not properly served with notice of this hearing by the Board. The Board's records indicate that only the Landlord's legal representative was mailed the Notice, and the believable and credible evidence was that it was not received in the mail until after the hearing date.
5. On this basis, I am satisfied that the Landlord did not have a reasonable opportunity to participate in the proceedings. As a result, the order is cancelled, and the Landlord's application was heard afresh.

De Novo Hearing

6. 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.
7. The Tenant was in possession of the rental unit on the date the application was filed.
8. The Tenant vacated the rental unit on June 30, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit.
9. The lawful rent is \$2,266.88. It was due on the 1st day of each month.
10. The Tenant has not made any payments since the application was filed.
11. The rent arrears owing to June 30, 2022 are \$5,784.56.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
13. The Landlord collected a rent deposit of \$2,266.88 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.

It is ordered that:

1. Order LTB-L-054835-22 issued on November 16, 2022 is cancelled and replaced by the following:

2. The tenancy between the Landlord and the Tenant is terminated as of June 30, 2022, the date the Tenant moved out of the rental unit
3. The Tenant shall pay to the Landlord **\$3,504.19**. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. 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 January 22, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 23, 2023 at 5.00% annually on the balance outstanding.

January 11, 2023

Date Issued

Camille Tancioco

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.

*Note: When the LTB 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 as the tenancy is terminated

Rent Owing To Move Out Date	\$5,784.56
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	- \$2,266.88
Less the amount of the interest on the last month's rent deposit	- \$13.49
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	\$3,504.19

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