



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

**Citation:** Kenney v Fournier, 2022 ONLTB 14638

**Date:** 2022-12-23

**File Number:** LTB-L-019243-22

**In the matter of:** 110 ROSEMUND CRES  
Kingston ON K7M6Z4

**Between:** Joey Kenney Landlord

**And**

Cynthia Fournier  
Kassandra Harkness Tenants

Joey Kenney (the 'Landlord') applied for an order to terminate the tenancy and evict Cynthia Fournier and Kassandra Harkness (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on December 21, 2022. The Landlord and their legal representative, F. Alfano attended the hearing.

As of 9:30am, the Tenants were 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.

**Determinations:**

**PRELIMINARY ISSUE**

1. As discussed in order LTB-L-019243-22\_IN issued October 26, 2022, and LTB-L-019243-22\_IN-2, issued December 2, 2022, the Tenants allege that they filed a consumer proposal, which would directly impact the outcome of this proceeding. In both interim orders I direct the Tenants to file a copy with the Board and serve the Landlord with a copy of that proposal. The matter was adjourned twice, the Tenants failed to comply with the interim orders on both occasions.
2. On any application before the Board, the person who alleges any particular incident or event occurred has the burden of leading sufficient evidence to establish that it is more likely than not that their version of events is true. In this case that burden falls on the Tenants.
3. The Tenants were provided two opportunities to supply documents to establish that a consumer proposal was filed with the Court, as no documents have been filed I am unable to determine whether or not the alleged consumer proposal is legitimate, and therefore is not considered in this order.

4. Since the Tenants failed to comply with the most recent interim order LTB-L-019243-22\_IN-2. In accordance with that order- the consent shall issue as agreed upon at the hearing on November 25, 2022.

## COSTS

5. As a result of the Tenants failure to comply with the interim orders, the Landlord requested costs for having to attend 2 previous attendances at the Board. For the following reasons, I find that costs are reasonable in the circumstance.
6. The Board's *Interpretation Guideline 3: Costs* assists parties in understanding the Board's usual interpretation of the law and its usual processes, as well as to provide guidance to members and promote consistency in decision-making. This Guideline sets out the Board's position on when it may be appropriate to order costs. The Board should not use its power to order costs in a way which would discourage landlords and tenants from exercising their statutory rights.
7. The Board has the discretion to require a party, a party's agent or a party's legal representative to pay, as costs, any representation or preparation expenses of another party where the conduct of the party, a party's agent or a party's legal representative was unreasonable. Conduct is unreasonable if it causes undue expense or delay.
8. Rule 23 of the Board's *Rules of Procedure* addresses costs. Rules 23.2 and 23.3 state:

**23.2** A member may exercise discretion to order a party to pay another party's:

- a. representation/preparation fees; and
- b. other out-of-pocket expenses.

Where the LTB orders a party to pay the representation/preparation fees incurred by another party, these fees shall not exceed \$100 per hour for the services of a paid representative to a maximum of \$700.

**23.3** A party who engages in unreasonable conduct which causes undue delay or expense may be ordered to pay costs to another party.

9. At the hearing on December 21, 2022, the Landlord submitted that he was seeking a total of \$1,243.00 in costs. This sum was broken down as \$395.50 for the cost of his legal representative's previous appearance on November 25, 2022, and \$847.50 for his legal representative's costs for the December 21, 2022, appearance.
10. I do not find costs appropriate for the November 25, 2022 hearing. The Landlord chose to be represented at that hearing and the parties engaged in fruitful negotiations which resulted in a consent, as such I do not find that the Tenants conduct during that proceeding was unreasonable.
11. Where I find that the Tenants conduct to be unreasonable was failing to comply with my second interim order, requesting documents. The Tenants raised the issue of a consumer proposal during the initial hearing on October 24, 2022, and failed to comply with both

interim orders, which resulted in delay and the scheduling of a third hearing, in which the Landlord unreasonably incurred additional costs.

12. In accordance with the Board's Interpretation Guideline and its Rules of Procedure, I find costs in the amount of \$200.00 to be appropriate in these circumstances. This amount represents an hour of preparation and an hour of attendance at the December 21, 2022 hearing.

**It is ordered that:**

1. The below was agreed upon by the parties at the November 25, 2022, hearing:
2. The tenancy between the Landlord and the Tenants is terminated as of December 31, 2022 the Tenants must move out of the rental unit on or before that date.
3. If the unit is not vacated on or before December 31, 2022, then starting January 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 January 1, 2023.
5. The Tenants shall pay to the Landlord \$18,536.00 for arrears of rent up to November 30, 2022 and costs.
6. The Tenants shall pay to the Landlord the amount set out in paragraph 5 in accordance with the following schedule:
  - a) the Tenants shall pay \$1,900.00 on or before November 28, 2022.
  - b) Assuming the payment was made above, the Tenants shall pay to the Landlord the balance of \$16,636.00 on or before December 31, 2022.
7. The Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing for December 2022, or until the arrears are paid in full, whichever date is earliest.
8. If the Tenants fail to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after November 30, 2022.
9. The Tenants shall also pay the Landlord compensation of \$62.47 per day for the use of the unit starting December 31, 2022 until the date the Tenant moves out of the unit.
10. The Tenants shall also pay to the Landlord \$200.00 in costs.
11. If the payments are not made in accordance with paragraph 6, the total the Tenants owe the Landlord to December 31, 2022, inclusive of rent and costs is \$20,636.00.

12. If the Tenants do not pay the Landlord the full amount owing on or before December 31, 2022, the Tenants will start to owe interest. This will be simple interest calculated from January 1, 2023 at 5.00% annually on the balance outstanding.
13. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

**December 23, 2022**

**Date Issued**

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Curtis Begg

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 July 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