



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

Citation: Malik v Cook, 2022 ONLTB 14341

Date: 2022-12-14

File Number: LTB-L-018755-22-RV

In the matter of: Basement Apartment, 218 Gardiner Dr
Bradford ON L3Z2A5

Between: Mansoor Malik Landlord

And

Michele Yack and Robert Cook Tenants

Mansoor Malik (the 'Landlord') applied for an order to terminate the tenancy and evict Michele Yack and Robert Cook (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was resolved by order LTB-L-018755-22 issued on November 7, 2022.

On November 14, 2022, the Tenants requested a review of the order.

The request to review was heard by videoconference on December 12, 2022.

The Landlord's son and agent, Waleed Malik ('WM'), and the Tenant, Michele Yack ('MY'), on behalf of both Tenants, attended the hearing. The MY declined the opportunity to speak to Tenant Duty Counsel prior to the hearing.

Request to Review:

1. I am satisfied that the Tenants were not reasonably able to participate in the proceedings because the Tenants did not receive the Notice of Hearing. As a result, I cancelled order LTB-L-018755-22 issued on November 7, 2022 and proceeded to hear the Landlord's application.

L1 Application:

Preliminary issue:

2. MY claimed that the Tenants did not receive a copy of the written tenancy agreement. In support of her claim, she presented emails she sent to the Landlord requesting a copy of the written tenancy agreement.
3. WM denied MY's claim. He said that he communicated with the Landlord and was told that the Tenants were provided with a copy of the tenancy agreement.

4. I am not persuaded that the Tenants did not receive a copy of the written tenancy agreement. I did not find the emails presented by MY to be persuasive evidence that the Tenants did not receive a copy of the written tenancy agreement. This is because the emails show the Tenants to be in a heated dispute with the Landlord at that time. I did not find the claim in the emails to be truthful in this context. I am mindful of the competing testimony on this issue and the varying quality of this testimony, however, I preferred WM's testimony on this point. As a result, I find that the Landlord has proven on a balance of probability, based on the evidence before me, that the Tenants were given a copy of the written tenancy agreement.

Determinations:

5. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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.
6. As of the hearing date, the Tenants were still in possession of the rental unit.
7. The lawful rent is \$1,350.00. It is due on the 4th day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$44.38. This amount is calculated as follows: \$1,350.00 x 12, divided by 365 days.
9. The Tenants have not made any payments since the application was filed.
10. The rent arrears owing to January 3, 2023 are \$18,900.00.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$1,350.00 from the Tenants 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.
13. Interest on the rent deposit, in the amount of \$15.36 is owing to the Tenants for the period from November 4, 2021 to December 12, 2022.
14. I have considered all of 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 January 31, 2023 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The request to review order LTB-L-018755-22 issued on November 7, 2022 is granted and the order is cancelled and replaced by this order.
2. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
3. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**

- **\$19,086.00** if the payment is made on or before January 3, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- **\$20,436.00** if the payment is made on or before January 31, 2023. See Schedule 1 for the calculation of the amount owing.
4. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after January 31, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
 5. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before January 31, 2023**
 6. If the Tenants do not void the order, the Tenants shall pay to the Landlord **\$16,770.06**. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
 7. The Tenants shall also pay the Landlord compensation of \$44.38 per day for the use of the unit starting December 13, 2022 until the date the Tenants move out of the unit.
 8. If the Tenants do not pay the Landlord the full amount owing on or before December 25, 2022, the Tenants will start to owe interest. This will be simple interest calculated from December 26, 2022 at 4.00% annually on the balance outstanding.
 9. If the unit is not vacated on or before January 31, 2023, then starting February 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
 10. 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 1, 2023.

December 14, 2022

Date Issued

Richard Ferriss

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 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before January 3, 2023

Rent Owing To January 3, 2023	\$18,900.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$19,086.00

B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before January 31, 2023

Rent Owing To February 3, 2023	\$20,250.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$20,436.00

C. Amount the Tenants must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$17,949.42
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,350.00
Less the amount of the interest on the last month's rent deposit	- \$15.36
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total amount owing to the Landlord	\$16,770.06
Plus daily compensation owing for each day of occupation starting December 13, 2022	\$44.38 (per day)

2022 ONL TB 14341 (CanLII)