



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

**Citation:** MetCap Living Management Inc. v Mcallister, 2022 ONLTB 14055

**Date:** 2022-12-13

**File Number:** LTB-L-018483-22-RV

**In the matter of:** 102, 704 CANBORO RD  
FENWICK ON L0S1C0

**Between:** MetCap Living Management Inc. Landlord

**And**

Jamie Mcallister Tenant

MetCap Living Management Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Jamie Mcallister (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard on October 12, 2022 and resolved by order LTB-L-018483-22 issued on November 1, 2022.

On November 4, 2022, the Landlord requested a review of the order. On November 10, 2022, interim order LTB-L-018483-22-RV-IN was issued, staying the order issued on November 1, 2022.

This request was heard by videoconference on December 5, 2022. Only the Landlord's legal representative Emma Bennett attended the hearing. As of 9:30am, the Tenant was not present, despite being served with notice of hearing by the Board.

**Determinations:**

Review request:

1. The Landlord's application was dismissed as abandoned at the October 12, 2022 hearing date as neither the Landlord nor the Tenant attended the hearing.
2. The Landlord's representative testified that on October 12, 2022 the Landlord experienced an IT outage and system interruption. Because of the outage, the Landlord's in-house legal department was unable to access their legal documents, hearing calendar or tickler system and as such, was unable to attend any hearing scheduled on this date.
3. Based on the uncontested evidence and testimony, I am satisfied on a balance of probabilities that the Landlord was not reasonably able to participate in the hearing on October 12, 2022.

4. In *King-Winton v. Doverhold Investments Ltd.*, 2008 CanLII 60708 ('King-Winton'), the Divisional Court held that "being reasonably able to participate in the proceeding must be interpreted broadly, natural justice requires no less."
5. As such, the Landlord's request to review is granted and the matter was heard De Novo (anew).

L1 application:

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. As of the hearing date, the Tenant was still in possession of the rental unit.
8. The lawful rent is \$1,199.00. It is due on the 1st day of each month.
9. Based on the Monthly rent, the daily rent/compensation is \$39.42. This amount is calculated as follows: \$1,199.00 x 12, divided by 365 days.
10. The Tenant has paid \$7,297.00 to the Landlord since the application was filed.
11. The rent arrears owing to December 31, 2022 are \$4,693.00.
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 \$1,199.00 from the Tenant 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.
14. Interest on the rent deposit, in the amount of \$12.93 is owing to the Tenant for the period from January 12, 2022 to December 5, 2022.
15. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would not be unfair to postpone the eviction until January 3, 2023 pursuant to subsection 83(1)(b) of the Act.

**It is ordered that:**

1. The request to review order LTB-L-018483-22 issued on November 1, 2022 is granted. The order is cancelled and replaced with this order.
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:**

- \$4,879.00 if the payment is made on or before December 31, 2022. See Schedule 1 for the calculation of the amount owing.

**OR**

- \$6,078.00 if the payment is made on or before January 3, 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 January 3, 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 January 3, 2023**
  6. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$2,665.17. 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 Tenant. See Schedule 1 for the calculation of the amount owing.
  7. The Tenant shall also pay the Landlord compensation of \$39.42 per day for the use of the unit starting December 6, 2022 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 December 24, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 25, 2022 at 4.00% annually on the balance outstanding.
  9. If the unit is not vacated on or before January 3, 2023, then starting January 4, 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 January 4, 2023.

**December 13, 2022**  
**Date Issued**

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Fabio Quattrociocchi  
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 4, 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before December 31, 2022**

Rent Owing To December 31, 2022	\$11,990.00
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	- \$7,297.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<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 the Tenant must pay to continue the tenancy</b>	<b>\$4,879.00</b>

**B. Amount the Tenant 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 31, 2023	\$13,189.00
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	- \$7,297.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<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 the Tenant must pay to continue the tenancy</b>	<b>\$6,078.00</b>

**C. Amount the Tenant must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$10,988.10
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	- \$7,297.00
<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	- \$1,199.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$12.93
<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>\$2,665.17</b>
Plus daily compensation owing for each day of occupation starting December 6, 2022	\$39.42 (per day)