



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

Citation: O/a valery properties v Morris, 2022 ONLTB 12447

Date: 2022-11-18

File Number: LTB-L-012090-22-RV

In the matter of: 49, 238 HIGHWAY 8
HAMILTON ON L8G1E1

Between: 573274 Ontario Inc O/A Valery Properties Landlord

And

Kimberly Morris Tenant

REVIEW ORDER

573274 Ontario Inc O/A Valery Properties (the 'Landlord') applied for an order to terminate the tenancy and evict Kimberly Morris (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-012090-22 issued October 7, 2022.

On October 13, 2022, the Tenant requested that order LTB-L-012090-22 issued October 7, 2022 be reviewed and that the order be stayed until the request to review the order is resolved.

On October 21, 2022, interim review order LTB-L-012090-22-RV-In was issued staying the order.

The review hearing was heard on November 10, 2022.

The Landlord's Agent Tina Novak and the Tenant attended the hearing.

Determinations:

1. The Tenant's request for review is based on serious error and being not reasonably able to participate as the Tenant alleges she did not receive the notice of hearing from the Board.
2. The Tenant submits that when she vacated the rental unit, she provided her new address to the superintendent by putting a note in the superintendent's mailbox and also had her mail forwarded to her from Canada Post.
3. Notwithstanding the above, the Tenant states that the notice of hearing was not forwarded to her. The Tenant submits that she received a copy of the order issued October 7, 2022 from a collection agency on approximately October 12, 2022 and immediately requested a review.

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4. The Landlord's Agent stated she had nothing further to provide other than that the Landlord had noted the Tenant had vacated the rental unit as at July 13, 2022.
5. The Board's records show that the Board sent the Notice of Hearing and application package to the Tenant by regular mail to the rental unit. This package was not returned by Canada Post.
6. 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."
7. Interpreting this situation broadly, I find on a balance of probabilities, that the Tenant was not reasonably able to participate in the proceeding. 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 Tenant's testimony to the contrary.
8. For the reasons above, at the hearing I granted the Tenant's request for a review. A hearing of the Landlord's application proceeded *de novo* (anew).

L1/L9 application

9. 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.
10. The Tenant was in possession of the rental unit on the date the application was filed.
11. The Tenant vacated the rental unit on July 13, 2022. Rent arrears are calculated up to the date the Tenant vacated the unit.
12. The lawful rent is \$1,085.20. It was due on the 1st day of each month.
13. The Tenant has paid \$3,540.87 to the Landlord since the application was filed.
14. The rent arrears owing to July 13, 2022 are \$1,648.97.
15. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
16. The Landlord collected a rent deposit of \$950.00 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.
17. Interest on the rent deposit, in the amount of \$125.33 is owing to the Tenant for the period from April 16, 2013 to July 13, 2022.
18. As the Tenant had received an N4 notice on February 7, 2022 with a termination date of February 23, 2022, section 88 of the *Act* would not have applied.
19. The Tenant submits that due to financial strain, she fell behind in paying rent. The Tenant gave the Landlord notice on May 29, 2022 that she would vacate the rental unit. The Tenant requests additional time to pay the rent arrears.

It is ordered that:

1. The request to review order LTB-L-012090-22 issued October 7, 2022 is granted. Order LTB-L-012090-22 issued October 7, 2022 is cancelled and replaced with the following order.
2. Interim order issued on October 21, 2022 is cancelled.
3. The tenancy between the Landlord and the Tenant is terminated as of July 13, 2022, the date the Tenant moved out of the rental unit
4. The Tenant shall pay to the Landlord **\$759.64**. 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. 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.
5. If the Tenant does not pay the Landlord the full amount owing on or before November 29, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 30, 2022 at 4.00% annually on the balance outstanding.

November 18, 2022
Date Issued

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	\$5,189.84
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,540.87
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	- \$950.00
Less the amount of the interest on the last month's rent deposit	- \$125.33
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	\$759.64