



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

Citation: 2501572 ONTARIO INC. v Coombs, 2022 ONLTB 12388

Date: 2022-11-17

File Number: LTB-L-015899-22-RV

In the matter of: 303, 35 TRUELLE ST
SCARBOROUGH ON M1J1Z5

Between: 2501572 ONTARIO INC. Landlord

And

Dwayne Coombs Tenant

2022 ONLTB 12388 (CanLII)

REVIEW ORDER

2501572 ONTARIO INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Dwayne Coombs (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques.

This application was resolved by order LTB-L-015899-22 issued on October 6, 2022.

On October 11, 2022, the Landlord requested a review of the order and that the order issued on October 6, 2022 be stayed until the request to review the order is resolved.

On October 20, 2022, interim review order was issued which stayed order LTB-L-015899-22 issued October 6, 2022.

The review was heard by videoconference on November 10, 2022.

Only the Landlord's Legal Representative Daniel Moak attended the hearing.

As of 1:51 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.

Determinations:

1. The Landlord's request for review is based on the grounds of not reasonably being able to participate in the proceedings which took place on September 28, 2022.

2. The Landlord's Legal Representative submitted that the Landlord's Legal Representative mistakenly diarized the hearing for 1:00 p.m. rather than 9:00 a.m. on September 28, 2022. It was further submitted that the Landlord's Legal Representative intended to attend the hearing.
3. The case law from the Divisional Court generally instructs that the meaning of the phrase "not reasonably able to participate" should be interpreted broadly to ensure natural justice and, where a party shows that they genuinely intended to participate in a hearing but was prevented from so doing, then they should be entitled to a hearing through the review process. However, this genuine intent to participate must be borne out by the evidence, such as actions and conduct by the party, which clearly demonstrate the party's intent to participate in the hearing.
4. In *King-Winton v. Doverhold Investments* 2008 CanLII 60708 (ON SCDC), the Divisional Court stated: "Being reasonably able to participate in the proceeding must be interpreted broadly, natural justice requires no less." In *King-Winton* there was evidence to suggest that the tenant missed her hearing because of her honest but mistaken belief in an incorrect hearing date. In that case, the tenant mistakenly attended at the Board on the wrong date to hear the Landlord's application.
5. Here, the Landlord's Legal Representative states that he made a human error which resulted in the Landlord not being able to reasonably participate in the hearing. In keeping with the guidance of the Divisional Courts, I am satisfied on a balance of probabilities that the Landlord genuinely wanted to participate in the hearing of September 28, 2022. I am also satisfied that the Landlord did not attend the scheduled hearing because of an honest diarizing mistake on the part of the Landlord's Legal Representative.
6. At the hearing, I granted the Landlord's request to review the order. A hearing on the Landlord's application proceeded *de novo* (anew).

L1 Application

7. 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.
8. As of the hearing date, the Tenant was still in possession of the rental unit.
9. The lawful rent is \$1,551.39. It is due on the 1st day of each month.
10. Based on the monthly rent, the daily rent/compensation is \$51.00. This amount is calculated as follows: \$1,551.39 x 12, divided by 365 days.
11. The Tenant has not made any payments since the application was filed.
12. The rent arrears owing to November 30, 2022 are \$15,675.29.
13. The Landlord is entitled to \$180.00 to reimburse the Landlord for administration charges the Landlord incurred as a result of 9 cheques given by or on behalf of the Tenant which were returned NSF.

14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlord's Legal Representative submitted that there was no rent deposit collected from the Tenant.
16. The Landlord's Legal Representative stated that he was unaware of any factors to consider with respect to relief from eviction. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The request to review order LTB-L-015899-22 issued October 6, 2022 is granted. Order LTB-L-015899-22 issued October 6, 2022 is cancelled and replaced with the following order.
2. The interim order issued on October 20, 2022 is cancelled.
3. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
4. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$16,041.29 if the payment is made on or before November 28, 2022. See Schedule 1 for the calculation of the amount owing.
5. 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 November 28, 2022 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
6. **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 November 28, 2022.**
7. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$14,999.90. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. 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.
8. The Tenant shall also pay the Landlord compensation of \$51.00 per day for the use of the unit starting November 11, 2022 until the date the Tenant moves out of the unit.
9. If the Tenant does not pay the Landlord the full amount owing on or before November 28, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 29, 2022 at 2.00% annually on the balance outstanding.

10. If the unit is not vacated on or before November 28, 2022, then starting November 29, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
11. 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 November 29, 2022.

November 17, 2022
Date Issued

Heather Chapple
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 May 29, 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 November 28, 2022

Rent Owing To November 30, 2022	\$15,675.29
Application Filing Fee	\$186.00
NSF Charges	\$180.00
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 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 the Tenant must pay to continue the tenancy	\$16,041.29

B. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$14,633.90
Application Filing Fee	\$186.00
NSF Charges	\$180.00
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	\$0.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
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	\$14,999.90
Plus daily compensation owing for each day of occupation starting November 11, 2022	\$51.00 (per day)