



**Amended Order
Order under Section 69
Residential Tenancies Act, 2006
And section 21.2 of the Statutory Powers Procedure Act**

Citation: Paste Properties Ontario Ltd. v Mike Kinder, 2023 ONLTB 35191

Date: 2023-05-09

File Number: LTB-L-059513-22-AM

In the matter of: 205, 20 Valleyview Drive
Bancroft ON K0L1C0

Between: Paste Properties Ontario Ltd. and Paste
Properties Ontario Ltd.

Landlord

And

Laurie Milligan
Mike Kinder

Tenants



This amended order is issued to correct a clerical error in the original order issued on May 9, 2023. As the clerical error relates to the amount the Tenants are required to pay to void the order, the deadline for making the payments and the enforcement date have also been amended.

The amendments are bolded and underlined for ease of reference.

Paste Properties Ontario Ltd. and Paste Properties Ontario Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Laurie Milligan and Mike Kinder (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on April 26, 2023. The Landlords attended the hearing and were represented by Lisa Duchene. The Tenants attended the hearing and were self-represented.

Determinations:

Adjournment request:

1. At the commencement of the hearing, the Tenant's requested that the matter be adjourned. The Tenants testified that they required additional time to obtain and file evidence with the Board and claimed that they did not have sufficient notice of hearing.
2. The Board's records indicate that notice of hearing was mailed to the Tenants on March 23, 2023. There was no record of the mail being returned to the Board by Canada Post. Further, on March 13, 2023, the Landlord's superintendent emailed a copy of the notice of hearing to the Tenants, to which the Tenant Mike Kinder responded the same day

complaining about maintenance concerns in the rental unit and further stated “see you on April 26 of 2023”. The Landlord entered into evidence a copy of this email correspondence (LL exhibit #1).

3. Based on the evidence and the submissions of the parties, I denied the Tenant’s request to adjourn. I find that the Tenants were served with sufficient notice of hearing by both the Board and the Landlord’s superintendent. The Tenants responding to the Landlord’s email on March 13, 2023 confirms that the email was received and the response shows that the Tenants were fully aware of the hearing on March 13, 2023, which is more than one-month’s notice. The Tenant’s provided no reasonable explanation as to why they could not obtain and file any evidence with the Board despite having such advance notice.
4. As stated by the Court in *Q Res IV Operating CP Inc. v. Berezovs’ka 2017 ONSC 5541* “[I]f parties are not diligent in dealing with legal proceedings then they cannot demand that a Tribunal waste its resources by rehearing matters a second time. To allow this would undermine the ability of the administration of justice to deliver timely cost-effective and final orders.”
5. As such, the Tenant’s adjournment request was denied, and the matter proceeded to be heard on it’s merits.

Arrears of rent:

6. 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.
7. As of the hearing date, the Tenants were still in possession of the rental unit.
8. The lawful rent is \$821.00. It is due on the 1st day of each month.
9. Based on the Monthly rent, the daily rent/compensation is \$26.99. This amount is calculated as follows: \$821.00 x 12, divided by 365 days.
10. The Tenants have not made any payments since the application was filed.
11. The rent arrears owing to April 30, 2023 are \$7,269.00.
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 \$775.00 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.
14. Interest on the rent deposit, in the amount of \$1.33 is owing to the Tenants for the period from April 2, 2023 to April 26, 2023.
15. The Tenants disputed the amount of arrears claimed by the Landlord however, the Tenants were unable to provide the Board with the amount they believed to be owing or give submissions respecting which month’s were paid and/or in dispute. The Landlords testified that they have received no payments from the Tenants since July 2022.

16. Based on the submissions of the parties, I find that the Tenants owe \$7,269.00 in arrears of rent to April 30, 2023. The Tenants provided no proof of payment and gave no submissions respecting which specific arrears were in dispute.

Relief from eviction:

17. 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.
18. At the hearing the Tenants admitted that they withheld their rent payments due to dissatisfaction with the Landlord and the maintenance of the rental unit. The Act does not permit Tenants to withhold their rent and the Tenant's have not filed their own application or section 82 claims to address their concerns. The Tenant's did not propose a repayment plan, but requested additional time to secure alternate housing.
19. I find it would be unfair to the Landlord to grant any relief from eviction. The arrears of rent are substantial and have accumulated due to the Tenant's withholding payment. In the absence of an unforeseen circumstance for the arrears, I find that no relief from eviction is warranted.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - **\$8,276.00** if the payment is made on or before **May 31, 2023**. See Schedule 1 for the calculation of the amount owing.

OR

- **\$9,097.00 if the payment is made after May 31, 2023 but on or before June 17, 2023. See Schedule 1 for the calculation of the amount owing.**

**** Any payments made by the Tenants after the hearing date shall be deducted from the amounts owing above.**

3. 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 **June 17, 2023** but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **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 June 17, 2023**

5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$6,559.41. 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.
6. The Tenants shall also pay the Landlord compensation of \$26.99 per day for the use of the unit starting April 27, 2023 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before **June 17, 2023**, the Tenants will start to owe interest. This will be simple interest calculated from **June 18, 2023** at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before **June 17, 2023**, then starting **June 18, 2023**, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 **June 18, 2023**.

May 9, 2023
Date Issued

June 6, 2023
Date Amended



Fabio Quattrociochi
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 **December 18, 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

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 May 31, 2023

Rent Owing To May 31, 2023	\$8,090.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
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	\$8,276.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made after May 31, 2023 but on or before June 17, 2023

Rent Owing To May 31, 2023	\$8,911.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
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	\$9,097.00

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

Rent Owing To Hearing Date	\$7,149.74
Application Filing Fee	\$186.00
NSF Charges	\$0.00
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	- \$775.00
Less the amount of the interest on the last month's rent deposit	- \$1.33

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	\$6,559.41
Plus daily compensation owing for each day of occupation starting April 27, 2023	\$26.99 (per day)