



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

**File Number:** SOL-15059-20-RV

**In the matter of:** 7, 136 GLASGOW STREET N  
GUELPH ON N1H4W6

**Between:** Rick Eleveld

**and**

Andrea Rivera

I hereby certify this is a  
true copy of an Order dated

**JUN 28, 2022**

Landlord and Tenant Board

Landlord

Tenant

**Review Order**

Rick Eleveld (the 'Landlord') applied for an order to terminate the tenancy and evict Andrea Rivera (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order SOL-15059-20 issued on December 10, 2022. The Tenant filed a motion to void order SOL-15059-20. By endorsement dated February 17, 2022 the Board refused to accept the Tenant's motion. The Tenant re-filed the motion to void on February 18, 2022. By endorsement dated February 22, 2022 the Board again refused to accept the Tenant's motion.

On February 22, 2022, the Tenant requested a review of the endorsement dated February 22, 2022 and that order SOL-15059-20 be stayed until the request to review the order is resolved.

The request was heard by videoconference on March 25, 2022.

The Landlord, the Landlord's legal representative E. Kerson, the Tenant, and the Tenant's legal representative S. Harvey attended the hearing.

**Determinations:**

*Review*

1. At the review hearing the Tenant's representative acknowledged that he made a mathematical error in the motion filed with the Board. He did so because he was relying on correspondence from the Landlord's representative about the balance owed by the Tenant. It appears that, strictly speaking, it was not an error for the Board to refuse to accept the motion. However, given the circumstances, it would be a procedural error for the Board not to use its process to correct the situation. Accordingly, the Tenant's request for a review is granted.

*Motion to void*

2. The Tenant's motion was filed pursuant to s.74(11) of the *Residential Tenancies Act, 2006* (the 'Act').
3. In October 2018, during the course of the current tenancy, the Tenant filed a motion under s.74(11) of the Act. That motion was granted by order SOL-94683-18 issued on November 22, 2018.
4. Subsection 74(12) of the Act provides as follows: "Subsection (11) does not apply if the tenant has previously made a motion under that subsection during the period of the tenant's tenancy agreement with the landlord."
5. As noted above, the Tenant has previously made a motion under subsection 74(11) during the course of the current tenancy. The Landlord's representative submitted that, as per subs. 74(12) of the Act, the Tenant was prohibited from filing the motion that she filed in February 2022.
6. The Tenant's representative submitted that subs.74(12) of the Act does not prohibit the Tenant from filing this subsequent motion under subs. 74(11) of the Act. He submitted that I should interpret subs. 74(12) as referring not to the tenancy as a whole but as referring to each period in the tenancy. He submitted that this is a month-to-month tenancy and so each month is a new tenancy that ends at the end of the month and then is replaced by a new tenancy the following month and so on. He submitted that if a landlord wants protection from a tenant who seeks to file multiple motions under s.78(11), that landlord can offer the tenant a longer fixed term tenancy. The Tenant's representative also submitted that order SOL-15059-20 issued on December 10, 2022 contains a clause that says the Tenant can file a motion under subs. 74(11) of the Act.
7. The Tenant's representative's proposed interpretation of subs. 74(12) makes no sense. A tenant who is in arrears and facing legal proceedings has several opportunities to avoid eviction by paying off the arrears. A tenant's first opportunity is when they receive an N4 notice of eviction. If the tenant pays off the arrears by the termination date in the notice, the notice is void. A tenant's second opportunity is when they receive the application. A tenant can discontinue the application by paying off the arrears and the application filing fee before the Board issues an order. A tenant's third opportunity is when the order is issued: the tenant can void the eviction by paying the voiding amount in the order and the application fee by the termination date.
8. Subsection 74(11) gives a tenant a fourth opportunity to avoid eviction by paying all outstanding rent and arrears and costs before the eviction is executed. This last opportunity is a "last chance." It is clear from the plain wording of subs. 74(12) that this last chance opportunity is only available to a tenant one time in any tenancy. I say this because if this subsection is to be interpreted as suggested by the Tenant's representative, it may as well not be there at all. This subsection is a limit on the last chance opportunity. If it recharges or renews every month (or, in the case of a weekly

tenancy, every week) it is no longer a limit and it would not be necessary to have this subsection. The legislature took the time and effort to insert this limit on a tenant's opportunities to avoid eviction due to arrears and therefore bring some closure for landlords who otherwise may have tenants in chronic arrears who repeatedly void just before the eviction is enforced. The interpretation suggested by the Tenant's representative would subvert the purpose of this provision so much that it would cease to have any effect. It cannot be a principle of statutory interpretation that legislation should be understood to be meaningless.

9. That landlords may counter the Tenant's representative's novel interpretation of this provision by offering lengthy fixed terms does not fix the essential problem with the Tenant's representative's submission. Further, this would be a complicated fix because a landlord would have to give up the ability to file applications for termination prior to the end of term (eg., for own use, purchaser's use, persistent late payment, or extensive renovations) during the course of the lengthy fixed term just to avoid the absurdity that would ensue if the Board interprets subs. 74(12) as submitted by the Tenant's representative.
10. The clause in order SOL-15059-20 that says the Tenant may make a motion under s.74(11) is in every voidable eviction order issued for an application to evict for arrears. This clause also reminds tenants that they may only make such a motion once during their tenancy. This clause does not give the Board jurisdiction that it does not already have, so the invitation to file a motion under subs. 74(11) of the Act cannot be read as overriding the plain language interpretation of subs. 74(12) of the Act.
11. For these reasons, the Tenant's motion to void must be denied. The Tenant was not entitled to file it.
12. The lifting of the stay will be delayed to July 31, 2022 to give the Tenant time to find alternative accommodations.

**It is ordered that:**

1. The endorsement dated February 22, 2022 is cancelled.
2. The Tenant's motion to void order SOL-15059-20 is denied.
3. Order SOL-15059-20 remains in effect.
4. The interim order issued on February 23, 2022 is cancelled. The stay of order SOL-15059-20 is lifted on July 31, 2022.



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Renée Lang  
Member, Landlord and Tenant Board

**June 28, 2022**  
**Date Issued**

Southern-RO  
119 King Street West, 6th Floor  
Hamilton ON L8P4Y7

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.