



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

**Citation:** Bedi v Chenier, 2023 ONLTB 69174

**Date:** 2023-10-19

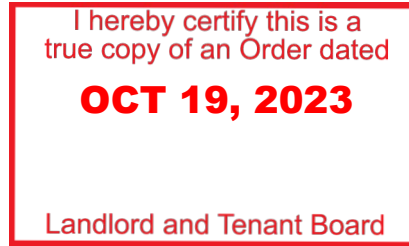
**File Number:** LTB-L-072908-22-RV

**In the matter of:** 1116 MONARCH MEADOWS DR  
BELLE RIVER ON N0R1A0

**Between:** Jaspreet Bedi

**And**

Francis Michael Chenier  
Dawn Kelly Lefaive



Landlord

Tenants

### Review Order

Jaspreet Bedi (the 'Landlord') applied for an order to terminate the tenancy and evict Francis Michael Chenier and Dawn Kelly Lefaive (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe and because the Landlord requires possession of the rental unit for the purpose of residential occupation.

This application was resolved by order LTB-L-072908-22 issued on July 20, 2023.

On September 15, 2023, the first-named Tenant above requested a review of the order and that the order be stayed until the request to review the order is resolved. On September 15, 2023, interim order LTB-L-072908-22-RV-IN was issued, staying the order issued on July 20, 2023, and directing the Landlord to put the Tenants back into possession of the rental unit.

The request for review was heard by videoconference on October 12, 2023.

The Landlord and the Tenants attended the hearing. The Landlord was represented by Trevor Scheib.

### Determinations:

1. For the reasons that follow, the Tenants' request for review is denied. The evidence is insufficient to establish that it is more likely than not that the Landlord committed an abuse of process as alleged by the Tenants. As a result, interim order LTB-L-072908-22-RV-IN is cancelled, the stay of order LTB-L-072908-22 issued on July 20, 2023, is lifted effective immediately, and the Court Enforcement Office (Sheriff) is directed to return vacant possession of the rental unit to the Landlord.

### FINDINGS OF FACT

2. Many of the background facts relevant here are not in dispute:
  - This application came before the Board for a hearing on May 3, 2023. The first-named Tenant above, the Landlord, and the Landlord's representative were present and participated in that hearing.
  - On July 20, 2023, the Board issued its order. In the order the Board finds the Tenants paid no rent to the Landlord for the period commencing November 1, 2022, up to the date of hearing, and were in arrears of rent totalling \$18,200.00 for the period ending May 31, 2023. Relief was granted in the form of extra time to either pay the arrears owing or to move. The Tenants were given until August 31, 2023, to void or move.
  - The order also finds the Landlord's mother genuinely intends to move into the rental unit and grants eviction for landlord's own use effective September 30, 2023.
  - The Board's order of July 20, 2023, was e-mailed to the first-named Tenant above on July 20, 2023, and mailed to both Tenants on July 21, 2023. The first-named Tenant acknowledges receiving the Board's order by e-mail.
  - The Tenants made no payments to the Landlord after receiving the Board's order.
  - On September 4, 2023, the Landlord paid \$377.00 and filed the eviction order with the Court Enforcement Office (Sheriff) in Windsor for enforcement.
  - On September 6, 2023, the Sheriff issued a notice informing the Tenants it intended to enforce the order on September 15, 2023, and posted that notice on the door of the rental unit.
3. What happened next is a matter of dispute between the parties.
4. The Tenants say they did not receive the Sheriff's notice on September 6, 2023. They believe the Landlord attended the rental unit on September 6, 2023, and removed the Sheriff's notice from their door. They say that on September 14, 2023, the Landlord returned to the rental unit, and served the notice on the first-named Tenant at the door of the rental unit. The second-named Tenant says she did not hear what if anything was said, but the first-named Tenant says the Landlord said something to the effect of "good luck getting your stuff".
5. The Landlord denies going to the rental unit on September 6 and September 14, 2023, denies removing the Sheriff's notice from the door of the rental unit, and denies subsequently giving it to the Tenants. The Landlord says he lives only a few minutes away from the rental unit, but he broke his right leg on July 8, 2023, had surgery on July 10, 2023, and has been unable to drive or return to work as a driver since. He completed physiotherapy at the end of September, 2023 and intends to return to work shortly. But he acknowledges he was at the rental unit for the eviction on September 15, 2023. He says a friend drove him. The Landlord also says there is no logical reason why he would interfere with the Sheriff's eviction process. He has been waiting months to regain possession of the rental unit and was within days of achieving that goal.
6. That being said, there is no dispute about what happened after September 14, 2023. On September 15, 2023, the Tenants filed this request for review, the Sheriff attended the rental unit, the locks were changed and vacant possession delivered to the Landlord at 1:30 p.m. After vacant possession was returned to the Landlord the Board issued interim

order LTB-L-072908-22-RV-IN which was e-mailed to the Sheriff's office by the Board the same day at 2:30 p.m.

7. The interim order says in part:

If order LTB-L-072908-22, issued on July 20, 2023, has been enforced, the Landlord shall immediately return the Tenant to possession of the rental unit and provide the Tenant with keys to the doors and/or locks of the rental unit until the request to review the order is resolved.

8. The Tenants filed the interim order with the Sheriff and went back into possession of the rental unit pursuant to the interim order on September 27, 2023. They say they are still in the rental unit, have found a new place to live for November 1, 2023, but ask that the stay remain in place until the first or second week of November, 2023, so they have additional time to move.

## ISSUES

9. The first issue before the Board on this review is with respect to the factual allegations made by the Tenants concerning the events of September 6 and September 14, 2023. Is the evidence sufficient to establish it is more likely than not that the Tenants are telling the truth about the Landlord removing the Sheriff's notice on September 6, 2023, and subsequently serving it on them on September 14, 2023?
10. If the answer to that question is yes, then the second issue before the Board is whether this behaviour on the part of a landlord constitutes an abuse of process that would justify the granting of a review. If the answer is no, then the review must be denied and the only remaining issue is with respect to the Tenants' request to delay the lifting of the stay.

## ANALYSIS

11. With respect to the first issue, the difficulty that arises here is that the two sides tell opposite stories with respect to what happened on September 6, 2023 and September 14, 2023, and neither party has any documentary or third party corroboration of their version of events.
12. As a general rule the person who wants to prove a particular fact before the Board bears the burden of proving that fact on the balance of probabilities. In other words, the Tenants here bear the onus of leading sufficient evidence to establish their version of events is more likely than not. The Tenants have not met that burden. Is it possible the Landlord here did what they say he did? Certainly. But that is not the test. The test is whether the evidence establishes it is more likely than not he did. Given the absence of third party or documentary corroboration coupled with the common sense proposition that the Landlord would have no reason to interfere with the legal process that was finally about to conclude in his favour, I am not satisfied it is more likely than not that the Landlord removed the Sheriff's notice on September 6, 2023, and then served it on the Tenants on September 14, 2023.
13. On that basis the request for review must be denied.

14. I would observe further however, that even if the facts are as the Tenants claim it is not clear to me that the behaviour alleged would constitute an abuse of process justifying review. There is some suggestion in the Board's records that indicates the Vice Chair who issued the interim order staying the eviction order and putting the Tenants back into possession misunderstood the underlying facts on which the review is based. The reasons given for granting the Tenants an extension of time to file review say:

The Tenant **submits the Landlord interfered with delivery of the July 20, 2023 order** and notice to vacate by the Sheriff. The [review] request states the Landlord changed the mailbox lock without giving the Tenant a key.

[Emphasis added.]

15. In actual fact, when the first-named Tenant refers to the "order" in the request for review and extension of time he is referring to the Sheriff's notice to vacate only. If the Landlord had in fact interfered with the receipt of the Board's order, it would have arguably deprived the Tenants of the opportunity to void and stay until September 30, 2023, which might constitute an abuse of process justifying review. But that is not what happened here.
16. This means the next issue for the Board is the request of the Tenants that the stay of the eviction order be delayed until the first or second week of November, 2023 to give them more time to move. There is no justification offered for such a request and given the circumstances here, further delay would be unconscionable. The Tenants have paid no rent to the Landlord for one full year. They knew as of July 20, 2023, that they had until August 31, 2023, to either pay the amount owing or move. They did neither. Absent some reason other than convenience to the Tenants, no further delay shall be granted. The Tenants have had ample time to locate new housing and organise a move. As a result, the stay of the eviction shall be lifted effective immediately.

## COSTS

17. At the end of the hearing of the review the Landlord asked that costs of the review be granted to the Landlord along with the Sheriff's costs of \$377.00 already incurred.
18. With respect to the Sheriff's costs incurred for the eviction that happened on September 15 2023, that request is granted. The Act specifically contemplates the proposition that a tenant who does not void an arrears order by the enforcement date should be liable for any costs the landlord incurs for non-refundable Sheriff's fees. (See s. 74(15).) As the eviction order was in fact enforced, all of the fees paid are non-refundable, so I am satisfied the Landlord is entitled to an order requiring the Tenants to pay the Sheriff's fees of \$377.00 incurred as a result of the eviction being enforced on September 15, 2023.
19. With respect to representation and preparation costs incurred by the Landlord for the review, the Landlord relies on the Board's Interpretation Guideline #3 on Costs. It says in part:

This Guideline sets out the Board's position on when it may be appropriate to order costs. The Board should not use its power to order costs in a way which would discourage landlords and tenants from exercising their statutory rights.

Generally, costs may be ordered where a party's conduct in the proceeding was unreasonable.

20. The Guideline goes on to give examples of what types of unreasonable conduct might draw an order for costs. The first two examples given are:

- Bringing a frivolous or vexatious application or motion
- Initiating an application or any procedure in bad faith

21. Although not specifically referred to, I believe these are the types of unreasonable conduct the Landlord relies on here with respect to its request for party costs on the review.

22. I am not prepared to make a finding that the review itself was frivolous or vexatious. As stated above, if the review was alleging the Landlord interfered with the Tenants' receipt of the July 20, 2023, order, that would arguably constitute a potential abuse of process which is an allegation of a serious nature that the Board treats accordingly.

23. But the record does support the conclusion that the review request was initiated in bad faith. I say this because it appears to have been filed for the sole purpose of gaining additional delay. For example, the request for review states in part:

So instead of ... having the 2 week period to evacuate I only have 20 hours. so (*sic*) could you extend the order it would be greatly appreciated just so I can have more time to get my things out.

24. In addition, at the hearing of the review request the Tenants offered no submissions at all about an abuse of process argument and simply continued to seek more time to move.

25. Given all of the circumstances here I am satisfied the review was initiated in bad faith and costs of the review are appropriate.

26. The Landlord's representative states an hour was spent in preparation and the hearing of the review itself took one hour. Pursuant to Rule 23.2 a party entitled to costs is to receive no more than \$100.00 per hour. Therefore, an order shall issue requiring the Tenants to pay the Landlord's preparation and appearance costs on the review in the amount of \$200.00.

27. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

**It is ordered that:**

1. The request to review order LTB-L-072908-22 issued on July 20, 2023, is denied. The order is confirmed and remains unchanged.
2. The interim order issued on September 15, 2023, is cancelled. The stay of order LTB-L-072908-22 is lifted effective immediately.

3. For greater clarity, this means the Landlord can file this order with the Court Enforcement Officer (Sheriff) at any time and upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord.
4. The Tenants shall pay to the Landlord \$377.00 for non-refundable Sheriff costs incurred.
5. The Tenants shall also pay to the Landlord \$200.00 for the costs of the review.
6. The total amount the Tenants owe the Landlord under this order is \$577.00.
7. If the Tenants do not pay the Landlord the full amount owing under this order on or before October 30, 2023, the Tenants will start to owe interest. This will be simple interest calculated from October 31, 2023 at 7.00% annually on the balance outstanding.

**October 19, 2023**

**Date Issued**



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**Ruth Carey**

Vice Chair, Landlord and Tenant Board

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