



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

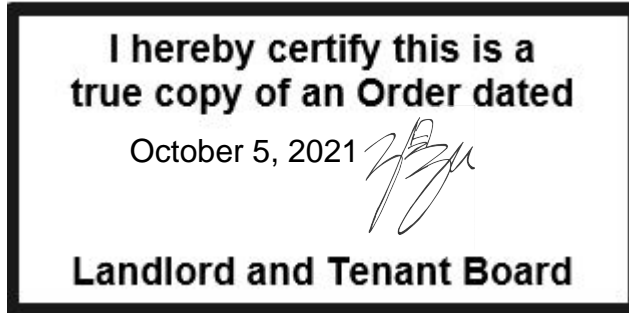
File Number: SOL-20854-21-RV

In the matter of: 2, 111 OAKWOOD STREET
PORT COLBORNE ON L3K5G4

Between: Kevin Brady
Carol Brady

and

Leslie Marshall
Paul Marshall



Landlords

Tenants

Review Order

Kevin Brady and Carol Brady (the 'Landlords') applied for an order to terminate the tenancy and evict Leslie Marshall and Paul Marshall (the 'Tenants') because the Landlord requires possession of the rental unit for the purpose of residential occupation. The Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date. This application was resolved by order SOL-20854-21 issued on September 21/2021.

On October 1, 2021, the Tenants requested a review of the order. The Tenants claimed that there was a serious error in the order.

A preliminary review of the review request was completed without a hearing.

Determinations:


1. On the basis of the submissions made in the request, I am not satisfied that there is a serious error in the order or that a serious error occurred in the proceedings.
2. In the review request the Tenants' Legal Representative states that the order contains a serious error as the Landlord did not meet the requirements of section 48 of the *Residential Tenancies Act, 2006*, (the 'Act') regarding the residential occupation of the rental unit by the Landlord's mother. He states the Member erred in his finding that the Landlord's mother would be residing in the rental unit for more than "occasional and/or infrequent use" which would not constitute residential occupation.
3. At paragraph 9 and 10 of the order Member Ebner finds that he is "satisfied that Ms. George genuinely intends to move into the rental unit for at least one year. I find that the

Landlord's mother in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year."

4. The Hearing Member has broad discretion in issuing his order. This discretion will not be interfered with lightly as the Hearing Member was in the best position to determine the facts, assess the credibility of the parties and give the appropriate weight to the evidence before him.
5. Having reviewed the matter, I find that the Member's findings were not unreasonable and were supported by the evidence presented in the hearing, and therefore should be given deference. Specifically, having listened to the recording of the hearing, I find that the Landlord's mother testified at the hearing as follows:
 - 46:18 due to her health she is not able to go to Florida;
 - 48:15 she cannot winter in Florida any further, maybe only a couple weeks each year;
 - 48:47 she cannot live alone without assistance any longer due to her health and medical issues;
 - 1:03:58 Cross-examination: her plans for Florida, no more winters, maybe vacations only; and
 - 1:04:40 Cross-examination: not able to occupy the Florida home in winters anymore.
6. On the request to review, the burden of proof is on the requesting party to show that there was either a serious error in the order or in the proceedings. I do not find that the Tenants have satisfied the burden in explaining how the Member erred in the way he considered the evidence and the conclusions he reached. The Tenants have not shown that there was no evidence to support the Member's findings or that the Member's findings are capricious or unreasonable. The Tenants may disagree with the Member's decision, but this is insufficient to establish that the order may contain a serious error.
7. I am satisfied that the Member properly addressed all the issues that were before him in the application and that there are no grounds for sending this request for review to a hearing.
8. The review request is denied in accordance with Rule 26.9(c) of the Board's Rules of Practice because the grounds for considering a review are not satisfied.

It is ordered that:

1. The request to review order SOL-20854-21 issued on September 21, 2021 is denied. The order is confirmed and remains unchanged.



Nicola Mulima
Member, Landlord and Tenant Board

October 5, 2021
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.