



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

**Citation:** Lee v Wellington, 2024 ONLTB 17914

**Date:** 2024-03-05

**File Number:** LTB-L-045505-22-RV

**In the matter of:** UPPER / SECOND FLOOR, 1067 DAVENPORT RD  
TORONTO ON M6G2C2

**Between:** Derrick Lee

**And**

Sherries Wellington  
Mapela Uhindu-gingala

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

**Mar 05, 2024**

Landlord and Tenant Board

Landlord

Tenants

### Review Order

Derrick Lee (the 'Landlord') applied for an order to terminate the tenancy and evict Sherries Wellington and Mapela Uhindu-gingala (the 'Tenants') because:

- the Landlord has entered into an agreement of purchase and sale of the rental unit and the purchaser in good faith requires possession of the rental unit for the purpose of residential occupation.

The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was resolved by order LTB-L-045505-22 issued on January 31, 2024.

On March 1, 2024, the Tenants requested a review of the order.

A preliminary review of the review request was completed without a hearing. In determining this request, I reviewed the materials in the LTB's file as well as the audio recording for this hearing.

### Determinations:

- The hearing of the Landlord's application took place on January 18, 2024. The Landlord, the Landlord's legal representative, the Landlord's witness and the Tenants attended the hearing. The Landlord's application was granted.
- The Tenants filed this review request alleging that there were the following serious errors:
  - The Board erred in awarding the Landlord daily compensation.
  - The Board erred in failing to consider the Tenants' maintenance issues.

- (c) The Board erred in procedure.
- (d) The Board erred in the determination to terminate the tenancy.

3. For the reasons set out below, the Tenants' review request is denied.

#### Daily Compensation

4. The Tenants submit that the hearing member seriously erred in finding that they are owing \$24,815.34 to the Landlord in daily compensation. Pursuant to section 86 of the *Residential Tenancies Act, 2006* (the 'Act'), a landlord is entitled to compensation for use and occupation of a rental unit by a tenant who does not vacate the unit after his or her tenancy is terminated by order, notice or agreement.

5. In paragraph 4 of "it is ordered that", the final order states:

The Tenants shall pay to the Landlord \$24,815.34, which represents compensation for the use of the unit from November 1, 2022 to January 18, 2024, **less any monies already paid to the Landlord.** [emphasis added]

6. As the hearing member found that the tenancy terminated, the hearing member's finding to award daily compensation from the date of termination was not capricious. However, I listened to the hearing recording and the Landlord's legal representative indicated that the Tenants were only in arrears for January 2024 rent.

7. That said, I do not find that paragraph 4 is a serious error. This is because the hearing member made it clear that any amounts paid by the Tenants would be subtracted by the daily compensation amount. In other words, if the Tenants paid all of the rent owed since the termination date in the N12 Notice, that is subtracted from the \$24,815.34 amount. A finding that this is a factual error would not change the result.

8. The Tenants state that the daily compensation amount is incorrect. I do not find that it is. Daily compensation is calculated based on the lawful monthly rent. As per paragraph 40 of the final order, this amount is calculated by multiplying the lawful monthly rent by 12 and divided by 365 days. This amount equals to \$55.89 per day, as stated in the final order.

9. The Tenants also state that the issue of the last month's rent deposit was not addressed. In paragraph 41 and 42 of the final order, the hearing member determined that there was a last month's rent deposit and the last month's rent deposit shall be applied to the last month of the tenancy. This evidence is also supported by the hearing record. As such, I find no serious error in this regard as the Landlord is required to apply the last month's rent deposit to the last month of the tenancy.

#### Maintenance Issues

10. The Tenants further submit that the hearing member erred in failing to consider the Tenants' maintenance issues regarding a leak and pest control. Paragraphs 32 and 33 of the final order states that the Tenants raised issues with the leak and rent receipts. The

hearing member determined that pursuant to section 83(3) of the Act, these issues did not rise to the level to warrant refusing the Landlord's application and that the leak issue is better dealt with in a Tenant's application.

11. The hearing member's decision to find that the Landlord's application was not dismissed pursuant to section 83(3) is not clearly wrong or unreasonable or conflicts with any binding Court decisions. The Tenants' review request does not identify any binding Court decisions that this order conflicts with. Moreover, the hearing member's finding that the leak and rental receipts do not rise to a level of refusing the Landlord's application is also grounded in the evidence and submissions before her, and therefore, not clearly wrong or unreasonable.
12. Regarding pest control, the Tenants state at the hearing that the Landlord told pest control not to service their unit. While not addressed in the final order, I do not find that there is a serious error in this regard. After the Tenants raised the issue of pest control, the hearing member advised that this was not a serious issue rising to a level warranting dismissal and that it sounds like a Tenant application.
13. The Court, in discussing the duty of a trial judge to give reasons, stated that, "Reasons acquire particular importance when a trial judge is called upon to address troublesome principles of unsettled law, or to resolve confused and contradictory evidence on a key issue, *unless the basis of the trial judge's conclusion is apparent from the record, even without being articulated* [emphasis added]."<sup>1</sup> As such, I do not find there was a serious error in the order in failing to address the pest control argument as the record is clear that the hearing member made a determination after considering the Tenants' submissions on the issue.

#### No Errors in Procedure

14. The Tenants submit that there were the following errors in procedure: the adjudicator refused to listen to the Tenants' audio recording, refused to consider the Tenants' evidence filed prior to the second hearing and refused to consider the Tenants' claim for moving expenses if the tenancy was terminated.
15. It was not unreasonable for the hearing member to refuse to consider the Tenants' audio recording. The Tenants state that the recording would have established that the purchase of sale agreement was fraudulent because the Landlord presented them with a cash for keys settlement. The hearing record does not demonstrate that the hearing member refused to listen to the audio recording. Instead, the hearing member posed questions to the Tenants about their evidence, and they began discussing other evidence, such as the leak.
16. As required by the Divisional Court in *Sutton v. Riddle*,<sup>2</sup> if the Tenants had fairness concerns regarding the audio recording, they were obligated to make those objections to

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<sup>1</sup> *R v. Sheppard*, 2022 SCC 26 at para 55.6.

<sup>2</sup> 2021 ONSC 1403.

the Board, not wait until the review process to raise these concerns. As such, I do not find there was a procedural fairness issue and therefore, there was no serious error in this regard.

17. Regarding the Tenants' evidence filed prior to the second hearing, this was addressed as a preliminary issue. The Tenants confirmed that the documents were uploaded at least seven days prior to the hearing but they were not served on the Landlord. As such, the hearing member refused to consider the Tenants' documents. Pursuant to Rule 19 of the Board's Rules of Procedure, the hearing member had the jurisdiction to refuse to consider evidence not properly disclosed. As such, there was no serious error in this regard.
18. Regarding the Tenants' claim for moving expenses, the hearing record demonstrates that in their closing submissions, the Tenants made this request. The hearing member stated on the record that the Board could not order compensation to the Tenants for moving expenses in a Landlord's N12-based L2 application. The Tenants do not identify how this determination conflicts with the Act or a binding Court decision. The Tenants also do not identify any authority that would allow such an award in a landlord application. As such, I do not find that there is a serious error in this regard.

#### Termination of the Tenancy

19. It is apparent from the final order that the presiding Board Member correctly exercised her jurisdiction under subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act') by admitting and considering the parties' evidence of their circumstances when concluding that it was unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
20. The final order shows that the Tenants exercised their right to introduce evidence about their circumstances. Paragraph 34, for example, recites some of the Tenants' relevant testimony regarding their employment circumstances. The order also identifies at paragraph 36 the Landlord's evidence of their circumstances. While the Tenants submit that the hearing member hastily made her decision, the hearing member's exercise of discretion was rationally connected to the parties' evidence and submissions, and the exercise was therefore not capricious. Although another Board Member may have exercised their discretion differently, the presiding hearing member's decision is entitled to deference.
21. 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 and/or that the Tenants were not reasonably able to participate in the proceeding.

#### **It is ordered that:**

1. The request to review order LTB-L-045505-22 issued on January 31, 2024 is denied. The order is confirmed and remains unchanged.

**March 5, 2024**  
**Date Issued**

  
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Camille Tancioco  
Member, Landlord and Tenant Board

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