



Order under Section 16.1 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

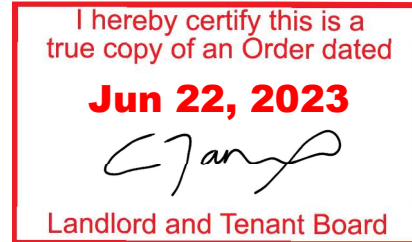
File Number: LTB-L-081448-22-IN

In the matter of: UPPER UNIT, 831 SYLVIA ST
OSHAWA ON L1H5M5

Between: Muhammad Umair Tayyab

And

April Bailey



Landlord

Tenant

Interim Order

Muhammad Umair Tayyab (the 'Landlord') applied for an order to terminate the tenancy and evict April Bailey (the 'Tenant') because:

- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

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

This application was heard by videoconference on May 30, 2023. The Landlord, the Landlord's legal representatives, S. Teal and F. Alfano, and assisting Tenant Duty Counsel, A. Campbell (AC), attended the hearing.

This matter was adjourned at the request of the Tenant. This interim order is being issued to provide reasons for granting the request and for my decision on costs.

1. AC made a request to adjourn on the Tenant's behalf as she was subpoenaed to give testimony in a criminal matter from May 30, 2023 to May 31, 2023.
2. The Landlord did not dispute that the Tenant was subpoenaed to give testimony. However, they were objecting to the adjournment request as they contacted the Superior Court who advised that the Tenant was aware of the subpoena as early as December 15, 2022. The Tenant did not make a request to reschedule until May 25, 2023.
3. The adjournment request was granted. It would be procedurally unfair for the matter to proceed in the Tenant's absence when she has a reasonable explanation for not being able to participate in these proceedings.

COSTS

4. The Landlord requested costs in the amount of \$700.00 as they were required to attend the hearing. The Tenant was aware of the subpoena well in advance and made a request to reschedule late.
5. AC objected to costs as the Tenant could have made the request earlier, but she was unrepresented and informed the Landlord's representative well in advance of the hearing.
6. The Board's records show that the Tenant filed the request to reschedule on May 16, 2023. In support of the request, the Tenant included emails with the Landlord's representative, S. Teal, informing her of the subpoena and providing her with more details as requested. This does not coincide with the Landlord's submission that the request was made on May 25, 2023.
7. An award of costs is discretionary. Rules 23.2 and 23.3 provide for ordering another party's costs. Under Rule 23.2 costs are limited to representation/preparation fees and out of pocket costs. The hourly rate for a paid representative is capped at \$100.00 to a maximum of \$700.00. Rule 23.3 does not specify the types of costs that may be awarded but does provide a party must have engaged in unreasonable conduct that caused undue delay or expense.
8. The Board's Costs: Interpretation Guideline 3 provides costs to a successful party will generally only be awarded where conduct is unreasonable. Conduct is unreasonable if it causes undue expense or delay and includes asking for adjournments or delays without justification.
9. I find that the Tenant asked for the Landlord consent to reschedule well in advance of the hearing. The Landlord did not provide their consent. The adjournment request was reasonable. Therefore, I do not find that that the Landlord is entitled to costs.

It is ordered that:

1. The matter is adjourned to a date to be decided by the Board. I am not seized.
2. As soon as possible and no later than **seven days** prior to the hearing, the Tenant and the Landlord shall give to the other and file with the Board a copy of any document, photograph, receipt, recording or like thing upon which they intend to rely at the hearing. Filing with the Board may be done by e-mail to LTB.evidence@ontario.ca.
3. If possible, the parties shall exchange information by email. For service where email is not available or for any other necessary communication, the parties must respect social distancing measures required by public health in the service and filing of all documents.
4. If you are the tenant and wish to obtain some legal advice **PRIOR** to your hearing, you can access Tenant Duty Counsel by calling 1-877-374-0391. Please note: Tenant Duty Counsel must be contacted in advance as there is no guarantee that they will attend each specific hearing. Tenant Duty Counsel is a service offered through Legal Aid Ontario and is not affiliated with the Board.

5. Pursuant to Rule 19.7 of the Board's Rules, a party who does not comply with an order for disclosure may not be permitted to rely on any evidence not properly disclosed.

June 22, 2023
Date Issued



Camille Tancioco
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.