



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

Citation: 97 CHARLOTTE STREET INC. v Vos, 2024 ONLTB 11316

Date: 2024-02-16

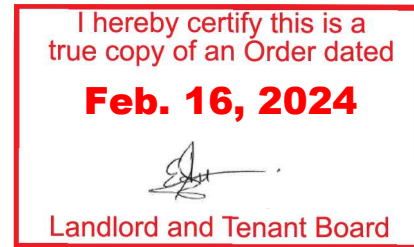
File Number: LTB-L-049351-23-RV

In the matter of: 1, 97 CHARLOTTE ST
BRANTFORD ON N3T2X2

Between: 97 CHARLOTTE STREET INC.

And

Megan Vos



Landlord

Tenant

Review Order

97 CHARLOTTE STREET INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Megan Vos (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-049351-23 issued on November 20, 2023.

On December 3, 2023, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved. The Tenant alleged that they were not reasonably able to participate in the proceeding and that the order contains a serious error.

On December 4, 2023, interim order LTB-L-049351-23-RV-IN was issued, staying the order issued on November 20, 2023.

This application was heard by videoconference on February 5, 2024. The Landlord's Legal Representative, A. Friel, and the Tenant attended the hearing. The Tenant's roommate, D. Pynn, also attended the hearing.

Determinations:

1. The Tenant alleged that she was not reasonably able to participate in the original proceeding of November 8, 2023, which resulted in order LTB-L-049351-23 terminating the tenancy for nonpayment of rent. The Tenant also claimed that the order contains a serious error.
2. In support of the request to review the order, the Tenant testified that she did not receive the Notice of Hearing and was unaware of the hearing until she received the order in the mail. The Tenant sometimes receives mails belonging to someone else and believes it is possible that person received her mails.

3. The Tenant spoke with the Landlord's Legal Representative who appeared at the initial hearing, IS, on November 8, 2023 but stated that their discussion, which took place in the afternoon, was limited to issues about a new Landlord and not the hearing.
4. The Tenant also stated that her roommate was a Tenant because she had completed certain forms in May 2023 that made him a Tenant. The Tenant provided as evidence, an email exchange with an employee of the Landlord dated October 10, 2023 where she mentions that a rental verification form was completed showing she had a roommate. This, however, does not make her roommate a Tenant as the Landlord did not enter into a tenancy agreement with him.
5. The Landlord opposed the Tenant's request stating that IS had a conversation with the Tenant on November 8, 2023 at about 10:48 a.m. for about 10 minutes, and he must have discussed the hearing with the Tenant. On the issue of the roommate, the Landlord did not amend the tenancy agreement at anytime to include the roommate as a Tenant.

Analysis


6. The Landlord and Tenant Board Interpretation Guideline 8 states that "*The LTB will only exercise its discretion to grant a review when it is satisfied the order contains a serious error, a serious error occurred in the proceeding or the requestor was not reasonably able to participate in the proceeding*".
7. Although the Notice of Hearing states categorically that if you are the Tenant and you do not attend the hearing or send a representative, the Board can hold the hearing without you and make a decision based on what is claimed by the Landlord, the Board's power to review a decision may be exercised if a party to a proceeding was not reasonably able to participate in the proceeding. The courts have enjoined that the phrase "not reasonably able to participate" should be interpreted broadly to ensure natural justice and, where a party shows that they genuinely intended to participate in a hearing but were prevented from so doing, then they should be entitled to a hearing through the review process.
8. Based on all the evidence, I am not satisfied that the Tenant genuinely intended to participate in the hearing. The Board's records show that the Notice of Hearing was sent by mail to the Tenant on August 4, 2023 and is deemed received on August 9, 2023 pursuant to section 191 (3) of the *Residential Tenancies Act, 2006* which states that a notice or document given by mail shall be deemed to have been given on the fifth day after mailing.
9. Although the Tenant testified about issues with mail delivery, there is no evidence to support the claim or record of a complaint made to the Landlord. The order, sent to the same address, was received by the Tenant.
10. On the Tenant's claim in the request that the rental unit was sold, this has no impact on the order and does not demonstrate that it contains a serious error. Section 18 of the Act shows that when a property is sold, the tenancy agreement is transferred to the purchaser who steps into the shoes of the seller and takes on all the rights and obligations that go with it.

11. Given the evidence presented, I find on a balance of probabilities that the Tenant has no problems with mail delivery and received the Notice of Hearing, which was not returned to the Board, undelivered.
12. Based on the submissions made in the request, I am not satisfied that the Tenant was not reasonably able to participate in the proceeding or that the order contains a serious error.

It is ordered that:

1. The request to review order LTB-L-049351-23 issued on November 20, 2023, is denied. The order is confirmed and remains unchanged.
2. The interim order issued on December 4, 2023, is cancelled. The stay of order LTB-L-049351-23 is lifted immediately.

February 16, 2024
Date Issued



Jitewa Edu
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.