



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

Citation: Gao v Keegan, 2024 ONLTB 21090

Date: 2024-03-20

File Number: LTB-L-049816-22-RV-IN-2

In the matter of: 1008, 65 EAST LIBERTY ST
TORONTO ON M6K3R2

Between: Hong Gao

And

Daniel Keegan

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

March 20, 2024

Landlord and Tenant Board

Landlord

Tenant

INTERIM ORDER

On March 4, 2024 Daniel Keegan (the “the Tenant”) requested that order LTB-L-049816-22 issued on February 24, 2024 be reviewed and that the order be stayed until the 's request to review the order is resolved.

It is determined that:

1. The request was granted on a preliminary basis on March 4, 2024. The hearing date of the review request has not yet been established.
2. On March 4, 2024, the Tenant filed a request that the hearing take place in the absence of the public, as expressed in the following excerpt from a letter dated February 29, 2024 from the Tenant’s physician:

Mr. Keegan requires human rights accommodation for his [accommodation needs] and it is requested that any hearings be conducted with no observers, as his [accommodation needs] is heavily triggered revealing his [accommodation needs] due to the stigma and to ensure his privacy.

3. For the reasons that follow, the request is denied without prejudice to the Tenant making a further request for the order sought in accordance with these reasons.
4. Hearings at the LTB are generally open to the public, in accordance with s. 9 of the *Statutory Powers Procedure Act* (“SPPA”). Moreover, s. 2(1) of the *Tribunal Adjudicative Records Act* (“TARA”) requires the Tribunal to make its adjudicative records, which includes evidence and submissions, available to the public.

5. Public access to both hearings and adjudicative records are protected by the open court principle. This principle, which is protected by s. 2(b) of the *Canadian Charter of Rights and Freedoms*, establishes a strong presumption that hearings are open to the public and that adjudicative records are available to the public: see *Toronto Star v. AG Ontario*, 2018 ONSC 2586 at para.
6. The person seeking to restrict access has the onus to displace the general rule of openness. Limits on the open court principle must be proven on a case-by-case basis, but confidentiality orders will only be made in exceptional cases in order to preserve the integrity of the principle.
7. The test used by courts for imposing limits on the open court principle provides guidance when considering whether to override the principle that LTB hearings should be open to the public: *Toronto Star* at paras. 89-93. The test was recently recast by the Supreme Court of Canada in *Sherman Estate v. Donovan*, 2021 SCC 25. The Court held that a person seeking to limit the open court presumption must establish that:
 - (1) court openness poses a serious risk to an important public interest;
 - (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
 - (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.
8. In *Sherman Estate* the Court recognized that privacy can be an important public interest under the discretionary test where it can be demonstrated that protection of human dignity is at risk. Where one's dignity is impaired, the impact on a person is no longer theoretical, but can have real consequences such as psychological distress.
9. In this case, the Tenant has failed to establish the test outlined by the Court in *Sherman Estate*. They state that they have privacy concerns regarding the disclosure of intimate details relating to their health care circumstances.
10. It may be that the nature of the information that the Tenant intends to submit as evidence rises to the level outlined in *Sherman Estate*, such that their dignity would be put at risk through its disclosure. However, I cannot conclude, based on the minimal information that the Tenant has provided in support of their request, that openness in this case poses a serious risk to the administration of justice.
11. Moreover, the test from *Sherman Estate* requires a person seeking a confidentiality order to establish that the order or orders sought are necessary because reasonably alternative measures will not prevent the risk posed by openness. In this case the Tenant requests an order restricting public access to the hearing. This order is arguably the most restrictive on the open court principle. The Tenant's request does not address why less intrusive orders would not suffice, such as an order anonymizing their name in the LTB's decision, or an order banning publication of information that could identify the Tenant's child.

12. For these reasons, the Tenant's request is denied. The Tenant may, however, bring a future request for the same order. They would be prudent to refer to the principles discussed above in this decision.

13. However, to minimize any possible prejudice to the Tenant in bringing such a motion at the hearing, I will direct that the hearing be scheduled to a docket without other matters.

It is ordered that:

1. The Tenant's request for an order closing the hearing to the public is denied. The Tenant may seek the order via a preliminary request before the presiding adjudicator at the hearing.
2. LTB staff are directed to schedule the hearing to a hearing docket without other matters.



March 20, 2024
Date Issued

Sean Henry
Vice Chair, 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.