



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

Citation: 2179591 Ontario inc. v Ganna Khaled Taha Abdelnaeem, 2023 ONLTB 36521

Date: 2023-05-11

File Number: LTB-L-011207-23-RV

In the matter of: D, 218 Queen Street East
Toronto Ontario M5A1S3

Between: 2179591 Ontario inc.

And

Ganna Khaled Taha Abdelnaeem

I hereby certify this is a
true copy of an Order dated
MAY 11, 2023
Landlord and Tenant Board

Landlord

Tenant

Review Order

2179591 Ontario inc. (the 'Landlord') applied for an order requiring Ganna Khaled Taha Abdelnaeem (the 'Tenant') to pay the rent that the Tenant owes.

This application was resolved by order LTB-L-011207-23 issued on April 6, 2023.

On April 8, 2023, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On April 12, 2023 interim order LTB-L-011207-23-RV-IN was issued, staying the order issued on April 6, 2023.

This application was heard in by videoconference on May 2, 2023.

The Landlord's Agent (Property Manager) Lucan Wai, the Tenant and the Tenant's Agent Ethan Miazad (family friend) attended the hearing.

Determinations:

1. The Tenant's request for review is based on the grounds of being not reasonably able to participate in the hearing. At the review hearing, the Tenant states that she moved out of the rental unit in December, 2022 and did not provide a forwarding mail address. As a result, the Tenant submits that she did not receive the notice of hearing that was mailed to her by the Board on March 2, 2023.
2. The Landlord's Agent stated this review is not fair as he was sending emails to the Tenant but she "ghosted" him after December 2, 2022 and he was not aware of when she actually vacated the unit as he did not receive any keys back from the Tenant.
3. The Board's records show that the Board sent the Notice of Hearing and application package to the Tenant by regular mail. This package was not returned by Canada Post.



4. In *King-Winton v. Doverhold Investments Ltd.*, 2008 CanLII 60708, the Divisional Court held that “being reasonably able to participate in the proceeding must be interpreted broadly, natural justice requires no less.”
5. Interpreting this situation broadly, I find on a balance of probabilities, that the Tenant was not reasonably able to participate in the proceedings. I have no reason to disbelieve that the Tenant did not receive the Notice of Hearing considering she states she moved out of the rental unit and also had no forwarding address.
6. For the reasons above, at the hearing I granted the Tenant’s request for a review. A hearing of the Landlord’s application proceeded de novo (anew).

The L9 hearing:

7. The Tenant was in possession of the rental unit on the date the application was filed.
8. The Tenant does not dispute that rent was not paid to the Landlord for December, 2022. It was submitted that the last month’s rent deposit should be applied for the month of January, 2023 and the Tenant denies that the Landlord is entitled to rent for the month of February, 2023.
9. The Tenant’s tenancy began in September, 2022 for a fixed length until August 31, 2023. The Tenant’s father, Khaled Abdelnaeem (‘KA’) testified that shortly after his daughter moved into the rental unit in September, 2022, it was felt the area of the rental unit was unsafe and the Tenant wanted to vacate the rental unit. No date of when the Tenant wished to vacate the rental unit was provided however the Landlord’s Agent responded to KA requesting how quickly did the Tenant wish to be let out of the lease. KA did not respond to the Landlord’s Agent.
10. The Landlord’s Agent submitted that as no date was provided of when the Tenant wished to be let out of the lease or when she intended to vacate the rental unit, it was impossible for him to advertise the vacancy of the rental unit.
11. The Landlord’s Agent stated that he asked the Tenant’s father on November 19, 2022 about when the Tenant wanted to be released from the lease and followed up again on November 22, 2022 asking for a response by Friday but the Tenant’s father did not reply by the stipulated date.
12. On December 2, 2022, the Tenant’s father sent a message to the Landlord’s Agent stating that the Tenant was “willing to pay half the month and you can keep the deposit so you can rent it again. I’m going to forward the payment to you later tomorrow”.
13. The Landlord’s Agent stated that no rent payment from the Tenant was received for December, 2022.
14. On December 21, 2022, the Tenant’s father confirmed that the Tenant had vacated the rental unit and testified that they had an agreement with the Landlord that the Tenant would pay rent for December, 2022 and the Landlord would also keep the last month’s rent deposit but the Tenant did not pay rent for December, 2022 despite what was messaged.



15. Sections 47 and 44(4) of the *Residential Tenancies Act, 2006* (the 'Act') can be referenced for the statutory requirements that the Tenant should have followed in order to terminate her fixed-term tenancy. In other words, the Tenant in this case did not provide the required prior notice to terminate the tenancy.
16. While no real notice to terminate was served, the Landlord clearly accepted the Tenant's desire to break her lease as he did advertise the rental unit in early December, 2022 on various websites including zumper, admapper, craigslist and kijiji. The Landlord also paid to advertise on Facebook Marketplace. While the Landlord acknowledges he had interest in the rental unit from potential tenants, he was unable to re-rent the unit until March, 2023. The Landlord therefore seeks rent up to and including February, 2023.
17. Generally in cases when a tenant vacates a unit without proper statutory notice being given, subsection 88(1)[1] of the *Act* can be activated by a landlord to claim arrears of rent owing for the period ending on the earliest termination date that could have been specified in the notice to terminate, had the notice been given in accordance with the *Act*. This general statutory provision is further balanced by section 16 of the *Act*, which places a statutory obligation on a landlord to minimize their losses.
18. In this case, I accept the Landlord's Agent's submission that the Tenant's father did not provide confirmation of the Tenant vacating the unit until December 2, 2022 and even then, it was not a specific date but rather "she will leave by mid December". Whatever the actual date was is rather immaterial as the Tenant was bound to the term in her lease which was to August 31, 2023.
19. While there was no documentary evidence tendered at the hearing from the Landlord to substantiate their efforts to re-rent the unit, I have no reason to disbelieve the oral evidence at the hearing and accept the Landlord's Agent's submissions that the Landlord advertised the rental unit on various websites and also held viewings but was unable to re-rent the unit until March, 2023.
20. In this case, the Tenant was liable for the rent to the end of the lease term on August 31, 2023 unless a new tenant could be found. At the hearing, I heard no evidence that the Tenant made any attempts to find an assignee or sublet the unit but the submissions of the Landlord's Agent that the unit was re-rented for March 1, 2023 is evidence that the Landlord made efforts to comply with section 16 of the *Act* to minimize rent losses.
21. Consequently, I find on a balance of probabilities that the tendency between the parties here ended on February 28, 2023, as new tenants began a new tenancy in the rental unit on March 1, 2023. This order, therefore will set out the rent arrears owing to February 28, 2023 when the tenancy ended. I will deduct the last month's rent deposit and interest owing from the rent owing.
22. The Landlord incurred the cost of \$201.00 for filing the application and is entitled to reimbursement of those costs.
23. This order contains all of the reasons within it and no further reasons will be issued.



It is ordered that:

1. The request to review order LTB-L-011207-23 issued on April 6, 2023 is granted . The order is cancelled and replaced with the following order.
2. The tenancy between the Landlord and the Tenant is terminated as of February 28, 2023.
3. The Tenant shall pay to the Landlord \$4,165.30. This amount includes rent arrears owing up to the date the tenancy terminated. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant.
4. If the Tenant does not pay the Landlord the full amount owing on or before May 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 1, 2023 at 6.00% annually on the balance outstanding.

May 11, 2023
Date Issued


Heather Chapple
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.