



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

File Number: EAL-90017-20-RV

In the matter of: 105, 181 HILLENDALE AVENUE
KINGSTON ON K7M1S6

Between: Jay Patry Enterprises Llc

Landlord

and

Hannah Thompson
Stephen Thompson

Tenants

2021 CanLII 88441 (ON LTB)

Review Order

Jay Patry Enterprises Llc (the 'Landlord') applied for an order to terminate the tenancy and evict Stephen Thompson (ST) and Hannah Thompson (HT) (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was resolved by order EAL-90017-20 issued on December 16, 2020.

On January 12, 2021, the Tenant HT requested a review of the order.

The request was heard by teleconference on May 10, 2021.

The Landlord's legal representative J. Moak and the Tenant HT attended the hearing.

Determinations:

1. HT's request for a review is based on the grounds of being not reasonably able to participate and serious error.
2. At the review hearing HT testified that she vacated the unit in October 2019 when the other Tenant ST kicked her out. HT submitted copies of text messages between her and ST exchanged in October and November 2019 in which they discuss ST retrieving her belongings. In these texts ST asserts that he will take her off the lease, he has taken her off the lease, and he will change the locks. It is clear from these texts that HT was not staying at the unit during this time.
3. HT testified that by December 2019 she had retrieved all of the belongings that she was going to take back (she left some furniture behind but no longer considered it to be hers). HT testified that ST took HT's keys from her. HT also testified that she was in contact with

an employee of the Landlord several times since December 2019 and that HT had told this employee that she had moved out.

4. At the review hearing the Landlord gave no evidence to contradict HT's evidence. Based on HT's uncontested evidence, I find, on a balance of probabilities, that HT vacated the unit no later than some time in December 2019.
5. The Landlord filed this application in April 2020.
6. Subsection 87(1) of the *Residential Tenancies Act, 2006* (the 'Act') provides as follows:

87 (1) A landlord may apply to the Board for an order for the payment of arrears of rent if,

(a) the tenant has not paid rent lawfully required under the tenancy agreement; and

(b) the tenant is in possession of the rental unit.

7. HT was not in possession of the rental unit when the Landlord filed this application. That means she should not have been included as a Tenant in the application. The Landlord was not entitled to file an application against HT.
8. Accordingly, I find that there is a serious error in the original order. HT should not have been listed as a Tenant on that order.
9. The appropriate way to remedy the error is to amend the original order to remove HT as a Tenant.

It is ordered that:

1. HT's request for a review of order EAL-90017-20 is granted.
2. Order EAL-90017-20, issued on December 16, 2020, is amended in the following manner: HT is removed as a Tenant.

May 18, 2021
Date Issued

Renée Lang
Member, Landlord and Tenant Board

Eastern-RO
255 Albert Street, 4th Floor
Ottawa ON K1P6A9

This order contains all reasons for the determinations and order made. No further reasons will be issued.

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