



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

Citation: Hart v Le, 2023 ONLTB 74309

Date: 2023-11-09

File Number: LTB-L-052382-23-IN

LTB-T-083022-23-IN

In the matter of: MAIN & LOWER, 79 MELBOURNE ST
HAMILTON ON L8P2A5

Between: Timothy Hart

And

Gaio Quynh Le

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

Nov 9, 2023

Landlord and Tenant Board

Landlord

Tenant

INTERIM ORDER

Timothy Hart (the 'Landlord') applied for an order to terminate the tenancy and evict Gaio Quynh Le (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes (L1 application); and
- the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person (L2 application).

The Tenant applied for an order determining that the Landlord:

- substantially interfered with their reasonable enjoyment of the rental unit and residential complex, and harassed them;
- withheld or deliberately interfered with the reasonable supply of a vital service, care service, or food that the Landlord is obligated to supply under the tenancy agreement (T2 application); and
- failed to meet the Landlords' maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards (T6 application).

These applications were heard together by videoconference on November 2, 2023.

The Landlord's Legal Representative, J. Nieuwhof, the Landlord, the Tenant's Legal Representative, E. Alexander, and the Tenant attended the hearing.

Determinations:

Adjournment Request – denied

1. At the outset of the hearing, the Tenant's Legal Representative submitted that they only discovered this day, the Landlord's supporting evidence (disclosure) in the Tenant's junk mail folder of his email. The Tenant's Legal Representative also submitted that there are eighty pages of documentation, including the L1 update form and he has not had sufficient time to review these documents. The Tenant's Legal Representative further submitted that he went on record as of October 7, 2023 and served the Landlord's Legal Representative notice on October 23, 2023 and therefore he should have been served with the Landlord's evidence (disclosure).
2. The Landlord's Legal Representative submitted and there was no dispute that the Landlord's evidence (disclosure) was emailed to the Tenant on October 25, 2023 which meets the requirement of at least 7 days prior to the hearing. The Landlord's Legal Representative also submitted that the Tenant in their written tenancy agreement consented to service via email. The Landlord's Legal Representative further submitted that they received a T2/T6 application from the Tenant's Legal Representative on October 23, 2023 but no indication that they are representing on the Landlord's L1/I2 applications today.
3. Given the submissions above, I was satisfied that the Landlord's evidence was properly served on the Tenant and therefore any adjournment for additional time for service and/or review of the documents was denied. In addition, as the supporting evidence was presented, time was given to the Tenant's Legal Representative to locate the document and review it before it was entered into evidence.
4. There was no dispute that the Tenant filed a T2/T6 application, a copy of which was served on the Landlord's Legal Representative in advance of this hearing. A tenant is entitled to raise issues pursuant to section 82 of the Act at a hearing of an application by a Landlord based on a notice of termination under section 59 of the Act. Therefore, I find that these applications should be heard together given the possible overlap of evidence and that one of the remedies requested by the Tenant was an abatement of rent.

Preliminary Issue – N7 Notice

5. The Tenant's Legal Representative submitted that the N7 Notice of termination at the root of the Landlord's L2 application is defective as box #4 is checked off (landlord resides in residential complex) which is not true and that an N7 Notice is an inappropriate notice in this case as the Tenant did not have the ability to remedy/void the issues.
6. The Landlord's Legal Representative submitted that checking off box #4 does not defect the notice by any means especially since this issue is not relied upon in the details of the notice. The Landlord's Legal Representative also submitted that the issues stated in the N7 Notice are a fire in the unit and removal of smoke detectors which is specific to safety.
7. Based on the evidence before me, I was not satisfied that the N7 Notice was defective. I find it more likely than not that box #4 was checked off in error, especially given that box #1 (seriously impaired safety) is checked off and the details in the notice related to alleged impaired safety. I was not satisfied that the N7 Notice was not an appropriate

notice to serve given that some of the allegations in the notice relate specifically to alleged impaired safety.

8. The hearing commenced, however there was insufficient time left in the hearing block to complete this hearing.
9. Therefore, these applications are adjourned to be heard together, subject to the conditions set out in the order below.

It is ordered that:

1. The hearing is adjourned to a date to be scheduled by the LTB.
2. The LTB will send the parties a Notice of Hearing for the next hearing date.
3. The Tenant shall pay the ongoing rent to the Landlord by the day it is due, being the 15th of each month, commencing November 15, 2023 and continuing until this matter is resolved or the LTB orders otherwise.
4. If the Tenant does not comply with the requirement to pay the ongoing rent, the Member may refuse to accept or consider the Tenant's evidence and submissions.
5. As soon as possible and no later than **November 30, 2023**, the parties are directed to give each other and the LTB any evidence that they intend to rely upon at the next hearing of these applications. This includes any documents, receipts, photographs, recordings or like things
6. The parties agreed to accept service via email to their Legal Representatives. The Landlord's Legal Representative's email address is ed@benchmarklegal.ca. The Tenant's Legal Representative's email address is paralegalhamilton@gmail.com.
7. The parties should upload their evidence to the Tribunals Ontario Portal at www.tribunalsontario.ca/en/tribunals-ontario-portal/. To add your evidence into the portal, log into Tribunals Ontario Portal, choose the file number and select 'Documents, Evidence, and Requests', and pick 'Submission' in the dropdown menu. If you cannot use the portal, you can send your evidence to the LTB **BY E-MAIL**. The LTB's e-mail address is ltb.evidence@ontario.ca.
8. Pursuant to Rule 19.7 a party who fails to comply with an order for disclosure may not be permitted to rely on evidence that is not properly disclosed.

November 9, 2023
Date Issued



Lisa Del Vecchio
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.