



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

Citation: Cabuenas v Gavilanes, 2022 ONLTB 5388

Date: 2022-09-02

File Number: LTB-L-003763-22-RV

In the matter of: 9 Heritage Street
Bradford ON L3Z0X5

Between: Julie Anne Cabuenas
Mark Cabuenas

And

Karen Gavilanes



Landlords

Tenant

REVIEW ORDER

Julie Anne Cabuenas and Mark Cabuenas (the ‘Landlords’) applied for an order to terminate the tenancy and evict Karen Gavilanes (the ‘Tenant’) because the Tenant did not pay the rent the Tenant owes.

This application was resolved by order LTB-L-003763-22, issued on August 10, 2022. On September 1, 2022 the Landlords requested that order.

A preliminary review of the review request was completed without a hearing.

Determinations:

1. Order LTB-L-003763-22 dismisses the Landlords’ application because the Member found that the Tenant was not in possession of the rental unit at the time the application was filed. In addition, the Member was not satisfied that the Tenant had received the Notice of Hearing and therefore refused to amend the L1 to an L10 application. The latter does not require the Tenant to be in possession at the time of filing.
2. The Landlords’ review request claims that the Member made a serious error in making the above findings of fact.
3. Findings of fact can be successfully challenged on review only if it can be demonstrated that there was no evidence on which to arrive at the impugned conclusion or the Member applied improper principles in arriving at his or her determinations.
4. Based on my review of the order and the record, the Member carefully considered all of the evidence and submissions. There was nothing in the request, the order or the record that would support a conclusion that there was no evidence to support the Member’s



findings of fact or that improper principles were applied. In other words, the Member's decision is supported by the evidence. For example, the Member's finding the Tenant was not in possession at the time the Landlord filed its application is based on the evidence that the Landlords attended the rental unit on January 14, 2022, discovered the locks to the rental unit were not working and changed the locks the same day. The Landlords later attended the rental unit on January 25, 2022 to find rotting food in the fridge. This evidence supports the Member's finding.

5. With respect to the service of the Notice of Hearing, section 191(1.0.1) of the *Residential Tenancies Act*, 2006 and Rule of Procedure 3.3 permit landlords to serve a tenant by email if the Tenant agreed in writing to receive documents by email **and** the landlord can prove the former tenant received the documents by email. In this case, the Member states at paragraph 15 that "it is not clear whether the Tenant received the notice of hearing." In other words, the Landlord failed to adduce sufficient evidence to prove the Tenant received the documents.
6. The request to review seeks to revisit the Member's decision. While the Landlords clearly disagree with the Member's decision, the purpose of the review process is not to provide parties with an opportunity of relitigating the issues. I would not interfere with the assessment of the evidence by the Member, who had the opportunity of hearing the evidence in its totality.

It is ordered that:

1. The request to review order LTB-L-003763-22 issued on August 10, 2022 is denied.
2. The order is confirmed and remains unchanged.

September 2, 2022
Date Issued



Khalid Akram
Member, Landlord and Tenant Board

15 Grosvenor Street, 1st 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.