



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

2024 ONLTB 20476 (CanLII)

**Citation:** HURON GREEN INC. C/O LINWOOD PROPERTY MANAGEMENT v Schram, 2024 ONLTB 20476

**Date:** 2024-03-14 **File Number:** LTB-L-028315-22-RV

**In the matter of:** PO BOX 13, 3 COLUMBIA CRESCENT HURON PARK ON N0M1Y0

**Between:** HURON GREEN INC. C/O LINWOOD PROPERTY MANAGEMENT Landlord

**And**

Michael Schram Tenants  
Lesley Mitchell

### **Review Order**

HURON GREEN INC. C/O LINWOOD PROPERTY MANAGEMENT (the 'Landlord') applied for an order to terminate the tenancy and evict Michael Schram and Lesley Mitchell (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant.

The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was resolved by order LTB-L-028315-22 issued on December 13, 2023.

On January 8, 2024, the Tenants requested a review of the order.

A preliminary review of the review request was completed without a hearing. In determining this request, I reviewed the materials in the Board's file as well as the audio recording for this hearing.

**Determinations:**

Application of land lease community rules to Tenants

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1. The order under review found that the Tenants had substantially interfered with the Landlord's lawful rights and interests by breaking a rule imposed by the Landlord prohibiting canvas sheds on the property.
2. Subsection 154(1) of the *Residential Tenancies Act, 2006* (the 'Act') provides procedural requirements if a landlord of a mobile home park or land lease community establishes rules for that park or community.
3. At subsection 2(1) of the Act, "land lease home" is defined as "a dwelling, other than a mobile home, that is a permanent structure where the owner of the dwelling leases the land used or intended for use as the site for the dwelling."
4. The Tenants submit that the adjudicator's determination that the Landlord's rules apply to the Tenants was made in error because the dwelling occupied by the Tenants is not owned by the Tenants, so the rental unit is not a "land lease home" as defined in the Act.
5. The order appears to assume that the residential complex is a land lease community. The order does not make a determination as to whether the rental unit is a "land lease home." The issue as to whether the Landlord's rules apply to the Tenants if the Tenants do not own the dwelling was not addressed in the order.
6. At the hearing the Tenants did not raise the issue of whether the dwelling is a "land lease home" as defined by the Act and they did not argue that the Landlord's rules do not apply to the Tenants because the dwelling is not a land lease home. Early in the hearing (around time index 19:52), the Member asked the Landlord's legal representative if this was a land lease community and the representative said that it is. Later in the hearing (around time index 1:57:11), the adjudicator said to MS, the Tenant who was present, that he lives in a land lease community, that he's leasing the land from the Landlord and that the Landlord has rules that govern the land lease community. She went on to say that the Landlord is entitled to make rules that are not contrary to the Act or other laws and then she summarized the Tenants' positions as follows: (1) the rules violate the Tenants' lease;

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(2) the rule at issue does not apply because the Tenants' backyard is not a common area; and (3) the application should be dismissed because it was brought in retaliation for the Tenants having sued the Landlord in the Superior Court of Justice. After number two, the Tenant is heard to say "yes." It therefore appears that the Tenant acquiesced to the adjudicator's statements before, which included the statement that the dwelling is in a land lease community. When the adjudicator was finished summarizing the Tenants' positions, the Tenant did not add that the Tenants believe that the rules do not apply to them because the dwelling is not a land lease home.

7. It was not an error for the adjudicator to consider this issue because it was not before her. The Tenants cannot raise this issue for the first time on review.

Weight given to Landlord's evidence

8. The Tenants submit that the adjudicator gave disproportionate weight to the Landlord's evidence. They submit that there were serious problems with the Landlord's evidence

and that as a result the adjudicator should have given it a lot less weight. The problems identified by the Tenants are as follows:

- a) The Landlord's legal representative attempted to mislead the Board by uploading only select pages of the lease. When the adjudicator asked the representative about this, the representative said that it was an upload issue.
  - b) The Landlord's legal representative tried to mislead the Board by uploading select pages of a previous Board order.
  - c) When the Landlord's employee was asked about the Tenants' Statement of Claim she claimed she had never seen the paperwork before.
  - d) The Landlord's legal representative incorrectly stated that there are no trees in the town of Huron Park. The adjudicator pointed out that she could see an abundance of mature trees in the photographic evidence.
9. The Tenant MS did not make any submission at the hearing that the adjudicator should give the Landlord's evidence less weight because the above noted conduct warrants a negative credibility finding against the Landlord's employee and legal representative. In the absence of such a submission, which would have to establish that the conduct is relevant to the Landlord's employee's and representative's credibility, the adjudicator had no reason to make a negative credibility finding. The conduct alone does not speak for itself in the sense that it is not patently obvious from this list of alleged conduct that the Landlord's employee and legal representative are less credible or less reliable than the average witness or the average representative. I am therefore not satisfied that the adjudicator erred by giving the Landlord's evidence disproportionate weight.

Bias

10. The Tenants submit that the adjudicator was biased against them. The test for reasonable apprehension of bias is whether an informed person, viewing the matter realistically and practically, would think that it is more likely than not that the decision maker would not decide fairly.
11. The Tenants submit that the adjudicator consistently dismissed MS's points in the hearing, the adjudicator "said [MS] supplied no evidence to support [the Tenants'] Statement of Claim and the adjudicator was not interested in seeing an endorsement of the Court that would show that the Statement of Claim was not frivolous.
12. The adjudicator was polite and patient with MS in the hearing. At times she told him that his statements were irrelevant to the issues. This is good hearing management, not bias. At times she told him that his views as to what the Landlord is legally required to do or provide are wrong. For example, MS stated that the Landlord was required to provide, or give the Tenants access to, high speed internet because it is a vital service. The adjudicator pointed out that high speed internet is not a vital service under the Act. The adjudicator's corrections of MS's misconceptions do not establish bias.
13. The Statement of Claim was relevant to the argument that the Landlord filed the application in retaliation. At one point in the hearing the adjudicator asked MS what evidence he has to support his allegations that the Landlord had failed to conduct certain repairs. MS stated that the Statement of Claim contains this evidence. The adjudicator explained that the Statement of Claim is not evidence and asked MS if he has filed any evidence. He stated he did not think he would have to file evidence to prove the allegations in the Statement of Claim. This exchange does not establish bias. MS erroneously believed he could establish that the Landlord breached its maintenance obligations by referring to the Statement of Claim and the adjudicator corrected him. Whether the Statement of Claim was frivolous was not in issue, and so even if the adjudicator refused to see the endorsement, that would not indicate bias.
14. The Tenants have not established that there is any reasonable apprehension of bias here. I note that the Tenant MS did not raise the issue of bias at the hearing.

Relitigating

15. The remainder of the review request sets out arguments and statements of purported fact that disagree with the adjudicator's determinations and findings but do not identify any error in reaching those determinations or findings. A review is not an opportunity to relitigate a matter in the hopes of achieving a more favourable outcome.

Disposition

16. On the basis of the submissions made in the request, I am not satisfied that there is a serious error in the order or that a serious error occurred in the proceedings.

**It is ordered that:**

1. The request to review order LTB-L-028315-22 issued on December 13, 2023 is denied. The order is confirmed and remains unchanged.

**March 14, 2024**

**Date Issued**

15 Grosvenor Street, Ground Floor  
Toronto ON M7A 2G6

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Renée Lang

Vice Chair, Landlord and Tenant Board

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