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

Citation: Batra v Choudhary, 2024 ONLTB 6405
Date: 2024-01-18
File Number: LTB-L-038720-23-RV

In the matter of: 106 FOOTBRIDGE CRES
BRAMPTON ON L6R0T9

Between: Jitender Batra, Sheetal Ahuja — Landlords

And

Anjul Choudhary, Sushil Bhakar — Tenants

Review Order

Jitender Batra and Sheetal Ahuja (the 'Landlords') applied for an order to terminate the tenancy and evict Anjul Choudhary and Sushil Bhakar (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was resolved by order LTB-L-038720-23 issued on December 15, 2023.

On January 14, 2024, the Tenant, Sushil Bhakar requested a review of the order and that the order be stayed until the request to review the order is resolved.

On January 16, 2024, LTB-L-038720-23-AM was issued.

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

Determinations:

1. The hearing of the Landlord's application took place on September 28, 2023. The Landlords, their legal representative, and the Tenants attended the hearing. The Landlord's application was granted, in part.

2. The Tenant filed this request to review alleging that there were serious errors in procedure and in the final order. The alleged errors can be summarized as follows:
   (i) The hearing member erred in finding the arrears as $16,050.00 as opposed to $16,000.00.
   (ii) The hearing member erred in procedure by denying the Tenants' adjournment request.
   (iii) The hearing member erred in procedure by limiting the Tenant's cross examination, failing to administer oaths, refusing to allow the Tenants to amend

the application to include new allegations, not providing the Tenants an opportunity for closing remarks, and permitted the Landlords to admit late evidence and the Tenants' personal documents.

(iv) The hearing member erred in failing to consider that the Landlord ought to have picked up the Tenants' rental payment as this was the agreed upon method of payment.

(v) The hearing member made unreasonable findings of fact regarding the Tenants' fridge issue.

(vi) There is new evidence regarding the Tenants' carpet.

(vii) The hearing member did not award a remedy for the Tenants' lawn care and snow removal.

(viii) The Tenants' remedy was unreasonable.

(ix) The hearing member erred in providing time for the Landlords to address the Tenants' remedies.

3. For the reasons set out below, the Tenant's review request is denied.

Clerical Error

4. The hearing member determined that the parties agreed that $16,050.00 was the outstanding arrears. The Tenant submits that this is a serious error because the agreed upon amount was $16,000.00. The order was amended on January 16, 2024 by way of order LTB-L-038720-23-AM to reflect $16,000.00. As such, I find this is not a serious error, but a clerical error, which was resolved in the amended order.

No Procedural Errors

5. I find that there were no errors in procedure. I listened to the hearing recording in its entirety. Firstly, I find no error in the hearing member denying the adjournment request. The Tenant requested an adjournment to combine their T1 application with the Landlord's application and for the Tenant to have time to retain a legal representative. The hearing member examined the T1 application and determined that if there were any issues regarding illegal rent, that could be addressed at the hearing and the other issues in the T1 application could be heard on another day. The hearing member also considered the request to adjourn for a legal representative and found that the Tenant had more than enough time to retain a representative. I find no serious error as it is apparent from the hearing record that the hearing member considered the Tenant's submissions.

6. The Tenant also submits that the hearing member refused to consider their argument that they had difficulty preparing for the hearing because of political unrest in Brampton. This argument was never raised by the Tenant at the hearing and the Tenant was able to make submissions regarding the issues in the application. As such, I find no serious error in this regard or that the Tenant was unable to reasonably able to participate.

7. I also considered the other procedural errors alleged: limiting the Tenant's cross examination, failing to administer oaths, refusing to allow the Tenants to amend the application to include new allegations, permitted the Landlords to admit the Tenants'

personal documents into evidence, and not allowing the Tenants to provide closing submissions.

8. It was not a serious error to limit cross examination. Section 183 of the Act and section 23 of the *Statutory Powers and Procedure Act, 1990* ("SPPA") permits a Board Member to control the proceedings and adopt the most expeditious method of determining the questions in the proceeding. Cross-examination is not an absolute right. I listened to the hearing recording and the hearing member stated that instead of cross-examination, the Tenants would have an opportunity to reply, to which the Tenants exercised. The hearing member not permitting cross examination was not unreasonable as the Tenants had an adequate opportunity to provide a reply to the Landlord. Therefore, I find no serious error in this regard.

9. I find that it was not a serious error for the hearing member to not swear in the witnesses. Pursuant to section 22 of the *Statutory Powers and Procedure Act, 1990*, a tribunal *may* require evidence before it to be given under oath or affirmation. This language is permissive, and therefore, it is not required that a witness be sworn in to give evidence. It is expected that any person providing testimony before a tribunal should be providing true and accurate information and therefore, an oath to affirm that they are telling the truth is not required. Therefore, I find no serious error in this regard.

10. I also find no procedural error in the hearing member refusing to permit the Tenant to amend their list of issues in the tenancy raised in response to the Landlord's application. Paragraph 16 of the final order and the hearing record shows that the hearing member excluded the Tenants' issues that were not properly disclosed. Pursuant to section 82 of the Act, a Tenant is permitted to raise any issue that could be the subject of an application if the Tenant complies with disclosure requirements or provides an explanation satisfactory to the Board explaining why the Tenant could not comply. It appears that the hearing member was not satisfied with the Tenant's explanation for why they failed to comply. As such, the Board had the jurisdiction to exclude issues not properly disclosed and therefore, I find no serious error in this regard.

11. The Tenant also submits that there were serious errors in procedure because the hearing member admitted the Landlord's late evidence and the Tenants' personal documents and did not permit them to make closing submissions. The hearing recording establishes that the Tenants did not raise objections regarding the above. As required by the Divisional Court in *Sutton v. Riddle,* [1] if the Tenants had fairness concerns regarding this evidence and closing submissions, they were obligated to make those objections to the Board, not wait until the review process to raise these concerns. Instead, the Tenants heard the evidence and did not challenge it or provide a reply. The Tenants also did not make a request to provide closing submissions. As the Tenants did not raise any issues with the hearing member, I do not find there was a procedural fairness issue and therefore, there was no serious error in this regard.

Finding of Arrears

[1] 2021 ONSC 1403.

12. The Tenant submits that the hearing member erred in finding that the Tenants were in arrears. It appears the Tenant is arguing that they were not in arrears because the Landlord ought to have picked up the Tenants' rental payment from their home as this was the agreed upon method of payment. The hearing recording establishes that the hearing member considered the parties submissions and evidence on this issue. The hearing member determined on the record that the Tenants had obligation to ensure the rent was paid as the Landlords picking up the rental payment was not the only method of payment. The evidence adduced at the hearing was that the Tenants previously paid rent via e-transfer. As such, I find it was not unreasonable for the hearing member to find that the Tenants were in arrears as the Tenants could have paid rent by another method. Therefore, I cannot find that there is a serious error in this regard.

13. The Tenant further argues that they were entitled to withhold rent because the Landlords did not provide a complete lease agreement. This issue was raised by the Tenants and was denied. The suspension of payment of rent is not indefinite. As such, I find it was not unreasonable for the hearing member to find that the Tenants were in arrears.

14. As the hearing member found that the Tenants were in arrears of rent, the Landlords were entitled to the application filing fee. Interpretation Guideline 3 states in most cases, the only costs allowed will be the application fee. It further states that costs may be ordered if the applicant is successful in obtaining an order which allows the relief they asked for in the application, or substantially all of that relief. As the Landlords were successful in obtaining substantially all of the relief requested, being arrears of rent, it was not unreasonable for the hearing member to award the filing fee.

Remedies

15. The Tenant further submits that the hearing member made unreasonable findings of fact regarding the Tenants' fridge issue. The final order sets out in sufficient detail the reasons why the hearing member arrived at his conclusions. The order, for example, identifies the parties' evidence and legal arguments with respect to what the issue was with the fridge and when it came to the Landlords' attention. The order is therefore an adequate order, and it is evident that the hearing member's findings of fact are rationally connected to the evidence adduced during the hearing. Put differently, the hearing member's findings of fact are not capricious.

16. The Board's review process is not an opportunity for a person to re-argue an application that has been finally determined. Although the Tenant disagrees with the presiding hearing member's finding, that there was insufficient evidence to show that there was an issue with the fridge after September 18, 2021, the hearing member was in the best position to admit and consider the parties' relevant evidence and submissions, and to make findings of credibility.

17. The Tenant also states that there is new evidence regarding the carpet issue. Specifically, they state that they researched the neighbourhood and believe that the carpet is older than stated by the Landlords. Interpretation Guideline 8 Review of an Order states that parties are expected to make every effort to produce all relevant evidence in support of their

positions in the original hearing. The review will be dismissed unless the LTB is satisfied the new evidence could not have been produced at the original hearing, is material to the issues in dispute and its consideration could change the result.[2] In my view, the evidence the Tenant seeks to rely on was available at the time of the hearing, but the Tenant only decided such evidence was relevant and should be obtained after they received the final order. A review is not an appeal or an opportunity to change the way a case was presented.

18. The Tenant also submits that the hearing member did not award a remedy for lawn care and snow removal although the hearing member found that the Landlords were in breach of their maintenance obligations. Paragraph 59 of the final order outlines that 10% rent abatement was awarded for all of the issues that were granted. As such, the hearing member awarded a remedy for the lawn care and snow removal issues. Therefore, there is no serious error in this regard.

19. I also find that this amount is reasonable. It is apparent from the final order that the hearing member correctly exercised his jurisdiction to award the abatement of rent pursuant to section 30 of the Act. The hearing member found that this amount was appropriate after considering the evidence and the impact on the Tenants. The hearing member's exercise of discretion was rationally connected to the parties' evidence and submissions, and the exercise was therefore not capricious. Although another Board Member may have exercised their discretion to award a different amount, the hearing member's decision is entitled to deference.

20. The Tenant submits that it was unfair that the hearing member gave more time to the Landlords to fix the issues. The Board had the authority pursuant to Section 30 of the Act to order the landlord to conduct repairs, replacements or other work within a specified time. The time provided to fix the issues is not unreasonable. As such, I find no serious error in this regard.

21. 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 and/or that the Tenant was not reasonably able to participate in the proceeding.

It is ordered that:

1. The request to review order LTB-L-038720-23 issued on December 15, 2023 is denied. The order is confirmed and remains unchanged.

January 18, 2024
Date Issued

Camille Tancioco
Member, Landlords and Tenants Board

[2] *First Homes Society v Henry*, [2002] O.J. No. 1754, (Div Ct.); *NOL-16865-14-RV(Re)*, 2014 CanLII 78539 (ON LTB).

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