



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

Citation: Devonshire Properties Inc. v Mullings, 2024 ONLTB 21020

Date: 2024-03-22

File Number: LTB-L-009029-23-RV

In the matter of: 704, 1201 WALDEN CIR
MISSISSAUGA ON L5J4M9

Between: Devonshire Properties Inc. Landlord

And

Ochieng Mullings Tenant
Janette Mullings

Review Order

Devonshire Properties Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Ochieng Mullings and Janette Mullings (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-009029-23 issued on January 5, 2024.

On January 29, 2024, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On January 30, 2024, interim order LTB-L-009029-23-RV-IN was issued, staying the order issued on January 5, 2024

This application was heard in by videoconference on March 14, 2024.

The Landlord's Legal Representative, T. Landriault and the Tenants attended the hearing.

Determinations:

1. The Landlord's L1 application came before the Board for the first time on May 23, 2023. Both the Landlord's Legal Representative, D. Strashin, and the Tenant's attended that hearing. The parties mutually agreed to resolve the application in part and return on another date to resolve the arrears claimed in the application and potential section 82 claims. An interim order was issued, and the matter was adjourned. The Tenant's agreed at the hearing to vacate the unit by June 30, 2023.
2. The adjourned hearing was scheduled to be heard on December 15, 2023. Only the Landlord's representative attended.

3. The Tenant requested a review of order LTB-L-009029-23 issued on January 5, 2024 because they allege that they were not reasonably able to participate in the hearing that took place on December 15, 2023.
4. The Tenant, J. Mullings testified that she did not receive the notice of hearing for the hearing on December 15, 2023. She testified that she found it in her “junk” mail folder in her Gmail account after December 15, 2023. She testified that she received the order from the Board on January 5, 2024 by email.
5. G. Mullings testified that he did not receive the notice of hearing at all.
6. The Board’s records show that J. Mullings was sent a copy of the notice of hearing by email on November 14, 2023. O. Mullings was mailed a copy of the notice of hearing on November 14, 2023. O. Mullings notice of hearing package was returned to the Board as undeliverable.
7. O. Mullings testified that once he vacated the rental unit as agreed on June 30, 2023, he did not advise the Board, the Landlord or the Landlord’s Legal Representative of a forwarding address. He did not engage in a mail forwarding service by Canada Post.
8. J. Mullings testified that she did not inform anyone of a forwarding address as she consented to service by email and expected the notice of hearing to come that way, as she received other documents from the Board that way.
9. The Landlord’s legal representative opposed the Tenant’s request to review. She submits that the Tenants were aware that the first hearing was adjourned and would reasonably anticipate a new notice of hearing to be sent out. She submits that the Tenants did not inform anyone of a forwarding address. She submits that J. Mullings specifically consented to service from the Board by email and that she received other documents that way that did not end up in her junk mail.
10. On the basis of the submissions made in the request, I am not satisfied Tenants were not reasonably able to participate in the proceeding.
11. A party to a Board application is required to exercise reasonable diligence to be aware of and attend a Board hearing: Q Res IV Operating GP Inc. v. Berezovs’ka, 2017 ONSC 5541.
12. I do not find the Tenants in this circumstance exercised reasonable diligence. It was agreed at the first hearing that the Tenants were vacating the rental unit on June 30, 2023, yet they did not inform the Board or the Landlord of a forwarding address. J. Mullings testified that she had access to the TOP portal and requested documents from the Board to be served by email. It would be reasonable for a person expecting to receive a return date for a hearing to advise the Board of a forwarding address. It would also be reasonable for a person expecting to receive a notice of hearing through email to be checking all email folders regularly. The Tenant testified that she has received other documents from the Board through email, it is unusual that this particular document went to her junk folder. No documentation was submitted to substantiate that claim.
13. Therefore, the Tenant’s request to review is denied.

It is ordered that:

1. The request to review order LTB-L-009029-23 issued on January 5, 2024 is denied. The order is confirmed and remains unchanged.
2. The interim order issued on January 30, 2024 is cancelled. The stay of order LTB-L-009029-23 is lifted immediately.

March 22, 2024

Date Issued

Emily Robb

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.