



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

Citation: Hastings Local Housing Corporation v Koebel, 2024 ONLTB 22908

Date: 2024-03-26

File Number: LTB-L-051634-23-SA-RV

In the matter of: 107, 7 TURNBULL ST
BELLEVILLE ON K8N3C9

Between: Hastings Local Housing Corporation Landlord

And

Christine Koebel Tenant

Review Order

Hastings Local Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Christine Koebel (the 'Tenant') and for an order to have the Tenant pay compensation for damage they owe because the Tenant failed to meet a condition specified in the order issued by the Board on June 12, 2023 with respect to application LTB-L-030711-22.

This application was resolved by order LTB-L-051634-23 issued on July 20, 2023. This order was made on an *ex parte* basis and no hearing was held.

On August 3, 2023, the Tenant brought a motion to set aside the *ex parte* order issued July 20, 2023.

The Tenant's motion was heard by videoconference on September 19, 2023 and was resolved by order LTB-L-051634-23-SA issued on November 17, 2023.

On December 18, 2023, the Tenant requested a review of the order issued on November 17, 2023 and that the order be stayed until the request to review the order is resolved.

On December 19, 2023, interim order LTB-L-051634-23-SA-RV-IN was issued, staying the order issued on November 17, 2023.

This request to review was heard by videoconference on February 13, 2024.

The Landlord's agent, Andrew Murray ('AM'), the Tenant, and the Tenant's legal representative, Samantha Hayward ('SH'), attended the hearing.

Determinations:Request to ReviewHistory of Proceedings

1. The Landlord brought an application claiming that the Tenant or someone living with or visiting her substantially interfered with the reasonable enjoyment or a lawful right, privilege, or interest of the Landlord or another tenant (LTB-L-030711-22). That application was resolved by a consent order issued on June 12, 2023.
2. The June 12, 2023 consent order provided, *inter alia*, that for a period of two years from June 1, 2023, the Tenant and/or her guests will not willfully damage the Landlord's property. It also provided that if the Tenant fails to comply with this condition, the Landlord can apply to the LTB under section 78 of the Act without notice to the Tenant for an order terminating the tenancy and evicting the Tenant.
3. On June 30, 2023, the Landlord made an application under section 78 of the Act, claiming that the Tenant failed to comply with the condition of the June 12, 2023 order, described above. The *ex parte* order issued July 20, 2023 granted the Landlord's application. It was determined that on June 2, 2023 the Tenant's guest willfully caused damage to the residential complex. The July 20, 2023 order cancelled the June 12, 2023 order and terminated the Tenant's tenancy.
4. The Tenant brought a motion to set aside the *ex parte* order. After the Tenant's motion to set aside the July 20, 2023 order was heard on September 19, 2023, order LTB-L-051634-23-SA was issued on November 17, 2023.
5. At issue on this request to review is whether the Member hearing the motion to set aside made unreasonable findings of fact on material issues that could change the outcome, or whether the Member's interpretation of the Act was clearly wrong or unreasonable, or in conflict with binding case law.
6. It was not contested that the Tenant's daughter attended the building on June 2, 2023 and willfully caused damage to the residential complex. The issue is whether the Tenant's daughter was the Tenant's guest at the time.

Tenant's position

7. SH submitted that the Tenant's uncontested evidence at the hearing was that the Tenant did not permit her daughter in the residential complex. Her daughter was let into the building by someone else and went to the rental unit, borrowed the Tenant's mobility scooter, then left the building. She returned to the building later in the day, was again let into the building by someone else, and that is when the Tenant's daughter caused damage in the common area laundry room of the residential complex.
8. SH said the evidence was that when the Tenant became aware her daughter was in the building, she told her daughter to leave, and went and asked the building superintendent to remove her.

9. At paragraphs 6-7 of the November 21, 2023 order, the Member accepts that the Tenant did not permit her daughter into the building, but found based on video evidence that the Tenant's daughter entered the rental unit at 12:12 p.m., and shortly thereafter she left the rental unit with the Tenant's mobility scooter. Then at 12:35 p.m. the Tenant's daughter entered the laundry room. Nearly 2 hours later, at 2:27 p.m., the Tenant's daughter returned to the laundry room, and it was at this point that she caused the damage.
10. At paragraph 7 of the order, the Member accepts that the Tenant gave her daughter the scooter so that she would leave the rental unit. The Member then determined that, while the Tenant did not want to give her daughter the scooter, her daughter became her guest at this point. He determined that by allowing her daughter to leave the rental unit with the scooter, "... the Tenant assumes responsibility for the behaviour of [her daughter]".
11. SH submitted that there are two serious errors in the order. The first is that the fact that the Tenant's daughter left the building after leaving the unit around 12:12 pm, and then returned before the damage was caused, was in evidence but not considered in the order. The second is that the Member did not properly consider the meaning of the word "permit" when considering if the Tenant breached the consent order, citing the Divisional Court's decision in *Musse v. 6965083 Canada Inc.*, 2021 ONSC 1085.

Landlord's position

12. AM did not make a submission relative to the request to review.

Law & Analysis

13. I do not find that the Member made any unreasonable findings of fact. The determination that the Tenant's daughter was her guest at the relevant time is a question of law to the extent that it is alleged that the Member did not apply the correct legal test. It is a question of mixed law and fact to the extent that the Tenant alleges that the Member did not properly apply the facts to the correct legal test.
14. The LTB will not exercise its discretion to review an order relative to a Member's interpretation of the Act unless the interpretation conflicts with binding case law, or is clearly wrong and unreasonable: *LTB Interpretation Guideline 8: Review of an Order*.
15. The building a multi-residential apartment building. The provision of the consent order at issue states that the Tenant and/or her "guests" will not willfully cause damage to the Landlord's property. The word "guest" is not used in the Act, but the Act does refer to persons permitted in a residential complex by a tenant. It can be logically inferred that a "guest" is a person a tenant permits into the residential complex.
16. The Divisional Court considered the meaning of the word "permit" in the context of the Act in *Musse v. 6965083 Canada Inc.* In that case, the Court wrote: "Permission, like consent, involves a state of mind. It is the voluntary agreement that something occur. It involves knowledge of what is going to happen and a voluntary agreement that it be done": *Musse v. 6965083 Canada Inc.*, 2021 ONSC 1085 (CanLII), para 26.
17. In this case, I find that the Member's determination that the Tenant's daughter was her guest, meaning that the Tenant permitted her daughter in the residential complex, conflicts

with the Divisional Court's decision in *Musse*. The evidence, as accepted by the Member, was that the Tenant did not allow her daughter in the building, and gave her the scooter so that she would leave. The Member did not consider whether the Tenant voluntarily agreed to allow her daughter to be in the residential complex. I find that the Member's interpretation of the Act in this regard to conflict with binding case law relative to the interpretation of the word "permit" in determining if the Tenant's daughter was her guest.

18. The fact that the order does not address the evidence that the Tenant's daughter left the residential complex after leaving the rental unit, and returned later before causing the damage is also a serious error. If the Member did not accept this important evidence, he ought to have explained why. The order does not account for the nearly two hours between the time the Tenant's daughter entered the laundry room after leaving the rental unit, and the time the Tenant's daughter returned to the laundry room and caused the damage. This is important, because if the Tenant's daughter left the residential complex, or if she was visiting another tenant during that time, it could have affected the outcome of the hearing. There are inadequate reasons in the order relative to this timeframe: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII), paras 126-128.
19. For the foregoing reasons, I am satisfied that there is a serious error in the order. The request to review is granted.

Merits of the Motion to Set Aside the Ex Parte Order

20. The Tenant said that on June 2, 2023, her daughter got in the building and came to the rental unit. She said that she does not know how her daughter got in the building, but she wanted the Tenant's scooter. She said she gave her daughter the scooter and told her to leave the building.
21. The Tenant said her daughter did leave the building for about 2 hours, but she came back. Again, the Tenant said she did not let her daughter into the building. She said she was looking for her scooter, and someone told her that her daughter was in the laundry room with another tenant named "Sandra".
22. The Tenant said she went and retrieved her scooter, and then went to the superintendent, told him that her daughter is not supposed to be in the building, and asked the superintendent to have her leave, which the superintendent did.
23. No evidence was presented on behalf of the Landlord.

Was there a breach?

24. It is not contested that the Tenant's daughter caused damage to the residential complex on June 2, 2023, but the Tenant's uncontested evidence was that her daughter was not her guest at the time, because she did not permit her daughter in the residential complex.
25. I accept that the Tenant did not permit her daughter in the residential complex at the relevant time. There was no evidence to suggest that the Tenant voluntarily agreed to let her daughter into the building or to remain in the building once she was there. To the contrary, the evidence was that the Tenant actively tried to have her daughter leave the

residential complex when she became aware her daughter was there. The Tenant's daughter was not a guest of the Tenant when she caused damage to the building.

26. I therefore find that the Tenant did not breach a condition of order LTB-L-030711-22. The motion to set aside *ex parte* order LTB-L-051634-23 is granted.

It is ordered that:

1. The request to review order LTB-L-051634-23-SA issued on November 21, 2023 is granted. Order LTB-L-051634-23-SA issued on November 21, 2023 is cancelled.
2. The motion to set aside order LTB-L-051364-23 issued on July 20, 2023 is granted. Order LTB-L-051364-23 issued on July 20, 2023 is set aside and cannot be enforced.
3. Order LTB-L-030711-22 issued June 12, 2023 is unchanged.

March 26, 2024
Date Issued

Mark Melchers
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.