



Order under Section 78(11) Residential Tenancies Act, 2006

Citation: BCIMC Realty Corporation C/O Quadreal Residential Properties G.P. Inc v Samson,
2024 ONLTB 27309

Date: 2024-04-17

File Number: LTB-L-076215-22-SA

In the matter of: 2011, 44 Jackes Avenue
Toronto Ontario M4T1E5

Between: BCIMC Realty Corporation C/O Quadreal Landlord
Residential Properties G.P. Inc

And

Paul Samson Tenant

The application TSL-23225-21 has been transferred to the Board's new case management system and assigned file number LTB-L-076215-22.

BCIMC Realty Corporation C/O Quadreal Residential Properties G.P. Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Paul Samson (the 'Tenant') because the Tenant did not meet a condition specified in the mediated settlement agreed to on November 4, 2016 with respect to application TSL-75697-16.

The Landlord application was resolved by order LTB-L-076215-22 (formerly TSL-23225-21), issued on August 11, 2021. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-076215-22 (formerly TSL-23225-21).

This motion was heard by videoconference on April 9, 2024. The Board had conducted a Prehearing Conference on September 15, 2023 and issued order LTB-L-076215-22-IN2 on September 20, 2023, confirming instructions to the parties.

The Landlord's Legal Representative Martin Zarnett and the Landlord Agent Deborah Diaz and the Tenant's Legal Representative David Strashin attended the hearing.

Preliminary Issue:

1. The Tenant representative requested an adjournment at the outset of the hearing for the following reasons:
 - a. The non-availability dates provided to the Board by email on December 22, 2023, the Tenant representative made an error in that it should have reflected they were not available April 3-17, 2024, vice just April 3, 17, 23... (dash vice a comma)

- b. The Tenant is away on a long-planned holiday, somewhere outside the country in an inconvenient time-zone.
 - c. The Tenant representative is not ready to proceed as they have just completed serving a suspension issued by the Law Society of Ontario.
 - d. That it has been uneventful at the residential complex over past many months that would not lend any urgency that would prejudice the Landlord if there were an adjournment.
2. The Landlord opposed this request for an adjournment on the basis that they were not previously alerted to this request and their own witnesses are present and ready to proceed today.
 3. The Landlord submitted the Law Society Guidelines for Lawyers who are suspended, regarding permitted activities. Specifically at paragraph 2 [1] [a] a suspended lawyer may see clients for limited purposes of assisting them in transferring their legal work to another client. At paragraph 2 [1][b], the ultimate choice of legal representation rests with the client. The Landlord submitted that once the notice of hearing had been issued on February 20, 2024, the Tenant's legal representative could have met with his client.
 4. The Tenant's response submission stated that the Tenant was not responsible for the Board delays in this application. They confirmed that they did speak with the Tenant after the notice of hearing had been issued and that the Legal Representative is still retained. They submitted that expediency should not be a more deserving goal over natural justice. The Tenant has a right to be present and to be represented by their lawyer of choice.
 5. The hearing was stood down to permit the Tenant Legal Representative an opportunity to contact his client. Upon return, they advised that they spoke with the Tenant, who confirmed they are away, and in transit, incommunicado and not able to participate, but that the Tenant has a desire to participate.
 6. The Board's Interpretation Guideline 1, entitled "Adjourning and Rescheduling Hearings", sets out the general approach of the Board.

Section 183 of the RTA directs the Board to "adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and to be heard on the matter."

Parties should assume that the hearing will proceed on the date stated in the Notice of Hearing. This means that the parties should be prepared to present their evidence, call and question witnesses and make their submissions.

Where an applicant (*Tenant*) fails to appear, a notice of hearing has been sent to the parties and the matter has not been adjourned or rescheduled, the Member will proceed with the hearing, which means the applicant's case

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will be dismissed as abandoned, whether or not the respondent (*Landlord*) has attended.

Not preparing for a hearing based on the expectation that it will be rescheduled or adjourned has substantial risk.

7. The Board's Rules at Rule 21.1 sets out that a request to reschedule should be submitted on consent and at least 5 business days prior to the scheduled hearing. Rule 21.2 provides that the Board may grant a request that is not on consent. The Guideline 1, further states that a party should include any documents with their request which may tend to support the explanation in a request to adjourn or reschedule a hearing.

The party should explain why they failed to obtain the consent of the other parties or why the request was made less than 5 business days before the hearing. The party should include with their request any documents which may tend to support the explanation provided in the request.

The request will be considered by a Member or Hearing Officer. The request may be granted if the Member or Hearing Officer is satisfied that it was not reasonably possible for the party making the request to comply with Rule 21.1. If the Board does not grant the request, the hearing will proceed on the originally scheduled date and the parties or their representatives must attend.

8. Finally, the Interpretation Guideline states that parties are expected to be prepared for the hearing on the scheduled hearing date.

Both parties are expected to be prepared with their evidence, witnesses, and submissions on the scheduled hearing date, and adjournments are not generally granted because a party is not prepared to proceed.

9. The Ontario Divisional Court has stated in *Wang v. Oloo*, 2023 ONSC 1028 (CanLII) at paragraph 3, affirmed the Board's processes for seeking an adjournment; that included a requirement to provide evidence supporting an adjournment request prior to or at the hearing.

The LTB has a process to decide adjournment requests. That process requires that a party provide evidence supporting an adjournment request prior to the hearing to obtain an adjournment before the hearing date. If the party does not do this, it is then for the party to appear at the hearing – in person or by agent – to request the adjournment and to furnish evidence in support of the request.

10. The Divisional Court at paragraph 7, stated that a requirement to provide evidence in support of a request for an adjournment is reasonable.

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The LTB followed its own rules respecting adjournments at the original hearing. The requirement that a party requesting an adjournment provide evidence in support of the request before the hearing is a reasonable one. The tenants have no reasonable explanation for failure to comply with this requirement. As of the date of the hearing, no adjournment had been granted, no evidence had been provided to support an adjournment request,...

11. In the present case, the Tenant's representative did not provide any documentation to support the 'long-standing' travel plans, that the Tenant was outside the country and unable to join via zoom or phone. They postulated that their oral submissions should be sufficient, or that the Board could grant an adjournment with conditions.
12. The Tenant was aware of this hearing, having received the notice of hearing from the Board. The Tenant's Legal Representative confirmed that they had spoken with the Tenant and that the Tenant was aware of this hearing.
13. There is no record that the Tenant personally submitted a request to reschedule this hearing between the issuance of the notice of hearing on February 20, 2024 and the hearing date.
14. There is no record that the Tenant's Legal representative submitted a request to reschedule the hearing once their suspension had been served. The Landlord submitted that they had not been contacted by the Tenant's Legal Representative prior to the hearing to seek consent or to at least alert them to the request for an adjournment that would be raised at the hearing.

15. The Board notes that there have been unforeseen delays in these proceedings for no fault of the parties. However, at the same time the Board should be entitled to rely on the non-availability dates provided by the parties when rescheduling matters. The parties have an ongoing obligation to the Board to correct an error, or to revise non-availability dates until a matter is scheduled. If, as in this case, there was an error in the non-availability dates, the Tenant ought to have taken reasonable steps to request the hearing be rescheduled well in advance of the hearing. This could have been done on their own or through another Legal Representative once the notice of hearing had been received.
16. The Tenant's Legal Representative affirmed they were aware of Divisional Court decisions in this regard. They still did not come prepared with any evidence to support a request for an adjournment. That the Legal Representative may have been precluded from acting during their period of suspension, does not explain why the Tenant took no action.

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17. The Tenant did not submit a request in advance of the hearing and did not provide any evidence in support of a request at the hearing. In fact, the Tenant's Legal Representative appeared to take pains not to state where outside the country the Tenant was when contacted during the hearing to explain that he could not otherwise participate; and still did not provide any evidence of travel plans. The Tenant did not take reasonable and timely steps to seek to reschedule or adjourn this hearing.
18. In my view, I agree that fairness should not be sacrificed on the alter of efficiency, however that does not mean that parties can ignore the Board's Rules and Guidelines and take no action to ensure proceedings continue in an efficient manner. The Board had granted prior adjournments, some on request and some directed by the Board. The Board relied upon the non-available dates provided by parties when setting this hearing date. Had there been a request to reschedule due to this error with some evidence of longstanding travel plans by the Tenant, it is likely it would have been given due consideration. The Board was not asked to consider rescheduling, nor was the Landlord who consequently prepared for the hearing, served summons' on their witnesses and was ready to proceed.
19. Therefore, the request to adjourn was denied.

Determinations:

1. Since the Tenant did not appear at the hearing to support their motion, I find that this motion has been abandoned.
2. The stay of order LTB-L-076215-22 is lifted on May 17, 2024. The Board has determined that in light of the submissions that the Tenant is unavailable and incommunicado somewhere outside the country; notwithstanding that the request for an adjournment was denied that postponing the enforcement of eviction by 30 days would be fair in all the circumstances. The parties did not make submissions on when to lift the stay.

It is ordered that:

1. The motion to set aside Order LTB-L-076215-22 (formerly TSL-23225-21), issued on August 11, 2021, is denied.
2. The stay of order LTB-L-076215-22(formerly TSL-23225-21) is lifted on May 17, 2024.

April 17, 2024

Date Issued

Robert Patchett

Vice Chair, 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.