



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

Citation: Ivanoff v Lauricella, 2024 ONLTB 60784

Date: 2024-08-19

File Number: LTB-L-075432-23-RV2

In the matter of: 3, 119 HOLTON AVE S
HAMILTON ON L8M2L6

Between: Alex Ivanoff Landlord

And

Giovanni Lauricella Tenant

Review Order

Alex Ivanoff (the 'Landlord') applied for an order to terminate the tenancy and evict Giovanni Lauricella (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-075432-23 issued on April 23, 2024. Only the Landlord and the Landlord's Legal Representative attended the hearing.

On May 9, 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 May 10, 2024, interim order LTB-L-075432-23-RV-IN was issued, staying the order issued on April 23, 2024.

A review hearing was held by videoconference on June 27, 2024. Only the Landlord's Legal Representative attended the hearing.

On July 8, 2024, order LTB-L-075432-23-RV was issued, denying the Tenant's review request.

On July 24, 2024, the Tenant filed a second request to review the order and that the order be stayed until the request to review the order is resolved.

On July 25, 2024, interim order LTB-L-075432-23-RV2-IN was issued, staying the order issued on July 8, 2024.

The second request to review was heard in by videoconference on August 8, 2024.

The Landlord's Legal Representative, Anthony Corso, and the Tenant attended the hearing. The Tenant signed into the hearing from a computer located at a local legal clinic, however the Tenant did not have legal representation at the hearing.

Procedural History:

1. This is the second review request by the Tenant for the same proceeding.
2. The Landlord's application was first heard by videoconference on March 27, 2024. Only the Landlord and the Landlord's representative attended the hearing scheduled for 9:00 a.m. As of 9:45 a.m., the Tenant was not present or represented at the hearing although properly served with a notice of this hearing by the Board. There was no record or a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.
3. This application was resolved by order LTB-L-075432-23, issued on April 23, 2024.
4. The Tenant requested to review the order stating that he was not reasonably able to participate in the proceedings because he did not receive the notice of hearing.
5. The Tenant's first request to review was heard by videoconference on June 27, 2024. However, on June 20, 2024 the Tenant filed a request to reschedule this hearing alleging he was in the hospital. As the Tenant did not seek consent from the Landlord to adjourn the hearing, the request was denied. The Tenant was directed to attend the review hearing or appoint someone to appear as a representative. The Tenant did neither. Only the Landlord's representative attended this review hearing.
6. The Tenant's request to review was denied by order LTB-L-075432-23-RV, issued on July 8, 2024.
7. On July 24, 2024, the Tenant requested that order LTB-L-075432-23-RV, issued on July 8, 2024, be reviewed.
8. Rule 26.18 of the Board's Rules of Procedure provides that the LTB will not consider a further request to review the same order or to review the review order from the same requesting party. Rule A4.2 permits the Board to waive the application of any rule. The Board will only do so in extraordinary circumstances. The Board considered that the Tenant's circumstances may be extraordinary and moreover, the eviction order had been executed and the Tenant was no longer residing in the rental unit.

Determinations:

9. As stated above, this second request to review was heard by videoconference on August 8, 2024.
10. The Tenant's request to review states that he was not able to attend the hearing because he was medically incapable of doing so. The Tenant further states on the day of the hearing he was in the hospital following surgery. He was heavily medicated and completely incapable of attending the hearing or participating in any meaningful way.
11. At the hearing, the Tenant relies on the same letter written by his doctor and submitted to the Board with his request to reschedule the hearing. This letter was also addressed at the first review hearing.
12. In this letter, the Tenant's doctor wrote:

“Giovanni Lauricella was admitted to Hamilton general hospital on June 6, 2024 and underwent surgery. They are still currently admitted on June 12th, at the time of this note and may need additional time to recover.”

13. In order LTB-L-075432-23-RV, the Member determined at paragraph 4 of the order:

[4.] The medical letter submitted by the Tenant does not state the Tenant is unable to attend the hearing. The Tenant’s request does not identify and clear reason why they can not attend the hearing or participate in the proceedings.

14. In his testimony, the Tenant stated that he was in the hospital but could not provide any other evidence than the letter previously submitted. He stated he did not have enough time to gather any further evidence to support his claim.

15. As explained during the hearing, it is notable that the Tenant submitted a request to reschedule the review hearing on June 20, 2024, yet has failed to provide additional documentation from his doctor to support his absence from the initial review. In my view, the Tenant has had ample time to obtain the necessary medical evidence to substantiate his inability to attend the first review hearing. This extended delay raises concerns about the Tenant’s effort to secure and present the required documentation in a timely manner.

16. Further, at the first review hearing, the Landlord’s representative submitted he had personally spoken to the Tenant by telephone on June 21, 2024, the day after the Tenant’s request to reschedule was filed with the Board.

17. Based on the evidence and submissions from both parties, I am not satisfied on a balance of probabilities, that the Tenant was not reasonably able to participate in the initial review hearing. It was the Tenant’s responsibility to either attend the hearing personally or arrange for representation. Furthermore, the Tenant has not sufficiently demonstrated that hospitalization prevented his attendance, as the provided evidence does not substantiate this claim. As a result, the Tenant’s request for a review is denied.

It is ordered that:

1. The request to review order LTB-L-075432-23-RV, issued on July 8, 2024, is denied. The order is confirmed and remains unchanged.
2. The interim order issued on July 25, 2024 is cancelled. The stay of order LTB-L-075432-23 is lifted immediately.

August 19, 2024
Date Issued

Susan Priest
Member, Landlord and Tenant Board

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