



Order under Sections 30 and 31 Residential Tenancies Act, 2006

Citation: Kulikowski v Home2Home Properties, 2024 ONLTB 14296

Date: 2024-02-26

File Number: LTB-T-049802-22

In the matter of: 35, 1091 Felix Avenue
Windsor ON N9C3L6

Between: April Noelle Alexandria Kulikowski Tenants
Chloe Grace Dockrill

And

Home2Home Properties Landlords
Jane Marie Latif

April Noelle Alexandria Kulikowski and Chloe Grace Dockrill (the 'Tenant') applied for an order determining that Home2Home Properties and Jane Latif (the 'Landlord'):

- altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys.
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.
- withheld or interfered with their vital services or care services and meals in a care home.

The Tenants also applied for an order determining that the Landlords failed to meet the Landlords' maintenance obligations under the Residential Tenancies Act, 2006 (the 'Act') or failed to comply with health, safety, housing, or maintenance standards.

This application was heard by videoconference on February 14, 2024.

The Tenants, the Landlord Jane Maria Latif and the Landlord's Legal Representative Brenell Dean attended the hearing.

Determinations:

Preliminary Issue

1. This file was previously before the Board on October 26, 2022. I was not the Member on that date.
2. At the hearing on October 26, 2022, the Board determined the Tenants had not named the proper Landlord in the applications. It was found the proper Landlord is Alex Abes.
3. The named Landlords, Home2Home Properties and Jane Marie Latif asked that the applications be dismissed since they could not succeed as filed.
4. On October 26, 2022, the Board determined it would be most fair to permit the Tenants to amend the applications to name Alex Abes as the Landlord. As such, the Board adjourned the file and on November 1, 2022, issued an interim order requiring the Tenants to:

On or before November 9, 2022, the Tenants shall amend the application to include Alex Abes as the Landlord and shall provide to the Landlord and file with the Board a copy of the amended application and this interim order.

5. As of February 14, 2024, when the file returned before the Board, the Tenants had not complied with the interim order. The improperly named Landlords renewed their request for an order dismissing the applications.
6. The Notice of Hearing for February 14, 2024 was issued on November 1, 2023. It names the same Landlord that was found to be incorrect on October 26, 2022 because the Tenants did not submit a request to amend their application in the year that transpired after the interim order was issued.
7. While the Tenants served Alex Abes with the Notice of Hearing in January of 2024, his name does not appear anywhere on the document.
8. I asked the Tenants why they had not complied with the interim order and Ms. Kulikowski responded that she understood only a Schedule of Parties was required notwithstanding the words "Schedule of Parties" do not appear anywhere in the interim order while the words "amended" and "amend" are used.
9. Ms. Kulikowski then stated she only read the interim order a month after it was issued because she was recovering from surgery. The Tenants claimed they were relying on their legal representative to comply with the interim order even though it was Ms. Kulikowski that uploaded a Schedule of Parties on February 1, 2023, more than a month after recovering from her surgery.

10. I asked the Tenants if they took any steps to ensure the interim order had been complied with and Ms. Kulikowski stated she contacted her legal representative in December of 2022 but did not hear back from him. No submissions were made that the Tenants made any other attempts to contact this person.
11. I asked Ms. Kulikowski what steps were taken once she had not heard from her legal representative and she stated that because of issues experienced in the tenancy, she was traumatized and did not have the ability or opportunity to return to the file. Again, I note the Tenants uploaded a Schedule of Parties to the Board's online portal on February 1, 2023. In my view, this activity shows the Tenants were able to return to the file since they did what they claimed needed to be done.
12. Ms. Kulikowski also stated she served amended applications to Brenell Dean, the Legal Representative for the improperly named Landlords. This was done on February 7, 2024, one week prior to the hearing and more than 14 months after the deadline the Tenants were given to do it. This request to amend the applications was not served on Alex Abes.
13. Ms. Dean stated she does not represent Alex Abes and this was made clear on the previous hearing date. I asked Ms. Kulikowski why she served Ms. Dean and she stated that Ms. Dean was not present at the previous hearing but her Agent, Dan Schofield was. Ms. Kulikowski submitted that Mr. Schofield stated on the record he was representing Alex Abes and the hearing recording from October 26, 2022 would reflect this.
14. After the hearing concluded and prior to issuing this order, I listened to the hearing recording from October 26, 2022. Mr. Schofield never says he is representing Alex Abes. It is clearly stated that Ms. Dean's office only represents the improperly named Landlords. The Board openly contemplates an additional Legal Representative being involved once the applications are amended naming Alex Abes as the Landlord. Since the Tenants were present at the hearing on October 26, 2022, in my view, there is no possible way they could have believed Ms. Dean's office was representing Alex Abes. The submissions of Ms. Kulikowski were wrong and had the potential to mislead the Board since the Tenants were claiming to have served a request to amend their applications on Alex Abes through his legal representative.
15. Based on my review of the Board's records and the submissions of the parties, I concluded Alex Abes was provided a Notice of Hearing that does not name him or require him to do anything. As such, according to Ms. Latif, Alex Abes did not attend the hearing. Had he at least been given a copy of the interim order as the Tenant's were required to provide, he would have understood the Board found him to be the Landlord on October 26, 2022.
16. I turned my mind to Rule 15 of the Board's Rules of Procedures which addresses amendments to applications. I was not satisfied Alex Abes had notice of a request to amend the applications to name him as the Landlord. As such, I did not amend the applications.

17. When the file returned before the Board on February 14, 2024, I found the circumstances had not changed since October 26, 2022. The Tenants again attended the hearing in which they did not name the proper Landlord. The improperly named Landlords were again present. The Tenants had more than 14 months to comply with the interim order to ensure this precise situation was avoided.
18. I turned my mind to whether a further adjournment would be fair and appropriate in the circumstances. The Tenants submitted they should be granted an adjournment to obtain legal representation and they only found out their former representative was no longer practicing three weeks prior to the hearing. While the Tenants have a right to legal representation, this is not an absolute right. In my view, had the Tenants followed up with this representative in the year prior to the hearing, they would have had more than three weeks to find alternate representation. I do not find the Tenants were diligent in asserting their right to legal representation. Additionally, no reasonable explanation was given as to why the Tenants did not retain representation in the three weeks they did have.
19. The Tenants also submitted it would be prejudicial to deny an adjournment and dismiss the applications because their legal representative did not do what was required. I am not convinced the Tenants were relying on this representative to file a request to amend the applications since Ms. Kulikowski herself uploaded a Schedule of Parties to the Board's file on February 1, 2023. She stated this is what she understood was required. Even if I am wrong, the Tenants dissatisfaction with their choice of representation is not an issue for the Board. Again, had the Tenants exercised some diligence, deficiencies in these applications could have been corrected well before the hearing date.
20. Ms. Dean submitted an adjournment would result in prejudice to the improperly named Landlords as they would be required to return before the Board for a third time. Ms. Dean also submitted she believed the file was closed since she had not heard anything from the Tenants until two weeks before the hearing and because the interim order had not been complied with.
21. When I considered all of the circumstances, I did not adjourn the file. More than 14 months had elapsed since the Tenants were required to comply with a very simple and clearly worded interim order. I heard no reasonable explanation that accounted for the lack of action on the part of the Tenants in amending the applications or ensuring they had legal representation.
22. The Tenants continue to reside in the rental unit and they are free to file new applications that name the proper Landlord. I can appreciate the Tenants would experience some prejudice if their applications were dismissed due to the potential for time barred claims. However, I found it would be more prejudicial to the improperly named Landlords to require them to attend before the Board for a third time.

23. The Tenants were given a 14-month opportunity to address the issue with their applications and they were given a clearly worded order outlining what needed to be done. They did not follow these instructions and I had no confidence the Tenants would comply with a freshly issued interim order if the file was adjourned and a third hearing date was set. For all of these reasons, I did not adjourn the file again.
24. Since the applications were not amended to name Alex Abes as the Landlord, they had no prospect of succeeding. Therefore, I dismissed the Tenants' applications.
25. Ms. Dean sought an order for costs in relation to these applications. When I considered section 17.1(2) of the *Statutory Powers Procedure Act* and section 204(2) of the Act, I was not satisfied the Tenants had engaged in conduct that was unreasonable, frivolous or vexatious. Nor was I was not convinced the Tenants had acted in bad faith. Therefore, Ms. Dean's request is denied.

It is ordered that:

1. The Tenants' applications are dismissed.

February 26, 2024
Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

_____ **Date**
John Cashmore
Member, Landlord and Tenant Board

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