



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

Citation: Skyline Living v Adeniyi, 2024 ONLTB 62175

Date: 2024-08-28

File Number: LTB-L-098786-23-RV

In the matter of: 209, 265 WILLSON RD
WELLAND ON L3C5R6

Between: Skyline Living Landlord

And

Oladimeji Adeniyi Tenant

And

Brook Scottu Potential Party

2024 ONLTB 62175 (CanLII)

Review Order

Skyline Living (the 'Landlord') applied for an order to terminate the tenancy and evict Oladimeji Adeniyi (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-098786-23 issued on May 8, 2024. The hearing was held on April 29, 2024, where the Landlord's agent and legal representative and the Tenant attended the hearing.

The matter was resolved by way of a consent order with the assistance of a Dispute Resolution Officer. The consent order terminated the tenancy on April 30, 2024.

On May 28, 2024, Brook Scottu requested a review of the order as a potential party and that the order be stayed until the request to review the order is resolved.

On May 28, 2024 interim order LTB-L-098786-23-RV-IN was issued, staying the order issued on May 8, 2024.

The review request was heard by videoconference on August 15, 2024.

The Landlord's legal representative Shannon Kiekens (SK) and Brook Scottu (BS) attended the hearing. The Tenant was not present at the hearing.

SK said that the Tenant was provided with disclosure including a copy of the Notice of Hearing on August 8, 2024 by email and the email was not returned as undeliverable.

Determinations:

1. The order issued on consent between the Landlord and the Tenant on May 8, 2024 terminated the tenancy April 30, 2024 and ordered the Tenant to pay arrears of rent.
2. In the review request BS states that she co-signed the tenancy agreement and is a Tenant, not an occupant. BS states that as a Tenant, she never received the Notice of Hearing for April 29, 2024 which resulted in a consent order issued May 8, 2024 to terminate her tenancy.
3. For the reasons that follow, I am not satisfied that there is a serious error in that the Potential Party, Brook Scottu was not reasonable able to participate in the hearing.
4. Pursuant to Rule 26.1 of the Board's Rules of Procedure, anyone who is directly affected by a final order of the Board has the right to request a review but that right to request review does not give the Potential Party the same rights as a Tenant.
5. BS said that she moved into the rental unit around July 19, 2023 and lived with her partner and child.
6. BS said that she was under the impression that she became a tenant around December 2023 when the Tenant and BS requested that the Landlord add BS to the lease agreement on or around December 13, 2023.
7. The original lease agreement shows that the Tenant and the Landlord entered into a tenancy agreement on or around June 20, 2023.
8. BS relies on an amended agreement provided to the Landlord where both she and the Tenant sign and initial to add BS to the June 20, 2023 agreement. However, this agreement does not contain any further signature of the Landlord other than June 20, 2023.
9. BS is under the mistaken belief that the December 13, 2023 constituted a new lease agreement. I note, the unilateral request of BS does not constitute a new agreement.
10. The Landlord's representative said the Tenant vacated the rental unit on April 30, 2024 when he notified the Landlord that he was leaving and returned the keys to the management office.
11. The Landlord's representative said that the Landlord did not consent to adding BS to the lease and the amended lease is only initialed and signed by the Tenant and BS. Although the Landlord had some conversation about the Tenant's request to add BS to the lease, the matter had not been finalized. There was no meeting of the minds where BS was confirmed as a tenant. At the time of the April 29, 2024 hearing, BS was an occupant and not a tenant.
12. The Landlord's representative claims the evidence is definitive in that BS is not a tenant and therefore not entitled to receive various notices nor to request a review of the order.

Law and Analysis

13. Pursuant to section 2 of the Act, “tenant” includes a person who pays rent in return for the right to occupy a rental unit and includes the tenant’s heirs, assigns and personal representatives, but “tenant” does not include a person who has the right to occupy a rental unit by virtue of being”.
14. Based on the evidence and submissions before the Board, I find that BS is not a tenant pursuant to the Act. I say this as it was undisputed that BS was not named in the agreement. Despite the request to be added to the agreement, the Landlord and BS had not finalized the details and BS was not a tenant when the consent agreement was entered into at the original hearing.
15. The copy of the residential tenancy agreement provided to the Board shows that although the Tenant and BS had added BS, initialed and signed the agreement, it was void of the Landlord’s signature.
16. Pursuant to s.209(2) of the *Residential Tenancies Act, 2006* (the ‘Act’), the Board’s power to review an order may be exercised if a party to a proceeding was not reasonably able to participate in the proceeding. As I have found that BS. is not a tenant, not a party to this application or the tenancy agreement, I turned my mind to whether the Tenant was reasonably able to participate in the proceeding. There is no question that the Tenant did in fact attend the hearing on April 29, 2024 and that a consent order was entered into by the parties. As a result, it cannot be said that the Tenant was not reasonably able to participate in the hearing.
17. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
18. Given all of the above, I am not satisfied that the order contains a serious error as a result of the Potential Party not being able to reasonably participate in the proceedings. The request for review must be denied.
19. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The request to review order LTB-L-098786-23 issued on May 8, 2024 is denied. The order is confirmed and remains unchanged.
2. The interim order issued on May 28, 2024 is cancelled. The stay of order LTB-L-098786-23 is lifted immediately.

August 28, 2024
Date Issued

Dana Wren
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.

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