



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

Citation: 650 Parliament Residences v Laguerta, 2024 ONLTB 20281

Date: 2024-03-20

File Number: LTB-L-044645-22-RV

In the matter of: 712, 650 PARLIAMENT ST
TORONTO ON M4X1R3

Between: 650 Parliament Residences Landlord

And

Kristine Alcantara Laguerta Tenant

Review Order

650 Parliament Residences (the 'Landlord') applied for an order to terminate the tenancy and evict Kristine Alcantara Laguerta (the 'Tenant') because:

- the Tenant has been persistently late in paying the Tenant's rent.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was resolved by order LTB-L-044645-22 issued on May 31, 2023. Only the Landlord's Legal Representative was present at the hearing when the matter was called at 11:36 a.m.

On September 29, 2023, the Tenant requested a review of the order. A request to extend time to file a review request was granted.

On October 4, 2023 interim order LTB-L-044645-22-RV-IN was issued, staying the order issued on May 31, 2023.

This application was heard by videoconference on November 21, 2023.

The Landlord's Legal Representative Charlie Bobrowski, the Tenant's Legal Representative Natasha Manning, the Tenant, and Tenant's Witness Kaycee Bareto attended the hearing.

Determinations:

Request to Review

1. The application is an L2 application based on an N8 Notice of Termination for persistent late payment of rent. In the order LTB-L-04465-22-HR dated May 31, 2023, the Member found that between October 2021 and July 2022 rent was paid late 10 times in 10 months and granted the Landlord's application to evict the Tenant.
2. The request to review is based on the grounds of serious error and not reasonably able to participate.

Serious Error

3. The request to review states that there was a serious error as Kaycee Bareto, the Tenant's sister, is listed as an Occupant on the rental application and agreement and meets the definition under the Act of "tenant," but was not a party to the application and was not served with the Notice of Hearing. She was therefore unaware of the hearing and unable to participate.
4. Kaycee Bareto (KB) was listed as an Occupant on the rental agreement. The Tenant testified that she gives her sister the rent money and her sister goes to the rental office to pay the rent. KB testified that she has not participated in previous LTB hearings and that her sister "deals with that" and sometimes discusses it with her but she was a high school student earlier in the tenancy. She testified that for "the last month or two" she has gone to the office to pay rent.
5. Based on these submissions, I do not find that there is sufficient evidence to determine that KB meets the definition of "tenant" under the Act and was therefore required to be named on the application and served with the Notice of Hearing. I am not satisfied that there is a serious error in the order or that a serious error occurred in the proceedings.

Not Reasonably Able to Participate

6. The review request also states that the Tenant did not receive the Notice of Hearing and was not reasonably able to participate in the hearing as a result. The request also notes that there are significant arguments for relief from eviction under section 83 of the Act.
7. The Tenant testified that she did not receive the Notice of Hearing which was sent by email by the LTB, nor did she receive the hearing order from the LTB. She stated that the first time she was aware of the eviction order was when she received it from the Landlord in

July. She testified that if she had known about the May hearing, she would have attended as she has in the past.

8. She testified that the email address that she had used was hacked and she no longer used it. She stated that she only checked the LTB online portal until May, at which time she thought that there was no longer an issue as she no longer owed arrears. She stated that when she became aware of the eviction, she contacted the rental office and legal clinic and paid the Sherriff's fee.
9. The Landlord stated that communications with the Tenant were by email and that her testimony about when her email address was hacked showed that it was after she should have received the Notice of Hearing from the Board.
10. The Landlord submitted that in accordance with *Q Res IV Operating GP Inc. v. Berezovs'ka*, 2017 ONSC 5541 [*Berezovs'ka*], the Divisional Court held that, "[l]ack of diligence in dealing with court proceedings is a reason for refusing to set aside an order where a party has failed to appear." In that case, the Tenant's lack of due diligence did not constitute a serious error in the proceedings, and it did not amount to the Tenant being reasonably unable to participate in the proceedings.
11. The Tenant testified that she understood when she received the N8 notice that she could be evicted, and that to prevent that from occurring, she paid the arrears that were owing by May. I find her testimony credible that she then thought the issue had been resolved and did not check the LTB portal. She also stated that she did not receive the eviction order which was also emailed by the Board, and I see no reason to disbelieve her assertion since she took action immediately when she received the order from the Landlord.
12. I also find the Tenant's testimony credible that she would have attended the hearing both because she stated she has attended in the past, and because she demonstrated that maintaining the tenancy was important by paying the arrears of rent. It is not logical that she would then choose to miss the hearing which would determine the outcome of the tenancy, which leads to the conclusion that the Tenant was not aware of the hearing and therefore not able to participate.
13. Unlike in *Berezovs'ka*, the Tenant did not claim that she thought the Landlord had cancelled the hearing, but rather that she was unaware of the hearing.
14. Based on the finding that the Tenant was not reasonably able to participate in the hearing, the request to review is granted. As a result, order LTB-L-04465-22-HR issued on May 31, 2023 was cancelled, and a new hearing was held to consider the original application.

Merits of the Original Application

15. The Landlord served notice to terminate on the Tenant for persistent late payment of rent on July 26, 2022.
16. The Landlord submitted that the Tenant paid rent late 10 times in 10 months between October 2021 and July 2022.

17. After the notice of termination was served, the Tenant continued to pay rent late and was in arrears although no rent is currently outstanding and the Sheriff's fee was paid.
18. The Landlord also submitted that although the Tenant was aware that eviction was scheduled for August 2023, rent was still paid late. Although August 2023 rent was paid early, rent was paid late on September 8, October 4, and November 3.
19. The Tenant does not dispute that she has been persistently late in payment of her rent.
20. The final issue with respect to the Landlord's application concerns relief from eviction under s. 83 of the Act.
21. The Tenant testified that she and her then 15-year-old sister moved into the apartment in 2010. She stated that in the past they have had difficulties and didn't fully understand the consequences of late payment of rent.
22. The Tenant has two children and KB has one child who reside in the rental unit with them. She testified that maintaining the tenancy is important to them because the rental unit is close to work and the children's school, and they feel safe in the building.
23. She also stated that KB began working August 23, 2023 and the Tenant states that both can now contribute consistently to the rent as they both have full time jobs.
24. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
25. I say this because the Tenant has recently demonstrated that she is able to pay rent in full (she has recently cleared the arrears) and testified that circumstances have changed for her and that the difficulties in paying rent in full and on time will be resolved as she and her sister now both have full time employment. The consequences of evicting the Tenant, her sister, and three children are severe.
26. As long as the Tenant pays rent on time and in full, it cannot be unfair to the Landlord to permit the tenancy to continue. On the other hand, if she does not do so, the Landlord will be entitled to obtain an eviction order without notice to the Tenant pursuant to s. 78 of the Act. An order shall issue accordingly.
27. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The request to review order LTB-L-044645-22-HR issued on May 31, 2023 is granted.
2. Order LTB-L-044645-22-HR issued on May 31, 2023 is cancelled and replaced by the following.
3. The Tenant shall pay rent on time and in full for the period April 1, 2024 to March 31, 2025.

4. If the Tenant fails to make any one of the payments in accordance with paragraph 3 of this order, the Landlords may, within 30 days of the Tenant's breach and without notice to the Tenant, apply to the Board pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant.
5. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
6. If the Tenant does not pay the Landlord the full amount owing on or before May 31, 2024, they will start to owe interest. This will be simple interest calculated from June 1, 2024 at 7.00% annually on the balance outstanding.

March 20, 2024

Date Issued

Margo den Haan

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.