



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

Citation: Macdane Investments v Brissett, 2024 ONLTB 20924

Date: 2024-03-18

File Number: LTB-L-101083-23-RV

In the matter of: 201, 2597 KEELE ST
NORTH YORK ON M6L2P2

Between: Macdane Investments Landlord

And

Kimberly Brissett Tenant

Review Order

Macdane Investments (the 'Landlord') applied for an order to terminate the tenancy and evict Kimberly Brissett (the 'Tenant'), and for an order to have the Tenant pay the rent they owe, because the Tenant failed to meet a condition specified in the order issued by the Board on September 5, 2023 with respect to application LTB-L-032383-23.

This application was resolved by ex parte order LTB-L-101083-23 issued on January 12, 2024.

On February 22, 2024 the Tenant requested an extension of time to file a motion to set aside the January 12, 2024 ex parte order. On February 26, 2024, the Board denied the Tenant's request to extend time.

On March 1, 2024, the Tenant requested a review.

On March 4, 2024 interim order LTB-L-101083-23-RV-IN was issued, staying the ex parte order issued on January 12, 2024.

The review request was heard on March 15, 2024.

The Tenant and the Landlord's legal representative L. Goncalves attended the hearing.

Determinations:

1. The Tenant's review request does not clearly identify whether the Tenant seeks to review the January 12, 2024 ex parte order, or the February 26, 2024 Member Direction denying the Tenant's request to extend time to file a set aside motion. Out of an abundance of caution, this order addresses both.

2. On the basis of the submissions made in the request, I am not satisfied that there is a serious error in the Member Direction or ex parte order, or that a serious error occurred in the proceedings.
3. The Tenant's February 22, 2024 request to extend time does not adequately explain why the Tenant did not file a motion to set aside the January 12, 2024 order by January 22, 2024, per subsection 78(9) of the *Residential Tenancies Act, 2006* (the 'Act'). Contrary to the Tenant's submission at the review hearing, the February 22, 2024 request does not give reasons for the Tenant's failure to file a set aside motion in time. Although the Tenant writes in the request to extend time that they left the country to attend an ailing family member, the Tenant does not provide dates of travel. Additionally, the Tenant does not explain how being overseas prevented the Tenant from filing electronic documents with the Board.
4. The Tenant only writes in the request to extend time that she did not directly receive a notice to vacate from the local court enforcement office. The Tenant's request to extend time does not address receiving the January 12, 2024 ex parte order. At the review hearing, the Tenant claimed there was an error in the proceeding because she did not receive the ex parte order. The Tenant testified she left Canada on January 10, 2024 to travel to Jamaica. The Tenant was therefore not at the rental unit when the Board gave a copy of the ex parte order to the Tenant by mail on January 12, 2024. Canada Post did not return the order to the Board as undeliverable. The Tenant did not call as a witness any family member or friend who was present at the rental unit, or who was otherwise instructed to monitor and collect the Tenant's mail while the Tenant was away. There was, therefore, no reliable evidence to support the Tenant's assertion that an error in giving the January 12, 2024 order to the Tenant occurred.
5. At the March 15, 2024 review hearing, the Tenant agreed that she did not pay rent to the Landlord in December 2023, as required by the September 5, 2023 consent Board order about rent arrears. The Tenant explained that her bank suspended her account. The Tenant attached a text message exchange with her bank manager to the review request. The text message notes the Tenant's bank account was suspended as of December 28, 2023. The Tenant was unaware at the review hearing whether her bank account had been suspended before that date. Both the Tenant and the Landlord's legal representative agreed that the Landlord required the Tenant to adhere to the terms of the September 5, 2023 consent order. The Landlord's legal representative described her efforts to work with the Tenant. The Landlord's legal representative testified that the Landlord has tried to collect unpaid rent from the Tenant since 2020.
6. Based on the evidence introduced at the review hearing, I find that the Tenant's bank account was suspended as of December 28, 2023. In arriving at this conclusion, I am mindful of the Tenant's bank manager's December 30, 2023 text message to the Tenant, which reads, in part: "They're [*sic.*] was [*sic.*] unusual transactions made so back office put a block an [*sic.*] alert on. This is why none of the transactions from the 28th of December onward will be successful."
7. The suspension of the Tenant's bank account therefore did not contribute to the Tenant's bank declining the Tenant's December 2023 rent cheque on December 15, 2023.
8. The Tenant has accordingly not established that an error exists in the February 26, 2024 Member Direction denying the request to extend time to file a set aside motion, or that an

error exists in the January 12, 2024 ex parte eviction order, or that an error occurred in the Board proceeding. Without sufficient details explaining the delay in filing the set aside motion, the Board's decision to deny the request to extend time was reasonable. Also, the Tenant agreed at the review hearing that she did not make a rental payment to the Landlord in December 2023. Although the Tenant gave evidence of her belief that a problem with her bank caused the December 2023 rental payment to be declined, there was insufficient evidence to determine the Tenant's belief is reasonable. Instead, the Tenant's own material shows that the Tenant's bank account was suspended two weeks after the Landlord tried to deposit the Tenant's December 2023 rent cheque. There was no evidence that the Board failed to give the Tenant a copy of the January 12, 2024 ex parte order.

9. I am mindful of the circumstances the Tenant described at the review hearing. However, although the Tenant asserted that she will pay the Landlord the amount owed, there is no reliable evidence of her ability to do so. The Tenant relies on employment income, but has not worked since leaving Canada on January 10, 2024. The Tenant did not have reliable evidence that she has sufficient funds available to pay the Landlord. The Tenant was not able to estimate how much money was in her bank account. Although the Tenant testified that the bank would not permit withdrawals from her account, there was nothing to suggest the Tenant was unable to obtain a bank account statement. There was, therefore, no evidence of the Tenant's ability to bring her account with the Landlord to a \$0.00 balance.
10. Moreover, the Board does not have jurisdiction to grant relief from eviction, or to postpone enforcing an eviction, at the preliminary stage of a review request. Because the Tenant has not shown that a serious error exists, the Tenant's review request must be denied.

It is ordered that:

1. The request to review the February 22, 2024 Member Direction is denied. The Direction is confirmed and remains unchanged.
2. The request to review ex parte order LTB-L-101083-23 issued on January 12, 2024 is denied. The order is confirmed and remains unchanged.
3. The interim order issued on March 4, 2024 is cancelled. The stay of order LTB-L-101083-23 is lifted immediately.

March 18, 2024

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Harry Cho

Vice Chair, Landlord and Tenant Board

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