



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

Citation: Grandview Property Management v Michaels, 2024 ONLTB 4158

Date: 2024-01-08

File Numbers: LTB-L-055852-23-BIR2
LTB-L-055730-23-SA-BIR

In the matter of: 208, 4075 Old Dundas Street
Toronto Ontario M6S2R7

Between: Grandview Property Management Landlords
Tony Tam

And

Christopher Michaels Tenant

Review Order

Grandview Property Management and Tony Tam (the 'Landlords') applied for an order to terminate the tenancy and evict Christopher Michaels (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 July 5, 2023 with respect to application LTB-L-027115-22.

The Landlords filed two such applications, which were separately resolved by order LTB-L-055852-23 issued on September 25, 2023 (after a hearing) and by order LTB-L-055730-23 issued on August 17, 2023 (without a hearing). The Tenant filed a motion to set aside order LTB-L-055730-23. The Board initiated a review of order LTB-L-055852-23. The Board Initiated Review and the Tenant's motion were resolved by order LTB-L-055730-23-SA/LTB-L-055852-23-RV, issued on November 3, 2023.

On December 7, 2023, the Board initiated a review of order LTB-L-055730-23-SA/LTB-L-055852-23-RV.

This Board Initiated Review was heard by videoconference on January 5, 2024.

The individual Landlord and the Tenant attended the hearing.

Determinations:

1. The procedural history of this matter is set out in more detail in order LTB-L-055730-23-SA/LTB-L-055852-23-RV, issued on November 3, 2023, and order LTB-L-055730-23-SA-BIR-IN/LTB-L-055852-23-BIR2-IN, issued on December 7, 2023.

Review of LTB-L-055730-23-SA

2. On October 11, 2023, the Board issued interim order LTB-L-055852-23-BIR-IN, which ordered a Board Initiated Review of order LTB-L-055852-23 on the basis that after the Landlords filed two L4 applications, two parallel proceedings were created for the essentially the same application. The purpose of the Board Initiated Review was to examine whether this situation presents an abuse of process or serious error and how this situation may best be resolved.
3. Interim order LTB-L-055852-23-BIR-IN does not cancel the set aside hearing that was scheduled for the next day, nor does it set a hearing date for the Board Initiated Review or indicate that the motion and the review will be heard together.
4. The hearing of the Tenant's set aside motion and the hearing of the Board Initiated Review took place together on October 12, 2023. The Tenant did not attend. By order LTB-L-055730-23-SA/LTB-L-055852-23-RV the Board denied the Tenant's motion, lifted the stay of order LTB-L-055730-23, and cancelled order LTB-L-055852-23. The Tenant was evicted by the Sheriff on December 6, 2023.
5. This review was initiated to determine whether the Tenant was not reasonably able to participate in the set aside motion or whether the duplicate proceedings created confusion that prejudiced either party, causing a serious error.
6. At the review hearing on January 5, 2024 the Tenant testified that he interpreted interim order LTB-L-055852-23-BIR-IN to mean that the entire proceedings would be suspended pending a review. From his previous experiences at the Board he believed that the hearing of this review would not be conducted the next day and that the hearing would not take place that day.
7. In *King-Winton v. Doverhold Investments Ltd.*, 2008 CanLII 60708, the Divisional Court held that "being reasonably able to participate in the proceeding must be interpreted broadly, natural justice requires no less." In that situation the Court found that the tenant had a reasonable basis for mis-diarizing the hearing date, leading to the tenant not attending the hearing. In this situation, I find that the Tenant had a reasonable basis for his belief that the proceedings for both matters were suspended. Order LTB-L-055852-23-BIR-IN identifies the duplicate proceedings as a problem and states that the Board will hold a hearing to solve that problem. It is rare for the Board to set a matter down for a hearing and then hold that hearing the next day. The interim order does not state that the Board Initiated Review would be heard on any particular date and it does not state that it will be heard with the set aside motion.
8. Based on the above, at the review hearing I found that the Tenant was not reasonably able to participate in the proceedings, specifically the set aside motion, and I granted the Board Initiated Review of the set aside order. I then heard the set aside motion *de novo*.

Set aside motion

9. The Tenant admits that he breached a condition of order LTB-L-027115-22, issued July 5, 2023, by failing to pay the Landlord \$10,000.00 on or before July 14, 2023. The issue in this set aside motion is whether it would not be unfair to set aside the eviction order.

10. The Tenant moved into the unit in August 2021. He paid rent for August and September 2021. The only other month for which he paid rent was July 2023. This means that for the approximately two and a half year tenancy, the Tenant has paid rent for only three months.
11. By failing to pay rent for the months of August, September, October, and November 2023 the Tenant further breached conditions in order LTB-L-027115-22. As of the hearing date upon which the parties consented to the terms of order LTB-L-027115-22, the Tenant owed \$29,561.00. The terms of the consent order also included arrears payments that were to be made monthly. The Tenant made no payments toward the arrears, further breaching the conditions of the order. As of the date of the review order, the Tenant owes \$40,661.00 to the Landlord.
12. The Tenant testified that he breached the terms of the consent order because he was expecting a large loan from a family member who was in the process of selling a property. The sale fell through, the funds were not available, and the Tenant was unable to pay the amounts that he agreed to pay. The Tenant further testified that he continued to breach the terms of the order by not paying his rent and by not paying anything toward the arrears because his employment is not stable and his income is not reliable, other than the small amount he receives from social assistance. The Tenant testified that he has just secured a contract for which he will be paid well and that he is in a position to pay the Landlord \$9,000.00 immediately (not from this employment) and an additional \$5,000.00 on January 26, 2024, then he can pay \$5,000.00 per month in addition to his rent until the arrears are paid off.
13. The Tenant testified that he accumulated the over \$29,000.00 in arrears prior to the hearing in June 2023 because of his unstable employment situation and because he receives little in social assistance. He did not explain why he did not pay the Landlord anything, not even occasional small amounts, from October 2021 to June 2023 although he had worked on and off during this time.
14. The Tenant is a single parent. His 17 year old son and 14 year old daughter live with him. They attend school in Toronto.
15. The Landlord is an individual (the corporation is closely held by the individual Landlord). I asked the Landlord if he would be prejudiced if I held onto my order until after January 26, 2024 to see if the Tenant had paid him \$14,000.00 by that date, and if so, grant the motion and put the Tenant back in possession as of February 1, 2024 with an order requiring the Tenant to pay rent plus \$5,000.00 each month, in addition to the rent, until the arrears are paid. The Landlord submitted that this would be prejudicial to him. He cited the Tenant's problematic payment history, the many times the Tenant told the Landlord that some person or another was going to loan him money, and the Tenant's breaches of most of the consent order's terms. The Landlord wants to start fresh with a new tenant who hopefully will be more reliable with the rent and he is not interested in having to make multiple applications to the Board.
16. Considering all of these circumstances, I am not satisfied that it would not be unfair to set aside the eviction order. I am satisfied that it would be unfair to the Landlords to do so. I say this because of the Tenant's payment history and because the last time he promised a payment plan he not only breached every condition to pay arrears but he also failed to pay any rent for four months (I do not include December 2023 or January 2024 because he was out of possession as of December 6, 2023). The Tenant explained that he was overly

optimistic about his ability to comply with that plan. It also appears he may be overly optimistic about his ability to comply with his currently proposed plan. As pointed out by the Landlord, the Tenant would be required to pay nearly \$7,000.00 per month for five months. The Tenant stated he was confident that he could pay this amount but he could not provide sufficient details about the income from his new contract to allow me to independently assess whether this monthly amount would be feasible. When this is considered with his payment history and history of breaches, it appears more likely than not that the Tenant would breach this latest plan, putting the Landlords once again in the position of having to file an application to the Board and further delaying the receipt of timely rent payments. I note that the Tenant has \$9,000.00 with which to pay first and last month's rent for a new rental.

17. Because the Tenant's set aside motion is denied, there is no reason to interfere with this part of order LTB-L-055730-23-SA/LTB-L-055852-23-RV.
18. The Tenant has been out of possession of the rental unit since December 6, 2023 and the Landlords have been required to preserve the unit and the Tenant's possessions since December 7, 2023. The Landlord advised that he complied with these requirements. The order prohibiting the Landlords from disposing of the Tenant's possessions will be lifted effective January 13, 2024. The Tenant has until January 12, 2024 to remove his belongings from the rental unit.

Review of LTB-L-055852-23-RV

19. There is also no reason to interfere with the part of order LTB-L-055730-23-SA/LTB-L-055852-23-RV that cancels order LTB-L-055852-23. This was done to regularize the situation where there were duplicate proceedings by cancelling the order for one of those proceedings. There are no longer duplicate proceedings for the Landlord's L4 application.

It is ordered that:

1. Order LTB-L-055730-23-SA/LTB-L-055852-23-RV, issued November 3, 2023 is confirmed and remains unchanged.
2. Interim order LTB-L-055730-23-SA-BIR-IN/LTB-L-055852-23-BIR2-IN, issued on December 7, 2023, is cancelled.
3. Effective immediately, the Landlords may re-rent the rental unit.
4. The Landlords shall not dispose of, damage, or otherwise interfere with any of the Tenant's belongings that are located in the rental unit or the residential complex until January 13, 2024. Starting on January 13, 2024 the Landlords may dispose of any of the Tenant's belongings that remain in the rental unit.

January 8, 2024
Date Issued

Renée Lang
Vice Chair, 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.