



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

Citation: Investfact Development Corporation v Martineau, 2023 ONLTB 80734
Date: 2023-12-18 **File Number:**
LTB-L-050525-22-RV

In the matter of: 83 RALLIDALE ST
OTTAWA ON K1X0G7

Between: Investfact Development Corporation Landlord

And

Paulyne Martineau Tenant
Louis Faubert

Review Order

Investfact Development Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Paulyne Martineau and Louis Faubert (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-050525-22 issued on December 1, 2023.

On December 5, 2023, the Tenant Louis Faubert the requested a review of the order, and that the order be stayed until the request to review the order is resolved.

The Board issued order LTB-L-050525-22-RV-IN on December 6, 2023, granting an interim stay to preserve the Tenants rights pending the outcome of this preliminary review.

A preliminary review of the Tenant's review request was conducted without a hearing.

Preliminary Issue:

1. Subsequent to the LTB issuing the interim stay, the Landlord provided submissions to the Board on a daily basis. These submissions were not requested, and as such, they submissions were **not considered** in the preliminary review.
2. The submissions were also provided directly to the Vice-Chair assigned to consider the request to review. Pursuant to LTB Rule of Procedure Rule 1.9, a party cannot attempt to



communicate with an LTB Member in the absence of the other parties outside the hearing room. This rule is in place to ensure fairness to all the parties in a proceeding.

3. The Landlord also included Suze Morrison a Member of Provincial Parliament and Premier Doug Ford in these communications. It is also inappropriate for a party to include Tribunals Ontario and the LTB on these communications, in particular while an application is pending before Tribunals Ontario and the LTB.
4. All Members have the exclusive authority to make decisions in accordance with the *Residential Tenancies Act, 2006*, (the 'RTA'). In addition, in keeping with the independence of Adjudicators, the Executive Chair of Tribunals Ontario and Associate Chair of the Board cannot interfere, influence or direct a particular outcome of a hearing. It would also be highly inappropriate for there to be any political interference.
5. A party is free to complain to any competent authority that they believe may be able to grant them the relief they are seeking. In *Guillaume v. Barney Rivers Investments Inc.*, 2021 ONSC 7203 (CanLII) the Divisional Court has also stated that "In particular, Ms Guillaume is free to complain to her MPP, the Judicial Council, and/or to the Chief Justice, but it is not proper for her to copy these complaints to this court while the R.2.1.01 issue is pending decision." The same applies to Tribunals Ontario and the LTB while any application is pending before the LTB. This is intended to ensure that there is no inappropriate influence on the Member that might cause the Member to recuse themselves resulting in undue delays in considering the application.
6. The Landlord also threatened to take matters into his own hands and change the locks and to bear the consequences. This too was also not taken into consideration in the deliberations.

Determinations:

1. I have listened to the hearing recording, and I have reviewed the Board's application record, including the post-hearing submissions. On the basis of the submissions made in the request for a review, I am not satisfied that there is a serious error in the order or that a serious error occurred in the proceedings.
2. The Tenant disagrees with the hearing Member's decision and seeks a re-hearing to present additional evidence.
3. This is an application for arrears of rent, and which at the hearing on September 21, 2023, the Tenant raised two issues in accordance with Section 82 of the RTA. There was no remedy awarded to the Tenants for the issues raised.



- a. The Tenants allege that the order contains a serious error, alleging that their heating issue has not been resolved and that the furnace does not function properly.
4. The Tenant provided lengthy submissions in support of this request. I have also listened to the hearing recording.
5. Guideline 8 provides the Board with the ability to grant a review hearing when it is satisfied that the original hearing order contains a serious error. Under the heading of Guideline 8, “Grounds for Review: Serious Error”, it states:

“Serious error includes:

- *An error of jurisdiction. For example, the order relies on the wrong section of the RTA or exceeds the LTB's powers. This issue need not have been raised in the original hearing;*
- *A procedural error which raises issues of natural justice;*
- *An unreasonable finding of fact on a material issue which would potentially change the result of the order;*
- *New evidence which was unavailable at the time of the hearing, and which is potentially determinative of one or more central issues in dispute;*
- *An error in law. The LTB will not exercise its discretion to review an order interpreting the RTA unless the interpretation conflicts with a binding decision of the Courts or is clearly wrong and unreasonable; and,*
- *An unreasonable exercise of discretion which results in an order outside the usual range of remedies or results and where there are no reasons explaining the result.”*

6. Under the heading “errors of fact”, it states:

“A request to review based on an alleged error of fact must include specific details of the alleged error and explain how a different finding of fact would change the result.

The original hearing Member's findings of fact are entitled to considerable deference. A request will not be granted simply because the reviewing adjudicator might have come to a different conclusion about the evidence. Even where it finds a factual error the LTB may not exercise its discretion to review if the error is trivial, does not relate to a material issue in dispute or would not change the result.

The LTB must be satisfied that there appears to be no rational connection between the findings of fact and the evidence in the original hearing.”

7. Based on the above, the Hearing Member’s findings of fact are entitled to considerable deference or respect. The Tenant must persuade me that there appears to be no rational connection between the Hearing Member’s findings of fact and the evidence in the original hearing.



8. The hearing Member as set out in paragraphs 7 to 14 of the order determined that the Tenant had not established that there had been a loss of heat that warranted an abatement and noted that the Landlord had the furnace inspected and repairs completed.
9. The Tenant submits that the repairs were completed in the spring and that until the winter cold season arrives, they are not convinced that the furnace had been adequately repaired. This issue was raised in the hearing and was considered by the hearing Member. The hearing recording also reflects that the hearing Member advised the Tenants that if the heating issue is not resolved that they still have their own applications where those issues could be raised when those applications are scheduled to be heard.
10. I directed my attention to the specific points of the recording regarding the submissions from the Tenants and reviewed the entirety of the Board's records. After reviewing the hearing recordings, and the application records, I must respectfully disagree with the Tenants' arguments and find that the Board did not make a serious error that would have resulted in a different outcome.
11. I find that, since there was sufficient evidence for the Member to make their findings of fact, the findings are rational and are entitled to deference. Without binding case law to the contrary, I find the Member's interpretation of the RTA, allowing the Member to consider relevant factors arising in the issues raised by the Tenants are reasonable and entitled to deference.
12. The Board's review process is not an opportunity for a party to re-argue a matter that has been finally determined, with the hope of achieving a different result. Although the Tenant disagrees with the presiding Member's findings, the order demonstrates the Member correctly admitted and considered the parties' relevant evidence and submissions during the proceeding. The order explains that the lack of reliable evidence that led the Member to conclude that the Tenants did not prove their claims. The order contains sufficient reasons and is an adequate order.
13. The Tenant has therefore not shown that a serious error may exist in the December 1, 2023, Board order, or that a serious error may have occurred in the proceedings. The request to review the order must accordingly be denied.
14. The Tenants also submitted that it would be difficult to find housing near their children's schools in the time provided in the Board order.
15. The Member did take into consideration the circumstances of the Tenants as set out in paragraph 10, noting the time it took to issue the order, and the substantial arrears that accrued because the Tenants did not pay the lawful rent, and noting that the hearing Member was not satisfied that the Tenants had provided a viable repayment plan.



16. The exercise of discretion in all the circumstances was reasonable and is also entitled to deference.

It is ordered that:

1. The request to review order LTB-L-050525-22 issued on December 1, 2023, is denied. The order is confirmed and remains unchanged.
2. The interim order issued on December 8, 2023, is cancelled. The stay of order LTB-L050525-22 is lifted immediately.

December 18, 2023

Date Issued

Robert Patchett

Vice Chair, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor Toronto
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.