



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

Citation: Starlight Canadian Residential Growth Fund III v Kelly, 2023 ONLTB 80146

Date: 2023-12-12

File Number: LTB-L-025693-23-RV-2

In the matter of: 113, 90 CURTIS CRES
KINGSTON ON K7M5V6

Between: Starlight Canadian Residential Growth Fund III Landlord

And

Summer Cheyenne Kelly Tenant

Review Order

Starlight Canadian Residential Growth Fund III and Starlight Canadian Residential Growth Fund III (the 'Landlord') applied for an order to terminate the tenancy and evict Summer Cheyenne Kelly (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-025693-23 issued on August 29, 2023 following an uncontested hearing held on August 15, 2023.

On October 6, 2023, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On October 10, 2023, interim order LTB-L-025693-23-RV-IN was issued, staying the order issued on August 29, 2023.

This application was heard in by videoconference on November 30, 2023, at 09:00 am.

The Landlord Representative David Danielson, the Tenant Representative John Done and the Tenant attended the hearing.

Determinations:

1. The Tenant Representative submitted that the Request for Review should be granted given the Tenant wasn't reasonably able to attend the August 15, 2023 hearing.
2. The Tenant testified that she never received the Notice of Hearing (NOH), owing to the fact she had been without a key to access her mailbox since March 2023. She also testified that during the course of her tenancy, both with this Landlord and the previous, she had lost her mailbox key on several occasions. With the previous Landlord they would often give her a replacement key at no cost, but with this new Landlord the Superintendent



told her he had given her the last spare and it would cost her \$70.00 to replace it. She further testified that she had gained access to mailbox once on September 16, 2023 when she convinced the Canada Post Delivery man to open it for her.

3. On cross examination she testified that she hadn't paid the \$70.00 to replace the key given it wasn't a priority as the majority of her bills came to her electronically and her rent was paid directly by Ontario Disability Support Program. She also testified to having an adolescent son and her desire to maintain the tenancy.
4. The Tenant Representative then submitted he was in process of attempting to secure financial aid for the Tenant that would void the arrears owing. Accordingly, he requested that the request for review be granted to afford the Tenant that opportunity.
5. In response the Landlord Representative submitted that the Tenant's inability to participate in the previous hearing was in no way the Landlord's fault, NOH had been deemed served and it was due to the Tenants own negligence that it was missed. He also submitted that the Landlord was not interested in maintaining the tenancy as they had other applications before the Board regarding this tenancy.
6. The Landlord Representative also submitted Board order TNL-10754-18-RV, issued February 11, 2019, citing paras 3-4, in which the presiding member determined that the Tenant's failure to check the mail was not grounds for granting a review.
7. The Landlord Representative also submitted Board order SOL-15504-20-RV, issued February 22, 2022, citing para 7 where the presiding member determined a person cannot render themselves immune to Board proceedings by not checking their mail.
8. On the basis of the submissions made in the request, and for the reasons that follow I am not satisfied that the Tenant was not reasonably able to participate in the proceeding.
9. The Tenant openly admitted to having lost her mailbox key and not deeming it a priority to have it replaced. Based on this, I agree with the Landlord Representatives submission that Tenant's own negligence led to them not being able to participate in the previous hearing. I am also in agreement with the determinations in Board order SOL-15504-20-RV, and accordingly, I must deny the Tenants request for review.

It is ordered that:

1. The request to review order LTB-L-025693-23 issued on August 29, 2023, is denied. The order is confirmed and remains unchanged.
2. The interim order issued on October 10, 2023, is cancelled. The stay of order LTB-L-025693-23 is lifted effective December 31, 2023, in order to afford the Tenant, the opportunity to find a new rental unit.

December 12, 2023
Date Issued

Kelly Delaney
Member, Landlord and Tenant Board

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