



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

Citation: Moshkboo v Nkem-Alakamadu Diogu, 2023 ONLTB 79575

Date: 2023-12-12

File Number: LTB-L-042174-23-RV

In the matter of: 15 Uplands Ave.
Thornhill ON L4J1J8

Between: Amir Moshkboo Landlord

And

Godwin Nkem-Alakamadu Diogu Tenant

Review Order

Amir Moshkboo (the 'Landlord') applied for an order to terminate the tenancy and evict Godwin Nkem-Alakamadu Diogu (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-042174-23 issued on September 26, 2023.

On October 8, 2023, the Tenant requested a review of the order.

On October 11, 2023, interim order LTB-L-042174-23-RV-IN was issued.

This review was heard by videoconference on November 28, 2023.

The Landlord's Legal Representative Bahman Roudgarnia, the Tenant and the Tenant's Legal Representative Carlos Perdomo attended the hearing.

Determinations:

1. The Tenant's request for review is based on the ground of not being reasonably able to participate in the hearing conducted on August 14, 2023 and that the order contains a serious error or that a serious occurred in the proceedings as the amount of arrears ordered in the order issued September 26, 2023 is based on misleading information.
2. The Tenant submits that he was not reasonably able to participate in the hearing conducted on August 14, 2023 because he was told that a special hearing date had been arranged to take place on Saturday August 12, 2023 at 9:00 a.m. The Tenant states that he received a telephone call from the Landlord's Legal Representative on August 10, 2023



and produced a copy of his phone records where he indicates he received an incoming call at 1:42 p.m. which lasted 9 seconds in length.

3. The Tenant states that the caller was the Landlord's Legal Representative who told them that a special hearing had been scheduled to take place on Saturday August 12, 2023 with the LTB. The Tenant states that he was provided with a phone number to call, being 1-855-703-8985 and was told to call in early.
4. The Tenant asserts that he is confident the identity of the caller from the 9 second call on August 10, 2023 was the Landlord's Legal Representative because he knows his voice. The Tenant states that during the 9 second call, the caller introduced himself, told him that the Landlord had filed for eviction against the Tenant for non-payment of rent, that there was a special hearing scheduled for August 12, 2023 before the LTB and that the Tenant was to call into a LTB phone number which the caller provided to the Tenant.
5. The Tenant states that he called the provided phone number at various times throughout the day on Saturday August 12, 2023 but was not admitted into the hearing and while the Tenant states he started to panic but believed he had to stay on the line until the hearing started. In cross examination, the Tenant states that when he called the phone number, it took him to the LTB and told him to wait as the hearing will start.
6. The Tenant states that he sent an email communication to the Board on August 12, 2023 at 3:16pm which states:

My name is Godwin Diogu and I have been on a ZOOM call all day till now and prompt messages keep tell participating in the meeting and can be reached anytime at 416 9991435 or by email at gndiogu@yahoo.com

7. The above noted email communication is also filed on the portal with the LTB.
8. The Tenant submits that it was not until August 15, 2023 when he checked his mailbox to see a package from the LTB which stated a hearing was scheduled for August 14, 2023 and that he had missed it. The Tenant states that he called the Landlord's Legal Representative to which there was no answer or it answered saying "embassy". The Tenant states that he then went to the Landlord's Legal Representatives office but it does not exist.
9. The Tenant asserts that he believes someone came to his rental unit, picked up the mail and then called him to misinform him of the hearing date so that he would not call on the actual hearing date. That person then put the mail back into the Tenant's mailbox after the hearing had taken place. The Tenant states that it is only him and his three cousins that reside in the rental unit and only the Tenant checks the mail.
10. The Tenant's Legal Representative submits that the evidence proves the Tenant was unable to attend the hearing based on misinformation the Tenant received, the Tenant was not afforded an opportunity to explain his position and requests a new hearing to permit the Tenant to tender evidence regarding rent.



11. The Landlord's Legal Representative submits that his office does exist, there is a large sign on top of the office identifying his office which is located at 261 Baythorne Drive. The Landlord's Legal Representative denies that he called the Tenant on August 10, 2023 to provide a "fake" hearing date for Saturday August 12, 2023 and states that it is impossible for all of the information to be provided to the Tenant, as claimed to have been received, during the 9 second call on August 10, 2023. The Landlord's Legal Representative submits that he speaks slow to which the Tenant indicated 9 seconds was enough time for him to comprehend the conversation and to get the information from the Landlord's Legal Representative.
12. The Landlord's Legal Representative states that the Tenant is not being truthful and questions the Tenant's credibility. The Landlord's Legal Representative submits that while the Tenant testified that only himself and his 3 cousins have resided in the rental unit, a copy of a fire notice from the Vaughan Fire and Rescue Service dated August 10, 2023 indicates that upon an inspection of the rental unit there were "11 occupants living in the unfinished basement". The Tenant states that when the fire department attended the unit, he was not present but there was a meeting taking place in the basement and denies that there were 11 people residing in the basement. The Landlord's Legal Representative submits that the Tenant's credibility should be considered for the purposes of this review.
13. The Landlord's Legal Representative submits that the Tenant is not being truthful as it is impossible for the information the Tenant alleges to have received be provided within 9 seconds and the Tenant is "lying" as the Landlord's Legal Representative is an "officer of the court" and would never mislead the Tenant to gain an advantage.

Analysis:

14. A review of the Board's records indicate that the notice of hearing and accompanying documents were mailed by the Board to the Tenant on June 27, 2023.
15. A further review of the Board's records indicate that the Tenant filed "evidence" onto the portal on August 4, 2023 at 9:59am via email from gndioqu@yahoo.com. The Tenant's email was to the Board's "LTB evidence" email address and was also sent to the Landlord's Legal Representative at canadianstandard@me.com.
16. It is also noted that when one calls the number which the Tenant states he called throughout the day on Saturday August 12, 2023, there is an immediate greeting saying: "Welcome to Zoom, enter your meeting ID followed by pound". If you do not enter your meeting ID, the message repeats by asking for the caller to enter their meeting ID number followed by pound. If there is no ID number entered by the caller, the message states "goodbye" and the call is disconnected.
17. Based on the evidence and submissions before me, and on a balance of probabilities, I am satisfied that the Tenant was reasonably able to participate in the hearing. I prefer the submissions and evidence of the Landlord as the Tenant's evidence was lacking in credibility. I say this for the following reasons. I find it more likely than not that the Tenant received the notice of hearing as he filed "evidence" to the LTB by sending an email to



ltb.evidence@ontario.ca on August 4, 2023 which is at least 7 days before the hearing and is information that is contained in the notice of hearing.

18. I am not satisfied that the Tenant would have been able to receive all the information about a special hearing that he claims to have received, within a 9 second phone call on August 10, 2023. There was insufficient evidence before me to conclude, on a balance of probabilities, that the Landlord's Legal Representative contacted the Tenant to provide a "fake" hearing date. Other than the Tenant asserting that he knew the Landlord's Legal Representative's voice, there was no phone number provided into evidence that would possibly indicate the phone number of the alleged caller on August 10, 2023 and that it was indeed the Landlord's Legal Representative.
19. There was no evidence from the Tenant that upon contacting the Board on Saturday August 12, 2023, the Tenant entered a passcode which was required to join the hearing. The Tenant states in his review request that he "always got the answer "the meeting has not started..." . The Tenant did not indicate that he was provided with a passcode, which is 11 digits followed by the # sign, during his 9 second phone call on August 10, 2023 and that he entered that passcode when he dialed into the hearing on Saturday August 12, 2023.
20. While I am satisfied that the Tenant would have been provided with information that the hearing was scheduled for August 14, 2023, there was no evidence before the Board that the Tenant made any attempt to call into the Board on that day to participate. One would think that if the Tenant had experienced the difficulties he testified to and had evidence he wished to present to dispute the Landlord's claims as contained in the L1 application and in the N4 notice of termination, he would have at least attempted to contact the Board on the hearing date stipulated in the notice of hearing or contact the Landlord or the Landlord's Legal Representative.
21. Finally, in coming to this determination, with respect to the Landlord's Legal Representative's attack on the Tenant's credibility, I considered the evidence that was filed to discredit the Tenant's testimony including that only 4 individuals resided in the rental unit however a fire notice tendered states there were 11 people residing in the unfinished basement of the rental unit.
22. As the Tenant bears the burden of proving the events on a balance of probabilities, and in the absence of sufficient evidence to support their testimony, I am not satisfied that the Tenant was not reasonably able to participate in the proceeding or that the order contains a serious error or that a serious occurred in the proceedings based on misleading information. As a result, the review must be dismissed.
23. This order contains all of the reasons within it and no further reasons will be issued.



It is ordered that:

1. The request to review order LTB-L-042174-23 issued on September 26, 2023 is denied.

December 12, 2023

Date Issued

Heather Chapple

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.