



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

Citation: Patton v Osborne, 2023 ONLTB 80258

Date: 2023-12-05 **File Number:**
LTB-L-045370-23-RV

In the matter of: A, 266 BELLEVUE ST
Peterborough ON K9H5E5

Between: Andrew Patton Landlords
Nicole Patton

And

Mike Osborne Tracy Bartley Tenants

Review Order

Andrew Patton and Nicole Patton (the 'Landlords') applied for an order to terminate the tenancy and evict Mike Osborne and Tracy Bartley (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was resolved by order LTB-L-045370-23 issued on November 24, 2023.

On December 1, 2023, the Tenants requested a review of the order.

A preliminary review of the review request was completed without a hearing.

Determinations:

1. I have listened to the November 7, 2023 hearing recording, reviewed the Board's application record, and the final order. On the basis of the submissions made in the request, I am not satisfied that there is a serious error in the order or that the Tenants were not reasonably able to participate in the proceeding.
2. The serious errors alleged by the Tenants can be summarized as follows:
 1. The order contains errors of fact.
 2. It was a serious error for the presiding member not to grant relief from eviction.



3. The order contains a jurisdictional error as it does not properly identify the rental unit.

Errors of Fact

3. The Tenants allege that the member made factual errors about whether the Tenants have reached out to community resources for help paying off the arrears, whether the Tenants responded to the Landlords attempts to negotiate a repayment plan, and the reason the Landlord put the rental unit up for sale. While I find that there are factual errors in the order, I find that the errors are not *serious* errors as they would not change the result of the hearing.

Community Supports

4. Paragraph 15 of the order states that the Tenants have not sought help from any community resources to assist with the repayment of the arrears. The Tenants allege that is incorrect. I have listened to the hearing recording. At the hearing the Tenant Mike Osborne ('M.O') was asked whether the Tenants have considered getting any help from community resources. He responded that community resources cannot provide the amount of money the Landlords are asking for but did note that the other Tenant Tracy Bartley ('T.B') has reached out to her worker but not heard back. No specifics about the likelihood of that funding, the amount, or a timeline were provided.
5. The only evidence about actual steps the Tenants took was that T.B reached out to her worker. The member considered many factors (not just whether the Tenants have any help from community supports) to determine that a payment plan would not be viable for the Tenants. Additionally, at the time of the hearing the Tenants had not secured funding from any community supports and as such I do not find an error about whether they had tried to secure those supports would have changed the result of the hearing.

Responses to Attempts to Negotiate a Repayment Plan

6. Paragraph 11 of the order states that the Tenants did not respond to the Landlords attempts to negotiate a repayment plan. The Tenants state this is incorrect. The Landlord Andrew Patton's ('A.P') testimony at the hearing was that he asked the Tenants for some sort of payment and even offered to accept partial payments, but that he "still has not received anything from the first part of July". As such A.P did not testify that he had not heard back from the Tenants but rather that he had received no payments.



7. Section 83(6) of the *Residential Tenancies Act, 2006* ('the Act') requires the Board to consider whether a landlord has attempted to negotiate a repayment agreement. The member finds that the Landlords did, but the negotiations were unsuccessful. Those are the two important findings of fact regarding a repayment plan. I find any misstatement about whether the Tenants responded to the Landlords texts/emails would not change the result of the hearing.

The Reason for the Sale of the Rental Unit

8. Paragraph 12 of the order implies that the reason that the rental unit is up for sale is due to the Tenants' non-payment of rent. The Landlord did not explicitly testify at the hearing that the house is up for sale because of the Tenants' non-payment of rent. However, I note that

at the hearing there was evidence that the house has been put up for sale, that the Landlords are funding their mortgage with a line of credit which is running out, and the Landlord Andrew Patton testified that his "back is against the wall". As such I find there was a possible inference that the Tenants' non-payment of rent is connected to the potential sale of the house. Regardless, I find that there was sufficient evidence before the member to find that there is a financial impact on the Landlords of the Tenants' non payment of rent based on other factors than the house being up for sale. As such, I find that an error regarding the reason the house is up for sale would not change the result of the hearing.

Unreasonable Exercise of Discretion

9. Orders granting relief from eviction involve an exercise of the original hearing member's discretion and are entitled to deference. The LTB will not exercise its discretion to review these types of decisions where the result is within the range of reasonable, acceptable outcomes. At paragraphs 10 to 16 of the order the member considers the circumstances of both parties to arrive at her conclusion. I find that the refusal to grant relief from eviction was within a reasonable and acceptable range of outcomes.

Description of the Rental Unit

10. The Tenants write the following in their request:

"We have several different documents L1 etc from the landlord and the board stating the address is Baltimore Ont and not Peterborough where the unit is, it even says Baltimore on the LTB portal as well".

11. Pursuant to section 43(1)(a) of the Act a notice of termination must properly identify a rental unit. The notice of termination in this case describes the rental unit as being in



Peterborough. As does the order. The Tenant Mike Osborne ('M.O') raised at that hearing that some of the correspondence he has received from the Landlord describes the rental unit as being in "Baltimore". M.O confirmed at the hearing that Peterborough is the correct address. As the notice of termination contains the correct address the member gave an oral decision that the notice of termination is valid. I find no serious errors with that determination.

Participation in the Hearing

12. The Tenant M.O attended the hearing and he spoke on behalf of both Tenants. M.O did not raise any concerns about the Tenants' ability to participate in the hearing in a virtual format and it is clear from the hearing that he actively participated and understood the issues to be determined. As such I do not find that the Tenants were not reasonably able to participate in the proceeding.

It is ordered that:

1. The request to review order LTB-L-045370-23 issued on November 24, 2023 is denied.

December 5, 2023

Date Issued

Amanda Kovats

Member, Landlords and Tenants 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.