



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

Citation: Sniderman v Nickoloff, 2023 ONLTB 80278

Date: 2023-12-04 **File Number:**
LTB-L-022047-22-RV

In the matter of: BASEMENT, 64 MONTCALM AVE YORK
ON M6E4N7

Between: Adam Charles Sniderman Landlord
Hava Friedman

And

Steven Nickoloff Tenant

Review Order

Adam Charles Sniderman and Hava Friedman (the 'Landlord') applied for an order to terminate the tenancy and evict Steven Nickoloff (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-022047-22 issued on November 2, 2023.

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

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

Determinations:

1. On the basis of the submissions made in the request, I am not satisfied that there is a serious error in the order.
2. The Tenant alleges that the order contains the following serious errors:
 1. The presiding member lacked the jurisdiction to hear the matter.
 2. The Tenant was denied procedural fairness when his request to combine his tenant applications (LTB-T-072717-22, and LTB-T-072793-22, and LTB-T-072850-22) with the Landlord's application was denied.
 3. The member either ignored or erred in her application of sections 1, 18, 183, 202(1), and 83(6) of the *Residential Tenancies Act, 2006* ('the Act').



4. The member erred by not granting further relief from eviction.
5. The member was biased.

Jurisdiction

3. The Tenant writes the following in his request to review:

On July 18, 2023, Ms. Sheena Brar was not an appointee when she heard this, the Landlords' application. Member Brar was appointed on October 14, 2023 as a part-time Member. It is the Tenant's position that Ms. Brar lacked jurisdiction to hear this application, thus her Order rendered on November 2, 2023, is void due to lack of jurisdiction.

4. It appears that the Tenant has taken from the appointment date of Member Brar on the Board's website that she was not a member of the Board on the date that the application was filed. Member Brar was reappointed to a new term in October 2023. She was already a member of the Board prior to her reappointment. The Board does not schedule non members to hear applications.

The Decision to Not Join the Applications

5. The Tenant alleges that it was a breach of procedural fairness for his tenant applications to not be joined with the Landlord's application.
6. The member's reasoning for why the Landlord's application was not joined with the Tenant's applications is found at paragraph 5 of the order. The member cites the following reasons for denying the request to join the applications: the delay it would cause to the Landlord's application, that the request was not made in a timely manner, and that one of the Tenant's applications is already seized with another member.
7. The Board has the power to join applications together when it would be fair to do so. The order articulates a reasonable basis for why the applications were not heard together. Additionally, the refusal to hear the applications together was not a final determination of the party's rights. The Tenant can still be heard on his applications, but it will be on a different date. For those reasons I find there was no breach of procedural fairness to not hear the applications together and that there was no serious error in denying the request to hear the applications together.
8. The Tenant writes in his request that the member erred in her decision "given no quantum of rent arrear can be determined until all of the Tenant's issues in the TT's Application are heard". That is incorrect. There is nothing in the Act that prohibits the Board from hearing a landlord's application for eviction based on non-payment of rent because a tenant has filed



a tenant application. While there is often good reason to join landlord and tenant applications so that any rent abatement can be offset against arrears of rent, that is not the only consideration a member must weigh. The member considered whether it would be appropriate to join the applications and ultimately decided that it would not.

9. Additionally, section 82 allows a tenant to raise tenant issues at the hearing of a landlord's application for non-payment of rent. The issues that the Tenant raised pursuant to section 82 of the Act were considered. The issues that were left off and included in separate tenant applications were not. It was the Tenant who decided how his section 82 issues were pled.

Application of the Act

Section 1

10. The Tenant writes that the member ignored section 1 of the Act when rendering her decision.
11. Section 1 of the Act establishes that the purpose of the Act is for Tenant protection. It is not clear from the request how the Tenant believes that the member improperly applied section 1 of the Act. That the member decided not in favour of the Tenant does not mean that section 1 of the Act was ignored. The member considered the evidence and submissions of both parties, reviewed the relevant legislation, and sets out detailed reasonable reasons for her determinations. As such I do not find that the member ignored the purpose of the Act.

Section 18

12. The Tenant writes the member "further erred in her decision when she ignored s. 18 of the Act when she denied the Tenant's request to join this Application with the TT's Applications".
13. Section 18 of the Act establishes that covenants run with the land. Essentially what this means is that a new landlord steps into the shoes of any landlord that came before.
14. The order states that the Landlord argued that the Tenant's applications should not be joined with the Landlord's application because the applications concern substantial interference and harassment by a previous landlord. However, the member does not adopt this argument in paragraph 5 of the order as one of the reasons she denies the request to hear the application together. Instead, the member relies on several other considerations. As such I do not find that the member misapplied section 18 of the Act in her decision to not join the applications.



Section 183

15. The Tenant writes that the member “erred in her decision when she ignored s. 183 of the Act, knowing that her decision in terminating the tenancy for rent arrears does directly affect the Tenant. The Tenant was denied an adequate opportunity to be heard on the TT’s Applications”.
16. Section 183 of the Act directs the Board to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.
17. I do not find that the member ignored or improperly applied section 183 of the Act. In fact, one of the member’s considerations for not combining the applications is that the request was not made in a timely manner, and that it would delay the hearing of the Landlord’s application.

Section 202

18. The Tenant writes that the member “further erred in her decision when she ignored s.202 (1) of the Act and did not ascertain the real substance of all transactions and activities relating to the rental unit and the good faith of the Landlords and their pattern of activities relating to the rental unit”.
19. It is not clear from the review request how the Tenant believes the member misapplied section 202 of the Act. As such I do not find any serious errors relating to the application of section 202 of the Act.

83(6)

20. The Tenant writes in his request:

The Member erred in her order and ignored that the Landlords’ failed to negotiate a payment plan with the Tenant. The requirement to issue a payment plan is enshrined in section 83(6) of the Act.

21. Section 83(6) of the Act establishes that in considering whether to delay or deny an eviction for rent arrears a member must consider whether the landlord has attempted to negotiate an agreement with the tenant including terms of payment for the tenant’s arrears. It does not say that eviction must be refused if a landlord has not offered a payment plan or that tenants must be offered a payment plan. It says that the board shall consider whether the landlord has attempted to negotiate in considering whether to grant relief from eviction. In the order the member mentions the Tenant’s argument that they were not offered a payment plan. However, after weighing all the circumstances the



member finds that the only relief from eviction that is fair in the circumstances is a postponement.

22. For those reasons I do not find that the member erred in her application of section 83(6) of the Act.

Relief from Eviction

23. 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. I find that the member's decision to not grant further relief from eviction other than a delay to November 30, 2023 was within a reasonable and acceptable range of outcomes.

Bias

24. The Tenant writes that the member was biased. The only factor that the Tenant raises to establish bias is that the member dismissed all of the section 82 issues raised by the Tenant. The Tenant may also be suggesting that the member's refusal to combine the applications was also evidence of bias but it is unclear from the request.
25. The Supreme Court in *R. v. S. (R.D.)*, [1997] 3 SCR 484 at paragraphs 109, 112, and 113, establishes that when it is alleged that a decision-maker is not impartial, the test that must be applied is whether the conduct gives rise to a reasonable apprehension of bias. Mere suspicion is not enough. A real likelihood or probability of bias must be demonstrated. The Court also states that the threshold to establish bias is high.
26. Additionally, the court of appeal in *Bailey v. Barbour*, 2012 ONCA 325 establishes that the legal test of a reasonable apprehension of bias is "whether an informed, reasonable and right minded person, viewing the matter realistically and practically, and having thought the matter through, would conclude that it was more likely than not that the trial judge would not decide fairly."
27. The member articulated a reasonable basis for why the Tenant's issues were dismissed and why the applications were not heard together. That a member dismisses a party's application does not establish bias. The Tenant has not established that an informed and reasonable person would conclude that there was a reasonable apprehension of bias in this case.

It is ordered that:

1. The request to review order LTB-L-022047-22 issued on November 2, 2023 is denied.



December 4, 2023

Date Issued

Amanda Kovats

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.