



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

Citation: Cassar Property Management Inc. v Wight, 2023 ONLTB 73382

Date: 2023-11-10 **File Number:**
LTB-L-069419-22-RV

In the matter of: #B2, 128 QUEEN ST W
BRAMPTON ON L6X1A6

Between: Cassar Property Management Inc. Landlord

And

Dean Wight Tenant

Review Order

Cassar Property Management Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Dean Wight (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully caused undue damage to the premises;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex used the rental unit or the residential complex in a manner that is inconsistent with use as a residential premises and that has caused or can be expected to cause significant damage.

This application was resolved by order LTB-L-069419-22 issued on July 7, 2023 as a result of a hearing on February 6, 2023 where the Tenant was not present.

On July 14, 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 July 17, 2023 interim order LTB-L-069419-22-RV-IN was issued, staying the order issued on July 7, 2023.

This application was heard in by videoconference on August 23, 2023.

The Landlord's agent, Christopher Cassar, and the Tenant attended the hearing. The Tenant consulted with Tenant Duty Counsel prior to the hearing.

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Determinations:

1. On the basis of the submissions made in the request, I am not satisfied that the Tenant was not reasonably able to participate in the proceeding. As such, an order shall issue denying the Tenant's review request and lifting the stay immediately.

Request to Review

2. The Tenant's request to review alleges that the Tenant did not receive the N5 and N7 notices of termination, the L2 application and the notice of hearing for the hearing held on February 6, 2023. This is why he missed his hearing.
3. At the hearing, the Tenant testified that it was on July 7, 2023 that the Landlord told the Tenant he received an eviction order where the Tenant became aware of the hearing he had missed; the Tenant confirmed receipt of this order on July 12, 2023.
4. The Tenant testified that his mailbox is located outside of the residential complex and does not have a key; the Tenant also testified that he checked his mail twice a day on a regular basis.
5. The Tenant describes the residential complex as a house with two units – he resides on the upper level and there are separate tenants living below him.
6. The Tenant testified that both units have access to this unlocked mailbox and check the mail regularly. While the Tenant does not believe the lower unit tenant took his mail, he asserts that the Landlord has taken it intentionally so that he would miss his hearing.
7. The Tenant submits that he has previously had mail trouble in September 2022 but did not report it to the police, did not tell the Landlord nor did he speak to Canada Post in this regard.
8. On cross-examination, the Tenant confirmed receipt of the order; he also confirmed that the never experienced mail issues and was certain the Landlord took the mail; he further confirmed he did not see the Landlord take his mail. The Tenant also confirmed he was aware of the allegations but not because he received the notices of termination.
9. The Tenant seeks that his review request be granted so that he can address the allegations and clear his name.
10. The Landlord opposes the Tenant's review request and denies taking the Tenant's mail as there would be no benefit to do so. He testified that the notices of termination were served to the Tenant by placing them under the door (as confirmed on the certificates of service). He also testified that there were no mailbox issues as neither Tenant of the residential complex made any complaints to him in this regard.
11. The Landlord submits that due process has been followed by the Landlord and the Tenant's review request should not be granted.



12. On any request for review before the Board the person requesting the review bears the burden of proof. This means the Tenant must lead sufficient evidence to establish that it is more likely than not that they were not reasonably able to participate in the hearing on February 6, 2023.
13. The issue here is whether the Tenants were reasonably able to participate at the hearing held on February 6, 2023. Largely this question rests on the credibility of the Tenant's assertions. Based on the contradictory evidence before the Board, I do not find the Tenant's explanation to be credible. I say this for the following reasons.
14. With respect to the mail issue, a reasonable person would expect that a person experiencing trouble with the mail would take some action to have the issue resolved. Here, the Tenant's own evidence indicates that he did not report it to the police or the Landlord or Canada Post. Further, as the mailbox is shared, even if the Tenant did not report, the tenant of the lower unit would have brought it to the Landlord's attention.
15. Finally, even if what the Tenant is saying is true, about his mailbox issues from September 2022, the evidence before the Board was the notices of termination were served to the Tenant by putting it under his door and the notice of hearing package was served by the Board on January 21, 2023. The Tenant confirms receipt of the order mailed to him in July 2023. It is unclear how the mail issue resolved on its own without any action from the Tenant.
16. Moreover, aside from the Tenant's testimony, there was no documentary evidence before the Board in support of the Tenant's assertions.
17. Given all of the above, I am not satisfied the Tenant has led sufficient evidence to establish that he was not reasonably able to participate at the hearing on February 7, 2023 and as such, the review request is denied.
18. As I am denying the review request, the next issue before the Board is when to lift the stay. Given the Tenant's circumstances and the fact that the hearing was two months ago, I do not find a further delay in eviction is warranted.
19. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The request to review order LTB-L-069419-22 issued on July 7, 2023 is denied. The order is confirmed and remains unchanged.
2. The interim order issued on July 17, 2023 is cancelled.
3. The stay of order LTB-L-069419-22 is lifted immediately.



November 10, 2023

Date Issued

Sonia Anwar-Ali

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.