



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

Citation: Le v Steeves, 2023 ONLTB 73728

Date: 2023-11-02

File Number: LTB-L-020556-22-RV2

In the matter of: Main Floor Unit, 3 Janet Court Hamilton
Ontario L8E4X8

Between: Ha Le Landlord

And

Jennifer Steeves Tenant

Review Order

Ha Le (the 'Landlord') applied for an order to terminate the tenancy and evict Jennifer Steeves (the 'Tenant') because:

- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises;
- the Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was resolved by order LTB-L-020556-22-RV issued on September 27, 2023.

On October 27, 2023, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

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

Determinations:

1. Rule 26.18 of the Board's Rules of Procedure is waived.
2. 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 a serious error occurred in the proceedings or that the Tenant was not reasonably able to participate in the proceeding. Therefore, the review request is denied.

Background

3. This application was originally heard on June 2, 2022 and October 19, 2022. At the original hearing, the Tenant's Legal Representative indicated that they were not challenging the "good faith" intention of the Landlord (Part 2 of 2 Hearing Recording, at 1 hr:23 min).
4. As a result, order LTB-L-020556-22 was issued on April 26, 2023, terminating the tenancy. The Tenant requested a review of the April 26, 2023 order on the basis that the hearing member had failed to consider all the circumstances in deciding whether or not to grant discretionary relief from eviction.
5. On May 25, 2023, order LTB-L-020556-22-RV-IN was issued directing the matter to a review hearing to determine whether the Board erred by failing to admit and consider evidence pursuant to subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act').
6. The review was heard on June 21, 2023 and July 10, 2023. At the review hearing, the parties agreed a serious error occurred in the proceedings because the original member did not hear evidence and submissions on whether to delay or deny the eviction. Accordingly, the review was granted.
7. While the review was granted, the reviewing member declined to revisit the issue of whether the Landlord gave the notice of termination in good faith because the Tenant conceded that the Landlord gave the notice in good faith during the October 19, 2022 hearing date. Instead, the reviewing member limited the hearing to whether relief from eviction should be granted pursuant to section 83 of the Act.

The Review Request

8. The submissions in the Tenant's second request to review seek to establish the N12 notice was given in bad faith and allege the reviewing member seriously erred by not allowing the

Tenant's the ability to present evidence and cross examine the Landlord's witness with respect to the validity of the N12 and the Landlord's "good faith" intention.

9. Rule 26.15 of the Board's Rules of Procedure says that if the request to review is granted, the reviewing member will identify the issues to be re-heard. The reviewing member's decision to limit the issues to be re-heard to section 83 considerations only was appropriate and reasonable in the circumstances of this case. The Tenant did not challenge the "good faith" of the Landlord at the original hearing. The matter was referred to a review hearing on the issue of whether section 83 of the Act was considered. The decision to limit the re-hearing to section 83 considerations was therefore not a serious error.
10. The Tenant's assertion that they did not concede that the Landlord in good faith requires the rental unit is not supported by the record. During the original hearing on October 19, 2022, at approximately 1 hr: 23 minutes on the record, the Landlord was testifying about

her intentions with respect to the residential complex. At this point, the Tenant's Legal Representative interrupted the Landlord's testimony and said:

Does it make a difference if I concede to the fact that based on the declarations, I acknowledge [the Landlord] requires it in good faith. . . I'm willing to concede that point for the purpose of moving the argument along.

11. Given the above concession, the Landlord's burden of proving their good faith intention was dispensed with. The good faith intention of the Landlord was not raised as an issue Tenant's review request. The basis of the Tenant's review request was whether the hearing member adequately considered relief from eviction. Therefore, it was reasonable for the reviewing member to limit the re-hearing to this issue only.
12. The reviewing member's approach is also consistent with the Board's obligation to adopt the most expeditious method of determining the questions arising in a proceeding that affords all persons directly affected by the proceedings an adequate opportunity to know the issues and be heard on the matter: See section 183 of the Act. The questions arising in this proceeding were: (1) whether the original member considered relief from eviction; if not, (2) whether to grant mandatory or discretionary relief from eviction. These issues were reasonably set out in the Tenant's review request and the May 25, 2023 interim order both of which, the record reveals, were sent to the parties.
13. The Tenant submits that they were not heard and did not receive a fair hearing. I disagree. The recording reveals that the Tenant was given an adequate opportunity to lead evidence and cross-examine the Landlord on the relevant issues. The order recites some of the relevant evidence and submissions made by the parties throughout the hearing. This demonstrates that the parties were able to lead evidence and introduce submissions during the proceedings.

14. While the Tenant's Legal Representative was interrupted by the reviewing member at various times throughout the hearing, I do not find that these interruptions resulted in a denial of procedural fairness or the right to be heard. I say this because the various interruptions were for the purpose of limiting the evidence to the relevant issues in the proceeding. The reviewing member was authorized to do this pursuant to the Board's powers to control its proceedings and subsection 23(2) of the *Statutory Powers Procedure Act*, RSO 1990, c S.22.
15. Despite the Tenant's submission, the record does not support that the reviewing member acted inappropriately or discriminated against Tenant's female Legal Representative.
16. For the reasons above, the Tenant has failed to establish there is a serious error in the order or in the proceedings. Therefore, the Tenant's request to review must be denied.

It is ordered that:

1. The request to review order LTB-L-020556-22, issued on September 27, 2023, is denied. The order is confirmed and remains unchanged.

November 2, 2023

Date Issued

Khalid Akram

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.