



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

Citation: Travi Inc. v Farah, 2023 ONLTB 73335

Date: 2023-10-31 **File Number:**
LTB-L-081737-22-RV

In the matter of: 308, 2517 LAKE SHORE BLVD W ETOBICOKE
ON M8V1E2

Between: Travi Inc.

Landlord

And

Mohamed Tahlil Farah
Tenant

Review Order

Travi Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Mohamed Tahlil Farah (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-081737-22 issued on June 15, 2023 as a result of an uncontested hearing that took place on June 6, 2023 where only the Landlord was in attendance.

On July 13, 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-081737-22-RV-IN was issued, staying the order issued on June 15, 2023.

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

The Landlord and the Tenant attended the hearing. The Landlord was represented by Debbesha Morris.

Determinations:

Preliminary Issue



1. During the period June 2014 to April 2019 I was employed with the paralegal firm which is representing this Landlord. At the beginning of the hearing, I invited submissions from the parties with respect to whether they would have an objection to me adjudicating this application given my prior employment.
2. I informed the parties that since my appointment to the Landlord and Tenant Board I have no communication with my former employer. As far as I recall, I had no involvement in any application concerning this Tenant or this tenancy or any knowledge of any such application while I was employed with the Landlord's paralegal firm.
3. The Tenant confirmed that this was the first time he recalled seeing me and that we had not met previously. He confirmed he did not have any concerns with me adjudicating on this request to review.
4. I proceeded to hear the request.

Request to Review

5. 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. Therefore an order shall issue denying the review request, but lifting the stay on November 30, 2023.
6. The Tenant's request to review alleges that the Tenant was not reasonably able to participate at the hearing on June 6, 2023 because he did not receive the notice of hearing as he had issues with his mailbox. The Tenant goes on to say he only found out about the hearing on June 5, 2023 when the Landlord's representative emailed him a copy.
7. At the review hearing, the Tenant testified that he also received his notice of hearing at 3:00pm the day before his hearing, in his mailbox – confirming he is the only one with key access and the only one who checks the mail.
8. The Tenant testified that he emailed the Landlord's representative on the morning of the hearing, seeking his consent to reschedule the hearing as the Tenant was unwell. A copy of the Tenant's correspondence with the Landlord's representative and the Landlord's response asking the Tenant to attend the hearing as the Landlord intended to proceed was submitted into evidence.
9. I note that the order that is the subject of this review also indicates the sequence of events depicted above.
10. On cross-examination, the Tenant confirmed he had been sick for a few days due to his lactose issue. He also confirmed his mailbox issues subsided at the end of



February/March 2023 and that his mailbox was not broken. The Tenant further confirmed that he did not log into the hearing room because he was not in a good condition but that, he called another number.

11. The Tenant seeks that his review request be granted and the Landlord's L1 application be reheard.
12. The Landlord opposes the Tenant's review request and submits that the Tenant, despite being told to attend, simply chose not to do so and the review request should be denied.
13. The Landlord submits further that the case relied upon by the Tenant with respect to *KingWinton v. Doverhold Investments Ltd.* speaks to a genuine intent to participate, but here, the Tenant has failed to establish how his symptoms prevented him from calling into the hearing room.
14. Based on the submissions before the Board, I am not satisfied the Tenant was not reasonably able to participate at the hearing held on June 6, 2023. I say this for the following reasons.
15. First, it is unclear why the Tenant was not able to attend the original hearing date – was it because he was unwell or was it because he was notified late? I say this because while the Tenant asserts the following in his review request:
 4. If I had been notified about the hearing in advance, I would have attempted to negotiate a payment plan with the Landlord in advance of the hearing date. If I had not been ill on the day of the hearing, I would have attended the hearing in order to save my tenancy. I always intended to respond to the Landlord's application but was deprived of the opportunity through no fault of my own.

the evidence from the Tenant and the Board's records confirms the Tenant was served with the notice of hearing on April 24, 2023 (after his mailbox issue subsided) and this mail did not return to the Board.

16. However, even if what the Tenant states is true, he still received the notice of hearing a day before the hearing. If the Tenant intended to participate but needed more time, he could have attended or sent anyone on his behalf to seek an adjournment on his behalf. But the Tenant did not do so, despite knowing the Landlord's position on his request to reschedule.
17. I note the notice of hearing indicates what may happen if a party fails to attend the hearing – that it may take place in their absence.
18. In *Chin Yong Ahn v. 4900 Bathurst Street Ltd*, 2014 ONSC 7325 the Courts find at paragraph 20, the following:



[20] The appellant offered no explanation for why he was not reasonably able to participate in the hearing. A review of the record and the June 5 Order indicates that the appellant ought to have been aware of the hearing date. The Board member noted that “[a]lthough being reasonably able to participate must be interpreted broadly, it is not sufficient for a party to merely state that they were not able to participate in the hearing.” A party must explain why they were unable to participate so that the Board assessing the request for review can determine where or not the party was reasonably able to participate in the hearing. The appellant failed to provide an explanation.

[Emphasis added.]

19. If the reason the Tenant did not attend was because he was ill, there is no corroborating evidence such as a medical note in support of this assertion.
20. In the case referred to by the Tenant in their review request, *King-Winton v. Doverhold Investments Ltd.*, 2008 CanLII 60708 (ON SCDC), which is the leading case with respect to the issue of being reasonably able to participate the Divisional Court found that the ability to participate in a legal proceeding must be interpreted broadly, and that natural justice requires no less.
21. In that case, the tenant mixed up her hearing date and failed to attend. The matter had previously been before the Board and was adjourned; the documentation that formed part of the record had been scratched out so it was found that there may have been some confusion.
22. In this case, however, this application was before the Board for the first time and the Tenant was clearly aware of the hearing date. The Tenant chose not to attend instead of making arrangements to attend or have someone attend the hearing date. Further, the Tenant provided two different explanations of why he was unable to attend the hearing
23. Reviews are intended to address errors made by the Board and to ensure that parties have an adequate to attend and participate in the hearing. What we have here is a situation where the Tenant was aware of the hearing date but chose not to appear instead. The Tenant knew or ought to have known that without the Landlord’s consent to reschedule the hearing, and in the absence of the Tenant, the hearing would proceed.
24. As such, I do not find that the Tenant has established that he was not reasonably able to participate in the hearing on June 6, 2023. Therefore, the Tenant’s request for review is denied.



25. With respect to the lifting of the stay, given the length of this tenancy and the Tenant's personal circumstances, I find it appropriate to grant short delay in the lifting of the stay to November 30, 2023.

26. This order contains all of the reasons for my decision within it. No further reasons shall be issued.

It is ordered that:

1. The request to review order LTB-L-081737-22 issued on June 15, 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-081737-22 is lifted on November 30, 2023.

October 31, 2023

Date Issued

Sonia Anwar-Ali

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.