



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

Citation: HOMESTEAD LAND HOLDINGS LIMITED v ST. VALLE, 2023 ONLTB 28852

Date: 2023-10-25

File Number: LTB-L-079096-22-RV

In the matter of: 1002, 221 GLENRIDGE AVENUE
ST. CATHARINES ONTARIO L2T3Y7

Between: Homestead Land Holdings Limited Landlord

And

Anderson St. Valle Tenant

BOARD INITIATED REVIEW ORDER

Homestead Land Holdings Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Anderson St. Valle (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant failed to meet a condition specified in the order issued by the Board on November 9, 2021 with respect to application LTB-L-079096-22 (formerly SOL-26612-21).

The Board initiated a Review of the matter pursuant to Rule 26.3 of the Board's Rules of Procedure to determine whether the Board made a serious error and whether the Landlord has engaged in a abuse of process.

The Board Initiated Review (BIR) hearing was heard in by videoconference on March 15, 2023. The Landlord's legal representative T. Rose and the Tenant attended the hearing.

Determinations:

Background

1. On January 12, 2022, the Board issued order SOL-26612-21, an *ex parte* eviction order. The Tenant filed a set aside motion and a stay was imposed on the eviction order. The Tenant's motion was denied by order SOL-26612-21-SA issued on August 11, 2022, which also lifted the stay.
2. On September 9, 2022, the Landlord filed order SOL-26612-21 with the Sheriff for enforcement.
3. On September 21, 2022, the Tenant filed a request to review order SOL-26612-21-SA. On September 22, 2022 the Board issued SOL-26612-21-RV-IN, which stayed order SOL-26612-21-SA, but did not stay the eviction order (SOL-26612-21, issued on January 12, 2022).

4. The Tenant's review request was granted by order SOL-26612-21-RV, issued on December 20, 2022. This review order cancelled order SOL-26612-21-SA, issued on August 11, 2022 but did not cancel the eviction order.
5. Order SOL-26612-21-RV orders the Tenant to pay certain amounts by December 31, 2022, failing which the Landlord may apply for an *ex parte* eviction order under s.78 of the Residential Tenancies Act, 2006 (the 'Act'). It appears from this order that what was intended was to cancel the eviction order and require the Landlord to file a further application seeking a new eviction order if the Tenant failed to pay the amount ordered.
6. The Sheriff enforced the eviction order on February 9, 2023.

Agreed facts

7. The parties agree that the Tenant is back in possession of the unit.
8. The parties agree that the Tenant has paid all monies owing under Order SOL-26612-21-RV issued December 20, 2022.

Landlord's evidence

9. The Landlord's legal representative asserted that the Landlord's direction to the Sheriff to enforce the eviction order on February 9, 2023, was human error and not an intentional abuse of process by the Landlord.
10. The Landlord's witness L. Faria (LF) is a new employee of the Landlord and is the person who filed the order with the Sheriff, at the direction of her supervisor, E. Smith (ES). She testified that ES attended the eviction with the Sheriff.

Tenant's evidence

11. The Tenant testified that he received the Sheriff notice of eviction on January 31, 2023. As a result of communications with the Sheriff and the Landlord, he made a final payment of \$45.61 on January 31, 2023 in full satisfaction of SOL-26612-21-RV issued on December 20, 2022. He paid his February 2023 on February 1, 2023.
12. Because he owed no money, he believed that the eviction had been cancelled and the matter resolved. He testified that the Sheriff showed up on February 9, 2023, advising him that in spite of the zero balance, the Landlord requested the Sheriff to proceed with the eviction because the Tenant did not pay all amounts owed by the deadline. The eviction was executed February 9, 2023. The Tenant filed a request to review on February 10, 2023, including a request for an interim order to be put back into possession of the unit. He testified that he was put back in possession of the unit on February 16, 2023.
13. I find that the Board erred by failing to expressly cancel order SOL-26612-21, the *ex parte* eviction order, in order SOL-26612-21-RV.
14. I also find that the Landlord engaged in an abuse of Board's process by enforcing the *ex parte* order on February 9, 2023. The Landlord knew or ought to have known that this order was no longer to be treated as enforceable given that it had been superseded by order SOL-26612-21-RV, which found that the tenancy would continue subject to certain conditions.

The Landlord knew or ought to have known that it could only lawfully evict the Tenant by following the process set out in order SOL-26612-21-RV, namely filing an application under section 78 of the *Residential Tenancies Act, 2006* (“Act”) in the event the Tenant fails to make an ordered payment. For the Landlord to proceed with eviction in these circumstances, and especially where there were no arrears owing, amounted to an abuse of process. Evicting a tenant from their home is a serious measure, and the Landlord failed to take reasonable and prudent steps to ensure that it should have occurred in these circumstances.

15. The obvious remedy to address this unfortunate circumstance is to put the Tenant back in possession of the unit and this has already taken place. As noted, on February 16, 2023, the Landlord put the Tenant back into possession pursuant to Interim Review Order LTB-L-079096-22-BIR-IN issued February 16, 2023. Thus, the Tenant was out of possession of the rental unit for eight days.
16. Given the Landlord’s abuse of the Board’s process and the harm it caused to the Tenant, it would seem reasonable to award the Tenant some monetary compensation or impose an administrative fine upon the Landlord. However, the matter before me concerns a request to review an order issued by the Board for a set aside motion filed by the Tenant pursuant to section 78(9) of the Act.
17. The types of orders the Board can make in respect of such a motion are set out in sections 78(11)-(12):

(11) If the respondent makes a motion under subsection (9), the Board shall, after a hearing,

- (a) make an order setting aside the order under subsection (6), and any order made under subsection (7) or (7.1), if any of the criteria set out in subsection (1) are not satisfied;
- (b) make an order setting aside the order under subsection (6), and any order made under subsection (7) or (7.1), if the Board is satisfied, having regard to all the circumstances, that it would not be unfair to set aside the order under subsection (6); or
- (c) make an order lifting the stay of the order under subsection (6), and any order made under subsection (7) or (7.1), effective immediately or on a future date specified in the order.

(12) In an order under clause (11) (b), the Board may amend a settlement agreed to under section 194 or an order made with respect to the previous application if it considers it appropriate to do so

18. Thus, I do not have the authority under the Act given the type of matter before me to award the Tenant monetary compensation or impose an administrative fine upon the Landlord.

It is ordered that:

1. The Board initiated Review of SOL-26612-21-RV issued on December 20, 2022 is granted.

2. Order SOL-26612-21-RV issued on December 20, 2022 is canceled and replaced with the following.
3. SOL-26612-21 issued on January 12, 2022 is cancelled.

October 25, 2023
Date Issued

Donna Adams
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.