



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

Citation: PEEL HOUSING CORP OP AS PEEL LIVING v Defreitas, 2023 ONLTB 68255

Date: 2023-10-17

File Number: LTB-L-060204-22-RV

2023 ONLTB 68255 (CanLII)

In the matter of: 506, 121 ACORN PL
MISSISSAUGA ON L4Z3N3

Between: PEEL HOUSING CORP OP AS PEEL LIVING Landlord

And

Mitsui Defreitas Tenant

Review Order

PEEL HOUSING CORP OP AS PEEL LIVING (the 'Landlord') applied for an order to terminate the tenancy and evict Mitsui Defreitas (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-060204-22 issued on May 9, 2023.

On May 24, 2023, the Tenant requested a review of the order, alleging that she was not reasonably able to participate in the hearing held on April 26, 2023.

On June 22, 2023, Interim Order LTB-L-060204-22-RV-IN was issued, staying the order issued on May 9, 2023.

This request was heard in by videoconference on July 27, 2023.

The Landlord's agent, M. Kemraj, the Landlord's legal representative, K. Trigiani, the Tenant and the Tenant's legal representative, R. Thompson, attended the hearing. The Landlord's witness, C. Aska, and the Tenant's witness, C. Balgrove, also attended the hearing.

Determinations:

Review Request: Evidence of the Parties

1. During the hearing on the merits, held on April 26, 2023, the parties agreed to mediation, and a consent order was issued by the mediator on May 9, 2023.
2. It is undisputed that the Tenant came to the hearing on April 26, 2023, with her support worker, C. Balgrove (CB). It is also undisputed that the parties came to an agreement in a



private break out room, and they subsequently went before the mediator to present the terms of their agreement. It is undisputed that the mediator did not participate in the negotiation. The mediator's role in this matter was, primarily, to issue a consent order based on the terms arrived at by the parties when they were in the break out room.

3. The Tenant requests a review, alleging that she was not reasonably able to participate in the hearing because she felt pressured to agree to the terms presented by the Landlord's agent, C. Aska (CA). She alleges that she has mental health issues that led to her feeling pressured, scared, and coerced into agreeing to the Landlord's terms for a repayment plan. She alleges that she had evidence she wanted to present at the hearing, but she was not given an opportunity to do that.
4. There were a number of decisions made by the Tenant on that day that contradict her allegation that she was either coerced into the consent order, or that she was denied an opportunity to participate.
5. The Tenant received the notice of hearing, attended the hearing, and brought a support worker with her to the hearing. The Tenant alleges that she was not able to be supported by her worker because she was told by the mediator or the adjudicator that her support worker could not "represent" her that day.
6. Support and "representation" are not the same thing. There are only certain qualified individuals who have standing to provide legal representation before the Board. In general, a legal representative should be a licensee of the Law Society of Ontario, unless they fit into very specific categories of exemption from this requirement. It is undisputed that CB is not a licensee. It is not clear exactly what sort of "representation" the Tenant thought CB could provide. The Tenant was present at the hearing to provide any testimony she required for her side, and CB was not an appropriate party to give testimony that could be provided by the Tenant herself. It is undisputed that the Tenant was permitted to speak with, sit with, and consult, CB during every step of the proceeding.
7. CB's own testimony demonstrates that CB herself understood that she could not legally represent the Tenant because she is not a licensee. However, CB did not say that she was not permitted to speak with or consult with the Tenant while either in the break out room with CA, nor when they went before the mediator. CB did not dispute that she was able to be present with, and talk with, the Tenant during the proceeding.
8. It is undisputed that the Tenant was informed that she could, at any time, opt to go to a hearing before an adjudicator. Nevertheless, the Tenant agreed to mediate. Before the mediator was available, CA suggested that they go into a private break out room for a discussion, and the Tenant agreed to that.
9. Even before the Tenant and CB went into a break out room with CA, the Tenant was given an opportunity to speak with Tenant Duty Counsel, and she took that opportunity. It is not an absolute right of the Tenant to either have a legal representative with them at a Board hearing, or even to have access to Tenant Duty Counsel, who provide free summary legal



advice prior to the hearing. However, in this matter, the Tenant did have access to Tenant Duty Counsel, and she consulted with Tenant Duty Counsel.

10. The Tenant alleges that she was coerced into an agreement by CA when they were in the break out room, prior to coming before the mediator. The Tenant said that CA told her, in the break out room, that she owed a certain amount of money, and that it “did not matter” whether the Landlord owed her money as a result of past overpayments. She alleges that CA would not look at her evidence of past overpayment, and rather, CA pressured her by saying that none of it mattered, and the Tenant just needed to agree to pay or she would be evicted.
11. The Tenant said that she sought legal help as soon as she received the notice of hearing, and she understood she could submit evidence prior to the hearing, and she did submit evidence. The Tenant said that she never informed the Landlord about her mental health condition, nor did she provide the Landlord with evidence of her mental health diagnosis, nor did she tell the Landlord that she had issues around decision-making.
12. It is undisputed that the Tenant has been at the Board with the Landlord on previous occasions.
13. CA said that it is her normal routine to suggest that the parties speak in a break out room while waiting for the mediator to become available. CA testified that the Tenant did bring up the issue of past overpayments from almost 10 years, but the Tenant’s documents and past payments were completely unrelated to the current arrears. CA said that the Tenant had brought this issue up in the past, and CA had looked into it at that time. She said that the alleged payments are very old, all the Tenant’s payments have been reconciled and credited, and there was nothing new in the documents disclosed by the Tenant.
14. CA said that she broke down all the amounts for the Tenant, she demonstrated to the Tenant what the Tenant owed, and CA said that CB helped the Tenant understand the documents. CA said that she did not tell the Tenant she had no choice but to agree to the Landlord’s terms or be evicted. Instead, CA said that she informed the Tenant about what the Landlord was willing to consent to, and that the Landlord would not be willing to agree to a payment plan that extended beyond 12 months. CA said that after the Tenant agreed to the proposed payment plan, they all went before the mediator. CA also said that the mediator explained the terms of a conditional order, and also what would happen if the Tenant breached the conditional order. Finally, CA said that the mediator turned to the Tenant and asked her if she consented to the terms.
15. The Tenant submits that she agreed to the order as a result of duress, and a power imbalance, and because she believed she had no other choice. The consent order was not the result of mediation, but rather the result of a high pressure conversation. The Tenant submits that she had no opportunity to present her evidence of past overpayment, and therefore the arrears stated in the order are in error.



16. The Landlord submits that the Tenant received the notice of hearing, she attended the hearing, and she had sufficient time to find legal representation and submit evidence. She consulted with Tenant Duty Counsel prior to the discussion with CA, and she submitted evidence. The Landlord submits that there is no evidence to suggest, on a balance of probabilities, that the outcome of the matter would be any different if the review were granted. The alleged overpayments by the Tenant are over 8 years previous, and the Tenant never filed an application alleging overpayment to the Landlord. The Landlord submits that stress is not the same as duress.

Reasons and Analysis:

17. I find that the Tenant was reasonably able to participate in the hearing for the reasons that follow.
18. The Ontario Court of Appeal described the elements of duress as follows in *Taber v. Paris Boutique & Bridal Inc.*, [2010 ONCA 157 \(CanLII\)](#) at paras. [8-9](#):

There is no doubt that economic duress can serve to make an agreement unenforceable against a party who was compelled by the duress to enter into it. Nor is there any doubt that the party can have the agreement declared void on this basis.

However, not all pressure, economic or otherwise, can constitute duress sufficient to carry these legal consequences. It must have two elements: it must be pressure that the law regards as illegitimate; and it must be applied to such a degree as to amount to “a coercion of the will” of the party relying on the concept.

19. There is no evidence in this matter that the Landlord applied undue or improper coercion upon the Tenant during the settlement discussions amounting to “a coercion of the will”. The Tenant was given the choice to engage in mediation with the Landlord, to which she agreed. She was given the opportunity to speak to Tenant Duty Counsel, and she chose to speak to Tenant Duty Counsel. CA asked the Tenant if she was willing to meet in a private break-out room while they were waiting for the mediator. The Tenant agreed, and she did, in fact, engage in negotiation with CA before going in front of the mediator. The Tenant had CB beside her, supporting her, for each of the above-mentioned decisions, and CB was with her in the break-out room and when they went before the mediator.
20. In addition, the Tenant has been before the Board with the same Landlord on a number of previous occasions, and she has never suggested there was duress on those previous occasions. The Tenant did not disclose any mental health issue around decision-making in the past, and she did not disclose such an issue prior to the hearing.



21. The Tenant alleges that CA told her she had no choice but to agree to the Landlord's terms, but at the same time the Tenant admits that she was aware she could go to a hearing if negotiation fell through. There is nothing improper in CA telling the Tenant the limits of what the Landlord would consent to. The Tenant had prior experience at the Board, and she was well aware of the proceedings. The Tenant always had the option of going to a hearing if she believed she could not consent to what the Landlord proposed. It is undisputed that the terms of the consent were explained to the Tenant by the mediator, and the Tenant was asked if she consented, and she said that she consented.
22. There was undoubted pressure on the Tenant to resolve the matter, but pressure does not equal duress. The Tenant may have felt a certain amount of pressure to agree to a consent order, and this may have compelled her to consent to a repayment plan that she later regretted. Making a choice one regrets does not amount to the absence of an opportunity to reasonably participate in the proceeding.
23. 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.

It is ordered that:

1. The request to review order LTB-L-060204-22 issued on May 9, 2023, is denied. The order is confirmed and remains unchanged.
2. The interim order, Interim Order LTB-L-060204-22-RV-IN issued on June 22, 2023, is cancelled. The stay of order LTB-L-060204-22 issued on May 9, 2023, is lifted immediately.

October 17, 2023

Date Issued

Nancy Morris

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.