



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

Citation: Randhawa v Giefert, 2023 ONLTB 66724

Date: 2023-10-16

File Number: LTB-L-024132-22-RV-IN2

In the matter of: 705584 OXFORD ROAD 35
WOODSTOCK ON N4S7V7

Between: Jagjit Singh Randhawa Landlords
Kuldeep Kaur Brar

And

Amy Giefert Tenant

Jagjit Singh Randhawa and Kuldeep Kaur Brar (the 'Landlords') applied for an order to terminate the tenancy and evict Amy Giefert (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-024132-22, issued on January 16, 2023.

On May 29, 2023, the Tenant requested a review of the order.

The request was heard by videoconference on September 27, 2023.

The Landlord Jagjit Singh Randhawa and the Landlord's Legal Representative Sherwin Shams and the Tenant Amy Giefert attended the hearing. The Tenant was assisted by her father John Beaupre.

Determinations:

The Review Request

1. The Tenant's request for a review is based on the grounds of being not reasonably able to participate in the proceedings that took place on January 4, 2023.
2. At the review hearing, the Tenant testified she did not receive a Notice of Hearing in the mail for the January 4, 2023 hearing date. The Board's file shows the Notice of Hearing was sent to the Tenant on November 2, 2022 at 705584 Oxford Road 35, Woodstock, ON N4S 7V7.
3. The Tenant testified her mailing address while she lived in the rental unit was always 1634 Devonshire Avenue, Woodstock, ON, N4T 0C2 and not the address listed on the lease agreement or the application.

4. The Landlord's Legal Representative, Mr. Shams, stated the address on the lease was correct and the application was correct.
5. Mr. Shams submitted an email sent to the Tenant on January 3, 2023 advising her of the hearing the following day. The Tenant testified she did not receive this email because it was sent to an email address she was no longer using. No evidence was submitted showing the Tenant responded to this email.
6. The Tenant stated that had she known about the hearing she would have attended.
7. In *King-Winton v. Doverhold Investments Ltd.*, 2008 CanLII 60708, the Divisional Court held that "being reasonably able to participate in the proceeding must be interpreted broadly, natural justice requires no less."
8. Interpreting this situation broadly, I find that the Tenant was not reasonably able to participate in the proceedings. At the hearing, I was satisfied the Tenant may not have received the Notice of Hearing sent by the Board on November 2, 2022. I was not convinced the Tenant received the notification email sent by Mr. Shams the day before the hearing.
9. For the reasons above, at the hearing I granted the Tenant's request for a review. A *de novo* hearing of the Landlord's application was therefore ordered.
10. While not addressed at the hearing, a post hearing review of the Board's file shows the Notice of Hearing mailed to the Tenant on November 2, 2022 was returned to the Board on January 23, 2023 with a label marked "No Such Address".

De Novo Hearing

11. The Tenant requested an adjournment of the re-hearing of the Landlord's L1 application on the basis that she would like to obtain legal representation.
12. Earlier in the hearing, the Tenant advised me she had suffered a stroke three weeks prior to the hearing. She appeared on camera connected to a heart monitor. Over the course of the hearing block, the Tenant took breaks to address a rising heart rate. While the Tenant did not request an adjournment based on her medical condition, it was something I was concerned with.
13. The review hearing was peremptory on the Tenant to proceed. The file was last before the Board on July 4, 2023. I asked the Tenant what she had to obtain legal representation since that date. The Tenant responded that she had contacted three legal clinics and none of them could assist her. She stated she could not afford to retain a legal representative during this time however her father had recently agreed to pay her legal fees.
14. The Landlord was opposed to the adjournment request. I noted the parties agreed the Tenant was no longer living in the rental unit so the alleged rent arrears were no longer accumulating. I found this limited the prejudice to the Landlord. I also found it would be prejudicial to the Tenant to force her to proceed when she had shown diligence in obtaining legal representation for the hearing.

15. I adjourned the rehearing of the Landlord's application for the reasons the Tenant stated. I found she had made reasonable efforts to obtain representation and I accept her submissions that she was now in a position to retain someone herself and not rely on a legal clinic. I also adjourned the file due to the health conditions of the Tenant, which in my view seemed serious.
16. I explained to the Tenant that the next hearing date will again be peremptory on her to proceed. She will have to ensure that any legal representation is available on the next date.
17. I also explained to the Tenant that she will be ordered to resubmit her evidence in accordance with the Board's Practice Direction on evidence to ensure the hearing proceeds in an expeditious manner.

It is ordered that:

1. The Tenant's request to review order LTB-L-024132-22, issued on January 16, 2023, is granted.
2. Order LTB-L-024132-22, issued on January 16, 2023 is cancelled.
3. The rehearing of the Landlord's application is adjourned to a date to be set by the Board. This next hearing date is peremptory on the Tenant to proceed.
4. If the Tenant intends to seek legal advice, she shall seek and obtain that advice prior to the next hearing date.
5. If the Tenant intends on retaining legal representation for the next hearing date, she shall ensure her choice of legal representative is available for the hearing.
6. At least 10 days before the next hearing date, the Tenant shall resubmit her evidence to the Board and the Landlord in accordance with the Board's Practice Direction on evidence including:
 - All documents, photographs and other items provided to the other parties and the LTB as evidence must:
 - a. be readable;
 - b. have consecutively numbered pages; and
 - c. include a list or table of contents identifying each item in order, and by page number, if more than one item is being submitted.
7. At least 5 days before the next hearing date, the Landlord shall give to the Tenant and file with the Board a copy of any documents, receipts, photographs, recordings, or any other submissions they intend to rely on at the hearing. The Landlord shall also comply with the Board's Practice Direction on Evidence as set out in paragraph 6 of this order.

8. Pursuant to Rule 19.7 a party who fails to comply with this order may not be permitted to rely on evidence that was not properly disclosed.

October 16, 2023

Date Issued

John Cashmore

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.