



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

Citation: Schver v Varawalla, 2023 ONLTB 57499

Date: 2023-08-15

File Number: LTB-T-073214-22-RV

In the matter of: 806, 238 Doris Avenue
Toronto Ontario M2N6W1

Between: Fabio Schver Tenant
Giovanna Schver

And

Arfakhasad Varawalla Landlord

Review Order

Fabio Schver and Giovanna Schver (the 'Tenant') applied for an order determining that Arfakhasad Varawalla (the 'Landlord') gave a notice of termination in bad faith.

This application was resolved by order LTB-T-073214-22 issued on August 1, 2023.

On August 12, 2023, the Landlord requested a review of the order and that the order be stayed until the request to review the order is resolved.

A review of the Landlord's request to review was conducted without a hearing.

Determinations:

1. The hearing of the application took place on April 27, 2023. The Landlord, the Landlord's spouse, the Landlord's legal representative, the Tenants and the Tenants' support person attended the hearing.
2. The final order being reviewed is a T5 application where the Tenants alleged the Landlord terminated the tenancy in bad faith. The Landlord gave the Tenants an N12 Notice to terminate the tenancy for their own use. The Tenants' application was granted.
3. The Landlord filed this request to review alleging the following serious errors:
 - (a) The hearing member erred in finding that the tenancy ended by way of an N12 Notice, as opposed to by way of agreement.
 - (b) The hearing member erred in failing to consider the six months the unit was vacant before it was re-rented, which rebuts the presumption of bad faith.
 - (c) The hearing member erred in finding that the Landlord stated he would likely need to move into a larger unit.



- (d) The hearing member erred in not deducting the compensation already paid to the Tenants from the remedies ordered.
 - (e) The hearing member erred in failing to consider the distance between the previous and current unit in awarding compensation for the difference in rent.
 - (f) The hearing member erred in awarding an abatement of rent.
4. For the reasons set out below, the Landlord's request to review is denied.

Terminated by way of Agreement

5. The Landlord submits that the hearing member erred in finding the tenancy ended by way of an N12 Notice. The Landlord alleges that there was a signed agreement to terminate the tenancy and the Tenants vacated the unit pursuant to this agreement. The agreement was signed on June 28, 2020, sets out that the Tenants will receive compensation, an additional amount for the unused days in the rental unit, and an amount for the return of the keys. The hearing member addressed this argument as a preliminary issue and found that the Tenants vacated the rental unit pursuant to the N12 Notice.
6. The Board's review process is not an opportunity for a person to re-argue an application that has been finally determined. Although the Landlord disagrees with the presiding hearing member's finding, that the Tenants vacated pursuant to the N12, the hearing member was in the best position to admit and consider the parties' relevant evidence and submissions, and to make findings of credibility.
7. The final order sets out in sufficient detail the reasons why the hearing member arrived at her conclusions. The order, for example, identifies the evidence and legal arguments with respect to the agreement to terminate the tenancy. The hearing record and final order shows that the hearing member considered the date the Landlord gave the N12 Notice, the date the agreement was signed and the date the Tenants vacated the rental unit. The hearing member found that the Tenants vacated pursuant to the N12 because she found that the subsequent agreement was just a confirmation of amounts paid to end the tenancy in accordance with the N12 and the agreement was signed after the Tenants vacated. The order is therefore an adequate order, and it is evident that the hearing member's findings of fact are rationally connected to the evidence adduced during the hearing. Put differently, the hearing member's findings of fact are not capricious.

Finding on Landlord moving in

8. The Landlord alleges that the hearing member erred in finding that when the Landlord was questioned about how his family could have comfortably occupied the rental unit which contains two bedrooms, he stated he would likely move to a larger unit as his children could not share a bedroom. In the request to review, the Landlord states that it was not difficult for them to move into their two-bedroom unit.
9. I listened to the hearing recording in its entirety. In response to the question posed by the hearing member whether the intent was for the children to share a bedroom, the Landlord's wife's testimony was that they would likely have to move to a three-bedroom unit. While the hearing member stated in the final order that this was the Landlord's testimony, this error is



not material. Therefore, I do not find this was an unreasonable finding of fact. A review is not an opportunity for the Landlord to change the way the case was presented.

Vacant Unit

10. The Landlord submits that the hearing member erred in failing to consider the length of time the unit was vacant before it was re-rented in her determination that the Landlord terminated the tenancy in bad faith. Specifically, the Landlord submits that the unit was vacant for six months before it was re-rented. The Landlord submits that this period of vacancy shows there was a change in circumstances to rebut the finding of bad faith. By failing to consider this fact, the Landlord states that the hearing member was biased.
11. Administrative tribunals do not have to consider and comment upon every issue raised by the parties in their reasons.¹ The order need only provide sufficient reasons.
12. In my view, the hearing member provides sufficient reasons in the order for the determinations. The hearing member's determination that the Landlord terminated the tenancy in bad faith is based on several factors:
 - The Landlord's insufficient evidence to support that he intended to return to Canada.
 - The Landlord's request to increase the rent above the lawful amount.
 - The restrictions on travel between Dubai and Canada during COVID-19.
13. There is a logical connection between the decision and the evidence before the hearing member. The reasons, viewed in light of the record and submissions on relevant issues reasonably support the findings.² As there were adequate reasons for the finding of bad faith, I do not find the Landlord established bias. Therefore, I do not find there is a serious error in this regard.

Remedies

14. The balance of the request to review is about the remedies granted. The Landlord submits that the hearing member erred in not deducting the compensation already paid to the Tenants from the remedies ordered. Subsection 57(3) of the *Residential Tenancies Act, 2006* (the 'Act') does not require a hearing member to deduct compensation paid from any remedies ordered in a bad faith application. The Landlord also does not point to any relevant regulations, legislation or case law that requires this. Therefore, I do not find there was a serious error in the regard.
15. The Landlord also submits that the hearing member ought to have considered the distance between the previous and current unit in awarding an amount for the rent differential. Specifically, the Landlord submits that the Tenants chose a unit that is 35 km away from the current unit out of preference to be closer to friends and family and therefore, the amount awarded for the differential was unreasonable.

¹ See *Construction Labour Relations v. Driver Iron Inc.*, 2012 SCC 65, [2012] 3 S.C.R. 405, at para. 3.

² See: *R. v. R.E.M.*, 2008 SCC 51, [2008]. See also *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708.



16. It is evident from the final order that the hearing member considered the location of the two units. Paragraph 40 includes the location as one of the factors considered. The hearing member ultimately found that the requested rent differential should be granted as the size of the units were the same. As stated above, a hearing member is not required to articulate every argument advanced. The hearing member's exercise of discretion was rationally connected to the parties' evidence and submissions, and the exercise was therefore not unreasonable. Moreover, if the hearing member did not consider distance in her determination, which I find that she did, it is speculative only that distance alone would change the outcome.
17. Regarding the abatement of rent, the Landlord submits that the hearing member's decision to order rent abatement was unreasonable as the Tenants resided in the unit for this period and experienced no inconvenience. The final order makes a finding that 20% rent abatement for May and June 2020 due to the Landlord disingenuous intent and that the Tenants did not need to vacate the rental unit. I find that the final order contained adequate reasons and therefore, the exercise of discretion was not capricious. Although another hearing member may have exercised their discretion to award a different amount, the presiding member's decision is entitled to deference.
18. 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 and/or that the Landlord was not reasonably able to participate in the proceeding.

It is ordered that:

1. The request to review order LTB-T-073214-22 issued on August 1, 2023 is denied.
2. The order is confirmed and remains unchanged.

August 15, 2023
Date Issued

Camille Tancioco
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.