



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

Citation: Li v McMahon, 2023 ONLTB 53802

Date: 2023-07-31 **File Number:**
LTB-L-026161-22-RV

2023 ONLTB 53802 (CanLII)

In the matter of: 42 MILEY DR
Markham ON L3R4V3

Between: Ai Guo Li Landlord

And

Alyesha McMahon Tenant

Review Order

Ai Guo Li (the 'Landlord') applied for an order to terminate the tenancy and evict Alyesha McMahon (the 'Tenant') because:

- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was resolved by order LTB-L-026161-22 issued on May 30, 2023.

On June 14, 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 June 14, 2023, interim order LTB-L-026161-22-RV-IN was issued, staying the order issued on May 30, 2023.

This application was heard by videoconference on July 20, 2023.

The Landlord, the Landlord's legal representative, David Ciobotaru, and the Tenant attended the hearing. The Tenant consulted with tenant duty counsel before the hearing.

Determinations:



1. In the request to review the Tenant claimed that she was not reasonably able to participate in the proceedings because she did not receive the Notice of Hearing before the hearing which was held on January 25, 2023. The Tenant stated that she only received the Notice of Hearing two days after the hearing.
2. According to the Tenant, one of her neighbours brought the Notice of Hearing to her two days after the hearing. The Tenant could not recall the date that the neighbour brought the Notice of Hearing, nor did she know the name of the neighbour.
3. In cross-examination the Tenant conceded that she received the Landlord's disclosure package of January 13, 2023. In the letter sent to the Tenant on January 13, 2023, the Landlord's legal representative clearly set out that the hearing was on January 25, 2023.
4. That Tenant submitted that she did not see it.
5. The Board record shows that the Notice of Hearing was mailed to the Tenant on January 7, 2023.
6. There is no evidence in the Board record that the Tenant attempted to contact the Board about her missed hearing.
7. The Landlord submitted that the Tenant's request to review should be denied as the Tenant knew or should have known about the hearing because the Landlord informed the Tenant of the hearing held on January 25, 2023 in the letter dated January 13, 2023, which the Tenant said she had received.
8. The Landlord's position was that the Tenant's request to review was frivolous and vexatious. The Tenant did not file the request to review in a timely fashion, but waited until the Landlord had filed the eviction order with the Sheriff. The eviction was set for June 10, 2023, the Tenant filed her request to review on June 14, 2023. Moreover, the Tenant has not paid rent to the Landlord since April 2022, ever since the Landlord gave the Tenant the N12 Notice of Termination.
9. On the basis of the evidence and submissions before me, I am not satisfied that the Tenant was not reasonably able to participate in the proceeding. I say this because the Tenant's evidence as to when she found out about the hearing was rather vague. Moreover, Tenant did not provide any corroborating evidence to support her position that she was not aware of the hearing on January 25, 2023, such as, the testimony or affidavit from the neighbour who allegedly brought her the Notice of Hearing. In addition, the Tenant was provided with the date of the hearing by the Landlord's legal representative in the Landlord's disclosure package of January 13, 2023.
10. In *Q Res IV Operating GP Inc. v. Berezovs'ka* 2017 ONSC 5541 the court stated that lack of diligence in dealing with court proceedings is a reason for refusing to set aside an order where a party has failed to appear. In my view, the Tenant has not been diligent in dealing with this matter. Had the Tenant been diligent, and reviewed the Landlord's disclosure



package, she would have known about the hearing on January 25, 2023, even if she had not received the Notice of Hearing, as she had alleged.

11. As a result, the Tenant's request to review shall be denied.
12. The Tenant requested that the lifting of the stay of the eviction order be delayed because she had six small children. The Landlord opposed any delay in the lifting of the stay, as the Tenant has been given a Notice of Termination in April 2022 and she has not paid any rent to the Landlord since.
13. Considering all the circumstances, especially the Tenant's family situation, the stay of the eviction order shall be delayed to August 4, 2023. The Tenant was informed at the hearing that the request to review was denied, and that should any delay in the lifting of the stay be granted, it would be a very short one, in order to minimize any possible prejudice to the Tenant by an unexpected result of the hearing.

It is ordered that:

1. The request to review order LTB-L-026161-22 issued on May 30, 2023 is denied. The order is confirmed and remains unchanged.
2. The interim order issued on June 14, 2023, is cancelled. The stay of order LTB-L-02616122 is lifted on August 4, 2023.

July 31, 2023

Date Issued

Jana Rozehnal

Member, Landlord and Tenant Board

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