



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

Citation: Cheryl St James v David Jordan, 2023 ONLTB 52643

Date: 2023-07-19

File Number: LTB-L-080721-22-RV

In the matter of: 509 WILEY ST
THUNDER BAY ON P7C3N4

Between: Cheryl St James Landlords
Patrick St James

And

David Jordan Tenants
Patty Jordan

Review Order

Cheryl St James and Patrick St James (the 'Landlords') applied for an order to terminate the tenancy and evict David Jordan and Patty Jordan (the 'Tenants') because:

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

The Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was resolved by order LTB-L-080721-22 issued on June 12, 2023.

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

Determinations:

1. The hearing of this application took place on May 31, 2023. The Landlords, the Landlords' legal representative and the Tenants attended the hearing. The Landlords' application was dismissed.
2. The Landlords' application was dismissed pursuant to section 43(1) of the Act that requires that a notice of termination identify the rental unit for which the notice is given. In the request to review, the Landlords do not dispute that the Landlords live on the main floor and the Tenants live in the upper unit of the house. The hearing member made a finding that the Landlords' N12 Notice does not correctly identify the rental unit as the Upper Unit.
3. The Landlords submit that the hearing member made a serious error in dismissing the application for the N12 Notice not identifying the Tenants' unit number. They state:



- (a) The dwelling is a single-family home and there is no further designation.
 - (b) The parties know who the landlord and tenant are so there would be no confusion for sheriff enforcement.
 - (c) The Courts have determined that minor deviations are not to be seen as major flaws causing the complete matter to be quashed as fatally defective.
 - (d) A tribunal may at any stage of the proceeding make any amendment necessary if it appears that it is in any way defective in substance or in form.
4. For the reasons set out below, the Landlords' request to review is denied.
 5. The hearing member's finding of fact is that the N12 Notice did not properly identify the Tenants' unit. There is nothing in the record to support a determination that the hearing member applied improper principles in assessing the evidence introduced or that there was insufficient evidence before the Board to support its conclusions. For example, the hearing member considered the evidence that the Landlords reside in the same property as the Tenants, that the Landlords live on the main floor and the Tenants live in the upper unit. I would not interfere with the assessment of the evidence by hearing member of first instance, who had the opportunity of observing the witnesses and of hearing the evidence in its totality.
 6. I listened to the hearing recording in its entirety. The Landlords' claim that the dwelling is a single-family home was considered by the hearing member. When the Landlords' legal representative raised this argument, the hearing member commented on the consequence if the parties shared a kitchen and bathroom, and that where there are two separate units, they must be identified.
 7. While the final order does not make note of the Landlords' particular argument, the hearing record shows that the hearing member's decision was supported by the hearing application and record. The Court, in discussing the duty of a trial judge to give reasons, stated that, "Reasons acquire particular importance when a trial judge is called upon to address troublesome principles of unsettles law, or to resolve confused and contradictory evidence on a key issue, unless the basis of the trial judge's conclusion is apparent from the record, even without being articulated [emphasis added]."¹ I do not find there was a serious error as the record is clear that the hearing member made a determination after considering the parties' submissions.
 8. The hearing record also does not show that the Landlords advanced the balance of the arguments. As such, it was not a serious error for the hearing member to not consider arguments not put forward. A review is not an opportunity to change the way a case is presented.
 9. Arguments (c)-(d) pertain to whether the hearing member made a serious error in law. Pursuant to Interpretation Guideline 8, the LTB will not exercise its discretion to review an order interpreting the Act unless the interpretation conflicts with a binding decision of the Courts or is clearly wrong and unreasonable. The Landlords have not referenced any binding Court decision that would conflict with the hearing member's interpretation of section 43. Furthermore, I find that the hearing member's interpretation is not clearly wrong or

¹ *R v. Sheppard*, 2022 SCC 26 at para 55.6.



unreasonable. The evidence put before the hearing member is that the Tenants reside upstairs. As such, it was reasonable to find that the Tenants occupy a separate unit and therefore, the rental unit should have been identified. This is consistent section 43.

10. 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 Landlords were not reasonably able to participate in the proceeding.

It is ordered that:

1. The request to review order LTB-L-080721-22 issued on June 12, 2023 is denied.
2. The order is confirmed and remains unchanged.

July 19, 2023
Date Issued

Camille Tancioco
Member, Landlords and Tenants 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.