



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

Citation: Askari v Brito, 2023 ONLTB 49466

Date: 2023-07-12

File Number: LTB-L-058096-22-RV

In the matter of: Main floor, 261 FIORI DR
WOODBIDGE ON L4L5N7

Between: Sara Askari Landlord

And

Jorge Eduardo Brito Tenants
Maribel Arce

Review Order

Sara Askari (the 'Landlord') applied for an order to terminate the tenancy and evict Jorge Eduardo Brito and Maribel Arce (the 'Tenants') 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-058096-22 issued on April 5, 2023 .

On April 5, 2023, the Tenants filed a requested a review of the order and that the order be stayed until the request to review the order is resolved. The Tenants alleges that the order contains a serious error.

On May 23, 2023, interim order LTB-L-058096-22-RV-IN was issued, staying the order issued on April 5, 2023.

This application was heard in by videoconference on June 19, 2023.

The Landlord and the Landlord's Legal Representative Ilan Shingait and the Tenants and Tenant's Legal Representative James Dondo attended the hearing.

Determinations:

1. The Tenant's Legal Representative Mr. Dondo submitted that Member Tancioco did not allow him to refer to documents submitted to the Landlord approximately 5-6 days before



the hearing. Mr. Dondo stated that the evidence exchange rule is not to be interpreted in a technical matter.

2. The Landlord's Legal Representative Mr. Shingait stated he was not served by Mr. Dondo with the potential evidence and did not receive any email from Mr. Dondo. Mr. Shingait stated that Mr. Dondo knew he was on record of this matter and could have asked for an adjournment before the hearing, this was never done.
3. Mr. Dondo admitted it was an oversight on his part that Mr. Shingait did not receive his email about potential evidence. I will note that Mr. Dondo failed to present any evidence such as a transcript or hearing recording to establish that the Member erred in her findings. Even in his own admission, Mr. Dondo failed to email Mr. Shingait. Therefore, I find there was no serious error made.
4. Mr. Dondo submitted that Member Tancioco erred in her interpretation of section 43 of the *Residential Tenancies Act*, as the Member did not consider that the Tenant was served with 4 N12 notices of termination in a month and a half period and the rental unit address was incorrect.
5. When I review the order, the Member address this issue in paragraph 1,2, and 3, and gave her reasons why she found the N12 valid. Paragraph 1 "The tenants submit the N12 Notice is invalid as it identifies an incorrect address..."261 FIORI DRIVE, MAIN FLOOR APARTMENT, WOODBRIDGE ONTARIO, L4L 5N7. The Tenants submit that they are entitled to use of the entirety of the residential complex and therefore, the Notice is invalid as it identifies that the Tenants only reside on the main floor". Paragraph 2 describes section 43 of the *Act*. Paragraph 3 "In accordance with section 43, the N12 Notice identified the rental unit, being 23 Fiori Drive. The Tenants did not submit any authority for a notice of termination being invalid for having additional information. Therefore, I find that the N12 Notice is valid".
6. I find the Member gave a fulsome analysis to how she found the N12 Notice valid, the Tenant may disagree with the decision however failed to present any evidence to refute the Members analysis.
7. Mr. Dondo submitted a business search stating the Landlord had a few businesses listed to the address of the rental unit. He later agreed this was a moot point.
8. The Tenants alleged that the Landlord never paid compensation equal to one months rent as required when serving them with an N12 Notice of Termination ('N12 notice). Mr. Dondo submits that when the Tenant went to cash the cheque ,the cheque was returned for "no chequing privileges".
9. The Landlord's Legal Representative Mr. Shingait stated that Mr. Dondo could have also contacted him before the hearing to discuss what happened with the cheque, but instead Mr. Dondo remained silent until the hearing date. He described this bank account open specific to receive this cheque.
10. I have reviewed the Order and this issue was already addressed at the first hearing. Member Tancioco address the compensation cheque issue in paragraphs 12 and 13 of her order.



11. In the Order Member Tancioco stated in paragraph 12 ..”the Tenant MS, stated that when she received the cheque in October 2022, she did not cash it. On March 7, 2023, MA attempted to cash the cheque and it was returned for “no chequing privileges”. Paragraph 13, “It was uncontested that the Landlord provided the Tenants with a cheque dated October 23, 2022, after the Tenants deposited rent into the Landlord’s account. The fact that the Tenants waited until a week prior to the hearing to deposit the compensation does not mean the Landlord failed to meet her obligation requirement. To allow a tenant to refuse to accept compensation to thwart a landlord’s application would be unreasonable. In my view, the Landlord paid the Tenants compensation”.
12. I find that the Member gave a fulsome analysis of the required compensation in her order. Just because the Tenant disagrees with her finding, there is no error in the analysis of compensation nor was any evidence presented by the Tenant to refute otherwise.
13. The other two issues Mr. Dondo attempted to raise at this request to review where about potential of 2 other N12 notices given. I find it was moot as Mr. Dondo did not show any evidence to support this claim. 2nd was the issue about the Landlord being homeless or living somewhere else. I find this evidence was available at the hearing and Mr. Dondo failed to cross examine the Landlord at that time.
14. A request to review is not an opportunity for a party to re-litigate or reargue their position in the hopes of a more favorable outcome. Nor is it an opportunity to present evidence and submissions that could and should have been presented at the hearing. This is the case in this request to review.
15. The Tenants failed to establish or identify any serious error in the order or Board’s proceeding. I am not satisfied that there is a serious error in the order or that a serious error occurred in the proceedings. The request to review is denied.

It is ordered that:

1. The request to review order LTB-L-058096-22 issued on April 5, 2023 is denied. The order is confirmed and remains unchanged.
2. The interim order issued on May 23, 2023 is cancelled. The stay of order LTB-L-058096-22 is lifted.

July 12, 2023
Date Issued

Anthony Bruno
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.