



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

Citation: 1000085600 Ontario Limited v. Walker, 2023 ONLTB 50744

Date: 2023-07-11

File Numbers: LTB-L-012098-23-RV
LTB-T-001870-23-RV

In the matter of: 2, 2866 KEELE ST
NORTH YORK ON M3M2G8

Landlord

Between: 1000085600 Ontario Limited

And

Vivette Walker

Tenant

And

Lingyan Lu

Landlord's Agent

And

Wayne Michael McCalla

Alleged Unauthorized
Occupant

Review Order

1000085600 Ontario Limited (the 'Landlord') applied for an order to terminate the tenancy and evict the Vivette Walker (the 'Tenant') and Wayne Michael McCalla (the 'Alleged Unauthorized Occupant'). The Landlord also applied for compensation for the use of the rental unit.

The Tenant applied for an order determining that the Landlord and the Landlord's Agent entered the rental unit illegally; substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household; and harassed, obstructed, coerced, threatened or interfered with the Tenant.

The applications were resolved by order LTB-L-012098-23 & LTB-T-001870-23, issued on June 8, 2023 and amended on June 22, 2023.



On July 7, 2023, the Landlord requested a review of Board order LTB-T-001870-23. Since the applications have not been severed, this review order includes Board file number LTB-L-012098-23.

A preliminary review of the review request was completed without a hearing.

Determinations:

1. 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 proceeding.
2. The Landlord disagrees with the presiding Board Member's finding of fact, that the Landlord's agent entered the rental unit illegally on November 27, 2022. The finding, however, is rational and is entitled to deference.
3. The June 8, 2022 Board order shows there was ample evidence introduced at the May 31, 2023 hearing for the presiding Member to find, on a balance of probabilities, that the Landlord's agent entered the rental unit illegally. The order, for example, cites the Alleged Unauthorized Occupant's sworn testimony of the Landlord's Agent's actions and evidence of an invalid notice of entry for the period November 25-27, 2022.
4. The Member's finding of the Landlord's Agent illegal entry into the rental unit is consistent with the evidence introduced at the hearing. The finding is therefore rational. The Member also makes findings of credibility and determines that the Alleged Unauthorized Occupant's testimony was the most reliable evidence of the illegal entry. By identifying relevant factors, such as evidence that the Landlord's Agent had previously acted on the unlawful notice of entry by attending the rental unit on November 25, 2022, the order shows that the Member correctly considered the totality of the parties' relevant evidence when determining their credibility. The Member's assessment of credibility is therefore entitled to deference.
5. The Landlord included with its review request audio recordings of an alleged telephone conversation as evidence that the Landlord's Agent did not enter the rental unit illegally on November 27, 2022. The Landlord did not adequately explain, however, why the material was not introduced at the May 31, 2023 hearing.
6. In *Wang v. Oloo*, 2023 ONSC 1028 (Div. Ct.) (CanLII), the Divisional Court affirmed at paragraph 9 that a party must establish that evidence was not reasonably available at the time of the original hearing. Without a reasonable explanation for failing to introduce the evidence at the May 31, 2023 hearing, I find the Landlord has not established good cause to admit and consider the audio recordings at this time.
7. Since the Landlord has not shown that the Board Member erred when he determined that the Landlord's Agent entered the rental unit illegally on November 27, 2022, or that it is appropriate in the circumstances to admit and consider evidence that should have been introduced at the May 31, 2023 hearing, I conclude that the Landlord's request to review the order must be denied.



It is ordered that:

1. The request to review order LTB-L-012098-23 & LTB-T-001870-23, issued on June 8, 2023 and amended on June 22, 2023, is denied. The order is confirmed and remains unchanged.

July 11, 2023

Date Issued

Harry Cho

Vice Chair, 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.