



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

Citation: Miller v Arguelles, 2023 ONLTB 49611

Date: 2023-07-07 **File Number:**
LTB-L-040309-22-RV

In the matter of: 944 PREMIER RD
NORTH BAY ON P1A2H5

Between: John Miller Landlords
(Estate of) Ann Miller

And

Suzanne Arguelles Tenant

Review Order

John Miller and the (Estate of) Ann Miller (the 'Landlords') applied for an order to terminate the tenancy and evict Suzanne Arguelles (the 'Tenant') 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 Tenant remained in the unit after the termination date.

This application was resolved by order LTB-L-040309-22 issued on June 5, 2023.

On July 4, 2023, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

Determinations:

1. This is a request to review for an N12-based L2 application. The Landlords served the N12 Notice on the Tenant as the Landlord required possession of the rental unit for the purpose of the residential occupation of the Landlord, Ann Miller's, child, Suzanne Miller. John Miller, the other named Landlord, is a child of Ann Miller. The Landlord's application was granted.
2. The Tenant filed the request to review based on the following alleged serious errors:



- (a) The hearing member erred in finding that a Landlord was the Estate of Ann Miller;
- (b) The hearing member erred in failing to make a determination with respect to the Executor/Trustee of the Estate;
- (c) The hearing member erred in terminating the tenancy as the person requiring the unit is John Miller's sibling, not child.
- (d) The hearing member erred in allowing the application to proceed although the Landlords did not disclose all previous N12 Notices;
- (e) The hearing member erred in failing to consider refusing eviction pursuant to section 83 of the *Residential Tenancies Act, 2006* (the 'Act').

3. For the reasons set out below, the Tenant's request to review is denied.

Estate of Ann Miller

4. The Tenant submits that the hearing member erred in finding that the Landlord was the Estate of Ann Miller. The Tenant refers to section 48 and section 2 regarding the definitions of landlord and person:

48(5) This section does not authorize a landlord to give a notice of termination of a tenancy with respect to a rental unit unless,

(a) the rental unit is owned in whole or in part by an individual; and (b) the landlord is an individual.

2 "landlord" includes,

(a) the owner of a rental unit or any other person who permits occupancy of a rental unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit,

(b) the heirs, assigns, personal representatives and successors in title of a person referred to in clause (a), and

(c) a person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent; ("locateur")

...

"person", or any expression referring to a person, means an individual, sole proprietorship, partnership, limited partnership, trust or body corporate, or an individual in his or her capacity as a trustee, executor, administrator or other legal representative; ("personne").

5. The Tenant submits that an estate cannot be named as a landlord as only a person in their capacity as an executor or estate trustee can be named as a landlord. Therefore, the decision to permit an estate to obtain an eviction order is an error in law.



6. The issue with the Tenant's argument is that the estate was not seeking termination of the tenancy at the time the N12 Notice was served. Paragraph 4 of the final order states that Ann Miller passed away on December 7, 2022, which is after the N12 was served and after the application was filed but before the hearing. The Tenant's request to review does not refute this fact. As such, at the time the N12 was served, it was Ann Miller, the Landlord, requesting termination of the tenancy for their child's own use and not the estate. As Ann Miler was a person at the time the N12 Notice was served, there is no error in allowing the application to proceed on this basis.
7. The Tenant also submits that the hearing member erred in not deciding who was the executor or trustee of the estate. The Tenant states that the estate cannot be a landlord and therefore, the hearing member ought to have decided who was the executor or trustee because a person appointed in these roles can be a landlord pursuant to section 2 of the Act. As found above, Ann Miller was a landlord at the time of the N12 Notice was served. Therefore, she was entitled to serve the N12 Notice on the Tenant. As such, the hearing member was not required to decide who was the executor or trustee.
8. The fact that Ann Miller has since passed away and the hearing member amended the application to reflect her estate is immaterial as Ann Miller was not the person asserting that she will reside in the rental unit. The hearing member found that Suzanne Miller genuinely intended to occupy the rental unit for a period of at least one year. The hearing member considered the evidence and submissions of both parties in making her conclusion. The hearing member's decision was supported by adequate reasons, for example, she considered Suzanne Miller's current living situation and her employment status and the Tenant's submissions as to why they believed Suzanne Miller was not going to be living in the rental unit. The hearing member's determination is rationally connected to the evidence adduced during the hearing.

Landlord's Child's Own Use

9. The Tenant also submits that the member erred in granting the application as the person purporting to require the rental unit in good faith is the sibling of the Landlord, John Miller, not child. Section 48 of the Act specifies that an N12 Notice could only be served for the use of the landlord, the landlord's spouse, a child or parent of the landlord or a child or parent of the spouse. As section 48 does not allow for siblings, the Tenant submits it was an error in law for the application to proceed.
10. Paragraph 2 of the final order specifies that the child who purports to require the unit is Ann Miller's daughter. The Tenant did not refute this fact. As found above, Ann Miller was a Landlord. As such, it was not an error in law for the application to proceed.



Disclosure of Previous N12s

11. The Tenant submits that the hearing member erred in accepting the application despite the Landlord failing to disclose all previous N12 Notices served on the Tenant. The Tenant relies on subsection 71.1(3) and (4) for this position which states:

(3) A landlord who, on or after the day subsection 11 (2) of Schedule 4 to the *Protecting Tenants and Strengthening Community Housing Act, 2020* comes into force, files an application under section 69 based on a notice of termination given under section 48, 49 or 50 shall, in the application,

- (a) indicate whether or not the landlord has, within two years prior to filing the application, given any other notice under section 48, 49 or 50 in respect of the same or a different rental unit; and
- (b) set out, with respect to each previous notice described in clause (a),
 - (i) the date the notice was given,
 - (ii) the address of the rental unit in respect of which the notice was given,
 - (iii) the identity of the intended occupant in respect of whom the notice was given if the notice was given under section 48 or 49, and
 - (iv) such other information as may be required by the Rules. 2020, c. 16, Sched. 4, s. 11 (2).

Non-compliance with subs. (3)

(4) The Board shall refuse to accept the application for filing if the landlord has not complied with subsection (3). 2020, c. 16, Sched. 4, s. 11 (2).

12. The Tenant submits that the Act requires the Board to refuse to accept the application if the Landlord fails to comply with subsection 71.1(3). As the Landlord did not, the hearing member did not have the authority to proceed on the application.

13. A similar issue was recently raised in application TNL-36369-21. Vice-Chair Ian Speers addressed the purpose of Section 71.1(3) of the Act as follows:

...the apparent intention of this statutory amendment is to allow both tenants and the Board to observe a pattern in a landlord's conduct of using N12 and N13 notices, I believe that the disclosure of all N12 and N13 notices, valid or not, is the legislative intent of the provision. This legislative intent is underscored by the contemporaneous proclamation of subsection 72(3) of the Act, which expressly contemplates that "the



Board may consider any evidence the Board considers relevant that relates to the landlord's or purchaser's previous use of notices of termination under section 48, 49 or 50."

...

The Act does not provide a clear consequence for a landlord's failure to meet their disclosure obligation under subsection 71.1(3). Subsection 71.1(4) provides that "The Board shall refuse to accept the application for filing if the landlord has not complied with subsection (3)", but does not expressly address what happens when the Landlord has completed the appropriate section of the application, but has omitted one or more N12 or N13 notices. The position of the Tenant's representative is that the application ought to be dismissed based on the defect.

...

While I would accept that, in certain circumstances, the appropriate result for non-compliance with subsection 71.1(3) might be the dismissal of the application, in the current instance I am satisfied that the Tenants in fact had actual notice of the previous N12 notices. One was served upon them, the other on their neighbour. From a procedural fairness standpoint, the Tenants in this application are not prejudiced, as they had full knowledge of the Landlord's service of prior N12 notices. They are not prejudiced in their ability to investigate any patterns in the Landlord's use of N12 or N13 notices of termination, nor are they prejudiced in their ability to bring any such findings before the Board should they wish to argue, under subsection 72(3) of the Act, that the pattern undermines the professed good faith of the notice of termination.

14. While not binding on me, TNL-36369-21 provides a persuasive framework for interpreting subsections 71.1(3) and (4). In my view, the hearing member's decision to allow the application to proceed despite the Landlord omitting an N12 Notice was not unreasonable as she considered the prejudice to the Tenant in making this determination.
15. Like in TNL-36369-21, the Landlord in this matter disclosed some of the N12 Notices but not all. In addition, like Vice Chair Ian Speers did in TNL-36369-21, the hearing member considered the prejudice to the Tenant. The hearing member addressed this issue in paragraphs 13 – 17 and made the determination that it was not unfair to proceed. The order sets out in sufficient detail the reasons why the hearing member arrived at her conclusions. The order, for example, identifies that the Tenant was aware of the N12 Notice not disclosed in the application. The hearing member's determination is rationally connected to the evidence adduced during the hearing. As such, the hearing member's decision was not unreasonable.

Refusal of Eviction

16. The Tenant submits that the hearing member ought to have considered refusing eviction pursuant to subsection 83(1)(a).



17. Subsection 83(1) states as follows:

Upon an application for an order evicting a tenant, the Board may, despite any other provision of this Act or the tenancy agreement,

- (a) refuse to grant the application unless satisfied, having regard to all the circumstances, that it would be unfair to refuse; or
- (b) order that the enforcement of the eviction order be postponed for a period of time. 2006, c. 17, s. 83 (1).

18. The hearing record supports that the hearing member considered all the circumstances and decided to postpone termination. The hearing member made this determination after hearing submissions regarding the Tenant's health, her income and the prejudice to the Landlord in delaying termination of the tenancy.

19. Although the order is silent on the hearing member's decision not to refuse to grant the application, she turned her mind to this issue as reflected in the hearing record. The hearing member considered the parties' evidence and submissions regarding whether relief should be granted. 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 As such, I do not find there was a serious error in the order in failing to address refusing to grant the application as the record is clear

that the hearing member made a determination to postpone after considering the parties' submissions.

20. 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 Tenant was not reasonably able to participate in the proceeding.

It is ordered that:

1. The request to review order LTB-L-040309-22 issued on June 5, 2023 is denied.
2. The order is confirmed and remains unchanged.

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



July 7, 2023

Date Issued

Camille Tancioco

Member, Landlords and Tenant Board

15 Grosvenor Street, Ground Floor Toronto
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.