



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

Citation: LES IMMEUBLES MAJE v Barton, 2023 ONLTB 46833

Date: 2023-07-05

File Number: LTB-L-044125-22-RV

In the matter of: 2, 593 Main
Hawkesbury ON K6A1B3

Between: LES IMMEUBLES MAJE Landlord

And

Tracy Barton Tenant

Review Order

On June 2, 2023, the Landlord requested that the Landlord Tenant Board ('Board') order LTB-L-044125-22, issued on May 3, 2023, be reviewed.

Determinations:

1. In the Landlord's Request to Review an Order, it alleges that the Board's order contained a serious error. The Landlord argues that the Vice Chair who heard the matter made an unreasonable or incorrect finding and did not correctly consider the relevant evidence.
2. The Landlord took issue with the Order:
 - Not referring to each allegation detailed in its Notice to End Your Tenancy For Causing Serious Problems in the Rental Unit or Residential Complex ('N7 Notice'), specifically those of July 25 to August 7, 2022, and the evidence related to those issues.
 - Not fully addressing the Tenant's alleged wilful damage to the rental unit or residential complex mentioned in the N7.
 - Making an adverse finding regarding the Landlord's credibility related to providing video footage that did not exist.
 - Not understanding, addressing and correctly applying the evidence of the Landlord's Agent, Ryan Laroque.
3. The Landlord relies on the Board's Review of an Order: Interpretation Guideline 8 ('Guideline 8') and Board Interim Order TEL-00268-19-RV-IN, dated September 12, 2019. The Landlord requests that the Request for Review be granted and that the Landlord's application be reheard by a different Board member.

4. Guideline 8 provides the Board with the ability to grant a review hearing when it is satisfied that the original hearing order contains a serious error. Under the heading of Guideline 8, “Grounds for Review: Serious Error”, it states:

“Serious error includes:

- *An error of jurisdiction. For example, the order relies on the wrong section of the RTA or exceeds the LTB's powers. This issue need not have been raised in the original hearing;*
- *A procedural error which raises issues of natural justice;*
- *An unreasonable finding of fact on a material issue which would potentially change the result of the order;*
- *New evidence which was unavailable at the time of the hearing and which is potentially determinative of one or more central issues in dispute;*
- *An error in law. The LTB will not exercise its discretion to review an order interpreting the RTA unless the interpretation conflicts with a binding decision of the Courts or is clearly wrong and unreasonable; and ,*
- *An unreasonable exercise of discretion which results in an order outside the usual range of remedies or results and where there are no reasons explaining the result.”*

5. The Landlord argues that the Board made:

- *An unreasonable finding of fact on a material issue which would potentially change the result of the order;*

6. Under the heading “errors of fact”, it states:

“A request to review based on an alleged error of fact must include specific details of the alleged error and explain how a different finding of fact would change the result.

The original hearing Member's findings of fact are entitled to considerable deference. A request will not be granted simply because the reviewing adjudicator might have come to a different conclusion about the evidence. Even where it finds a factual error the LTB may not exercise its discretion to review if the error is trivial, does not relate to a material issue in dispute or would not change the result.

The LTB must be satisfied that there appears to be no rational connection between the findings of fact and the evidence in the original hearing.”

7. Based on the above, the Hearing Member’s findings of fact are entitled to considerable deference or respect. The Landlord must persuade me that there appears to be no rational connection between the Hearing Member’s findings of fact and the evidence in the original hearing.
8. However, it is also accepted and settled law that a serious error for a decision-maker includes ignoring relevant evidence that is material to the issues in dispute.

9. I directed my attention to the specific points of the recording the Landlord relied upon and reviewed the entirety of the Board's records, including listening to the recordings from all three days of the hearing to ensure I was privy to the entire context of the hearing. After reviewing the hearing recordings, I must respectfully disagree with the Landlords' arguments and find that the Board did not make a serious error that would have resulted in a different outcome.
10. I agree with the Landlords submissions that the Hearing Order contained some errors, such as noting that the Landlord's Agent, Ryan Larocque ('RL'), did not witness "any of the activities that are alleged" as seen in paragraph 10 of the Hearing Order.
11. I also find that the Hearing Order did generally address each allegation detailed in the N7, specifically those of July 25 to August 7, 2022, as the Hearing Member addressed the Landlords' arguments and evidence as a whole and found most of it unpersuasive as noted in paragraphs 26 to 30.
12. I also note that Hearing Members are not required to address every piece of evidence put before them but will refer to the evidence that the Member finds relevant to the issues in dispute.
13. The crux of the Board's issue that was before the Board did not relate to RL's evidence not being understood, the adverse findings concerning RL's credibility, and the video footage and a negative inference, but rather, that the Landlords have not shown, based on a balance of probabilities, that the Tenant's behaviour amounted to a serious impairment of safety to the Landlords or other Tenants in the residential complex.
14. I find many of the issues raised by the Landlords' and the alleged errors of facts, including, the issues relating to the Tenant's Probation Office fall into this category, and that the Tenant's criminal behaviour did not have an impact on the Board's findings that the Landlords had not met their evidentiary burden.
15. I find that the Hearing Member focusing his analysis properly on the more material issues in deliberation. Though there were some factual errors, as noted above, the Hearing Member errors were not determinative of the hearing findings and process. Instead, I agree that the Hearing Member primarily reliance on the relevant evidence was appropriate and within the Board's jurisdiction. I that upon my review of the Board's record, that the Hearing Member's acted appropriately in determining the issues in dispute. Therefore, I find the Hearing Member's reliance on the relevant evidence was appropriate in the circumstances.
16. In terms of the Landlords' issue of the Hearing Member not fully addressing the Tenant's alleged wilful damage to the rental unit or residential complex mentioned in the N7, I must respectfully disagree with its position. I note that paragraphs 32 to 33 address the alleged damages, the claims amount to replace the property and that the Landlords had received compensation for the damages and withdrew the compensation claim.
17. Again, I see a rational connection between the findings of fact and the evidence in the original hearing and the Hearing Member's findings. Though the Hearing Member did not

specifically state that the Landlords could not pursue its request for eviction based on the damage claim when reading the decision that this was the Member's finding

18. Therefore, for the reasons above, the Landlords' Request to Review is denied, as the Board did not make a serious error that would have resulted in a have changed the result.

It is ordered that:

1. The Request to Review Order LTB-L-044125-22, issued on May 3, 2023, is denied. This order is confirmed and remains unchanged.

July 5, 2023

Date Issued

Stephanie Kepman

Member, 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.