



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

Citation: Davis Properties INC v Monique (Nikki) Plante, 2023 ONLTB 49457

Date: 2023-07-04

File Number: LTB-L-070532-22-RV

In the matter of: UNIT B, 453 Ferguson Avenue
HAILEYBURY ON P0J1K0

Between: Davis Properties INC Landlord

And

Monique (Nikki) Plante Tenant

Review Order

Davis Properties INC (the 'Landlord') applied for an order to terminate the tenancy and evict Monique (nikki) Plante (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-070532-22 issued on June 5, 2023.

On June 30, 2023, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

A preliminary review of the Tenant's review request was conducted without a hearing.

Determinations:

1. The request to review is based on a serious error. The Tenant alleges that the hearing member refused to consider her maintenance issues in response to the Landlord's application. The Tenant submits that the hearing member ought to have considered all of her circumstances for why she did not appropriately file her maintenance issues.
2. The hearing recording shows that the hearing member made a finding of fact that the Tenant's explanation for not filing the maintenance issues prior to the hearing was unreasonable. The hearing member stated that he made this finding after considering the documentation regarding when the Notice of Hearing was received and that the Tenant received the N4 prior to the hearing.
3. Section 82 of the *Residential Tenancies Act, 2006* (the 'Act') states that:
 - (1) At a hearing of an application by a landlord under section 69 for an order terminating a tenancy and evicting a tenant based on a notice of termination under section 59, the Board shall permit the tenant to raise any issue that could be the subject of an application made by the tenant under this Act if the tenant,



- (a) complies with the requirements set out in subsection (2); or
 - (b) provides an explanation satisfactory to the Board explaining why the tenant could not comply with the requirements set out in subsection (2). 2020, c. 16, Sched. 4, s. 16.
- (2) The requirements referred to in subsection (1) are the following:
- 1. The tenant shall give advance notice to the landlord of the tenant's intent to raise the issue at the hearing.
 - 2. The notice shall be given within the time set out in the Rules.
 - 3. The notice shall be given in writing and shall comply with the Rules.

4. The Board's Rules of Procedure state:

9.4 Unless the LTB has directed or ordered otherwise, a tenant who intends to raise issues under sections 82(1) or 87(2) of the RTA during a hearing for a landlord's application about rent arrears shall provide the other parties and the LTB with the following at least 7 days before the scheduled CMH or hearing:

- 1. a written description of each issue the tenant intends to raise; and
- 2. a copy of all documents, pictures and other evidence that the tenant intends to rely upon at the hearing.

19.5 A tenant who fails to provide the LTB and other parties with a written description of each issue they intend to raise at the hearing as required in Rule 19.4 shall not be permitted to raise issues under sections 82(1) or 87(2) of the RTA during a hearing for a landlord's application about rent arrears unless the LTB is satisfied that the tenant could not comply with the requirements.

5. It was undisputed that the Tenant did not file her maintenance issues in accordance with the Act and the Rules. While the final order does not make note of why the hearing member did not find that the Tenant's explanation for why she did not comply with the requirements of filing was reasonable pursuant to section 82(1)(b), I find that his decision to deny the request was supported by the hearing application and record.
6. The Supreme 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 The hearing member made a finding on the record that the Tenant's explanation was unreasonable after considering the evidence. As such, I do not find there was a serious error in this regard.

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



7. In addition, the Tenant states that she wanted the hearing member to consider that she was on sick leave and that she did not know how to electronically file evidence. The order shows that the hearing member considered the Tenant's sick leave in paragraph 13. Furthermore, the hearing recording does not show that the Tenant disclosed her inability to file evidence electronically. As such, I do not find that the hearing member made an error in this regard.
8. 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.

It is ordered that:

1. The request to review order LTB-L-070532-22 issued on June 5, 2023 is denied.
2. The order is confirmed and remains unchanged.

July 4, 2023
Date Issued

Camille Tancioco
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.