



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

Citation: Prakash Malik v Ibrahim Tams, 2023 ONLTB 47639

Date: 2023-06-23 **File Number:**
LTB-L-016255-23-RV

In the matter of: 2302, 710 Humberwood Blvd North Toronto
Ontario M9W7J5

Between: Prakash Malik Landlord

And

Ibrahim Tams Tenant Vera Farrage

Review Order

Prakash Malik (the 'Landlord') applied for an order to terminate the tenancy and evict Ibrahim Tams and Vera Farrage (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was resolved by order LTB-L-016255-23 issued on May 24, 2023. The hearing was held by video conference on May 8, 2023 where the Landlord, his legal representative and the Tenants attended the hearing. The Tenants spoke with Tenant Duty Counsel.

On June 16, 2023, the Tenants requested a review of the order.

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

Determinations:

1. I have listened to the May 8, 2023 hearing recording and I have reviewed the Board's application record. 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, or that the Tenants were not reasonably able to participate in the proceeding.
2. To summarize, in the request to review the Tenants claim that the amount of arrears is not correct, issues with the N11, issues with the Landlord's behaviour, not enough time to prepare for the hearing and "rarely allowed to ask or speak before or after." The Tenants also claim they were in distress and they could not hear or talk or defend themselves.

3. The hearing recording shows that the Tenants were able to participate in the proceeding. For example, they confirmed they could hear the presiding Member, provided submissions, questioned the Landlord's claims, asked and answered questions. The hearing recording

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did not indicate the Tenants were under duress or unclear of the process. Nothing in the hearing recording or application record gives rise to an objective basis to determine that the Tenants were otherwise unable to participate in the hearing. The Tenants did not request an adjournment and confirmed they spoke with Tenant Duty Counsel before the application was called to be heard.

4. Following the Divisional Court's reasons in *Lacroix v. Central-McKinlay International Ltd.*, 2022 ONSC 2807 (Div. Ct.) (CanLII), I find the Tenants did not demonstrate that they were not reasonably able to participate in the May 8, 2023 hearing. The Tenants did not ask to reschedule the hearing, or ask to adjourn the hearing, in accordance with the Board's Rules of Procedure. The Tenants also did not declare at the hearing a disability, or any other issue, that could have interfered with their ability to participate in the hearing. In the absence of an objective basis to find that the Tenants were not reasonably able to participate in the hearing, the presiding Member was correct to proceed with the matter.
5. On the issue of the rent arrears, the hearing recording confirms that the Tenants confirmed they had "no doubt what we owe, Sir." When asked if they dispute the arrears, the Tenants said they did not dispute the amount claimed by the Landlord.
6. The Board's application record confirms the Notice of Hearing was mailed to the Tenants on March 24, 2023, deemed served March 29, 2023. That means the Tenants had approximately 40 days to prepare for the hearing.
7. I note, the Board's notice of hearing gives parties to an application instruction on how to attend and participate in the hearing by various methods. The notice of hearing also gives tenants information on how to seek legal advice, including advice from community legal clinics, and invites parties to request accommodation before the hearing date to promote parties' attendance and participation in the hearing.
8. In *Q Res IV Operating GP Inc. v. Berezovs'ka*, 2017 ONSC 5541 (Div. Ct.) (CanLII), the Divisional Court affirmed that parties to an application must exercise reasonable diligence to participate in a Board proceeding. This includes attending the hearing and prepared to provide submissions and lead evidence.
9. With respect to the issues surrounding the N11 agreement to terminate the tenancy, that matter was not before the Board on the date of the hearing.
10. The hearing recording confirms that the that parties were often advised by the presiding Member to stop interrupting to ensure efficiency in the hearing room and it was a reasonable request.

11. The Tenants were also advised on multiple occasions of their right to file their own Tenant application to address their issues regarding the Landlord and that the Tenants did not file anything prior to the hearing as required.
- 12.

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13. I also note, the presiding Member spent considerable time reviewing the Tenants' circumstances including a full financial assessment and circumstances under s.83 of the Residential Tenancies Act, 2006 (the 'Act').
14. The request to review seeks to revisit the presiding Member's decision. While the Tenants clearly disagree with the decision, the purpose of the review process is not to provide parties with an opportunity to relitigate the issues. I would not interfere with the assessment of the evidence by the presiding Member, who had the opportunity of hearing the evidence in its totality.
15. Based on the above, the Tenants have therefore not shown that a serious error exists in the May 24, 2023 order, or that a serious error occurred in the proceedings, or that they were not reasonably able to participate in the May 8, 2023 hearing. The request to review the order must in the circumstance be denied.

It is ordered that:

1. The request to review order LTB-L-016255-23 issued on May 24, 2023 is denied. The order is confirmed and remains unchanged.

June 23, 2023

Date Issued

Dana Wren

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.