



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Helmy Ragheb v Madelaine Jorge Miranda, 2023 ONLTB 44088

Date: 2023-06-16

File Number: LTB-L-074149-22

2023 ONLTB 44088 (CanLII)

In the matter of: C1, 1624 Baseline Road Ottawa
ON K2C0B7

Between: Helmy Ragheb Landlord

And

Madelaine Jorge Miranda Tenant

Helmy Ragheb (the 'Landlord') applied for an order to terminate the tenancy and evict Madelaine Jorge Miranda (the 'Tenant') because:

- the Landlord requires possession of the rental unit in order to demolish the unit.

This application was heard by videoconference on June 1, 2023.

The Landlord attended the hearing.

The Tenant's legal representative, Chistelle Azzi, and the Tenant, attended the hearing.

Determinations:

1. On June 7, 2022, the Landlord gave the Tenant an N13 notice of termination with the termination date of October 31, 2022. The Landlord claims vacant possession of the rental unit is required for demolition.

Preliminary Issue:

2. The Tenant raised a preliminary issue that the Landlord did not file the application within 30 days of the termination date on the N13 notice of October 31, 2022.

The Act and Analysis

3. Section 69 of the Act states: Application by landlord

69 (1) A landlord may apply to the Board for an order terminating a tenancy and evicting the tenant if the landlord has given notice to terminate the tenancy under this Act or the Tenant Protection Act, 1997. 2006, c. 17, s. 69 (1).

Same

(2) An application under subsection (1) may not be made later than 30 days after the termination date specified in the notice.

4. The position of the Landlord is that he attempted to upload the application, along with the N13 notice, the building permit and the certificate of service before the termination date but due to technical issues with the portal was unable to do so.
5. The position of the Tenant is the Landlord did not file the application with the Board pursuant to the requirements in section 69 of the Act and therefore the Tenant requested the application be dismissed.
6. The Landlord submitted an email dated December 4, 2022 he sent to the LTB support to support his claim of technical issues, where he states he is having difficulty paying for the application on line. The email the Landlord sent identifies another file for a different N13 the Landlord served on a different Tenant.
7. The Landlord testified that the reason the file is different is because he was having issues with paying for and filing another application and that is the first file, he emailed to the LTB support team to illustrate the issue with both applications.
8. The Tenant's legal representative, pointed out that the application was filed on December 5, 2022 while all the other documents, the N13 notice, the certificate of service and the building permit were all filed on December 4, 2022.
9. The Tenant's legal representative stated that even if the Landlord was having issues on December 4, 2023 that date was past the 30 days from the termination date in the N13 notice of October 31, 2022 and would have required the Landlord to upload and file the application by November 30, 2022.

10. The Landlord testified he attempted to upload the application and supporting documents before November 30, 2022 but was unable to do so and made multiple attempts prior to November 30, 2022. After several failed attempts the Landlord was able to successfully upload the supporting documents but as of December 4, 2022 was still unable to upload the application and this is when the Landlord sent the email to the LTB support to report his issue.
11. The determinative issue before me is whether the Landlord was prevented from uploading the application due to a technical issue that prevented him from meeting the application submission deadline of November 30, 2022 and whether this would have made his submission of the application valid pursuant to the Act.
12. On any application before the Board the party making an allegation has the onus of proving that allegation on a balance of probabilities. That means the Landlord here must lead sufficient evidence to establish it is more likely than not he was unable to upload and file the application with the Board prior to the November 30, 2022 submission deadline due to issues with the portal.
13. On a balance of probabilities means the Landlord must show that his version of events is the more probable and should succeed. Saying something is proven on a balance of probabilities simply means that it is more likely than not to have occurred. It means that it is probable, i.e., the probability that some event happened is more than 50%--indeed, 50.1% is sufficient. In all cases, the decision maker must weigh up the evidence and decide which version is most probably true. Consequently, the real truth may never be known. All that can be done is to decide which of the parties has presented the most probable version.
14. In this matter, the onus rests with the Landlord to provide sufficient evidence that a technical issue prevented him from uploading his L2 application within the 30 days of the termination date in the N13 notice. This means the Landlord would have had to upload his application on or before November 30, 2022.
15. I make note that the email the Landlord submitted was not pertaining to this file, but for another N13 notice the Landlord was attempting to upload to the portal with the same termination date. The email the Landlord sent to the LTB support team is dated December 4, 2022.
16. During the Landlord's testimony he mentions trying to upload the application before the November 30, 2022 date. November 30, 2022 fell on a Wednesday. The Landlord's application was successfully uploaded on December 5, 2022 a Monday, while the certificate of service, building permit and N13 notice were all uploaded on December 4, 2022.
17. If the Landlord was having issues as of November 30, 2022, I would expect the Landlord would have made attempts to contact the LTB the very next day, however the first indication the Landlord was having issues was on December 4, 2022, a Sunday.

18. The Landlord's lack of particulars and specific details regarding his initial attempts to upload the application prior to November 30, 2022 are such that I am not satisfied the Landlord has met the burden of proof to support his claim.
19. I also make note that the Landlord testified he waited until the last day of the deadline to attempt to upload the application, and while it is up to the discretion of the Landlord to do so, the Landlord could have attempted to upload the application in advance of this date to mitigate any unforeseen issues. Still, there is a 4 day discrepancy the Landlord cannot account for with respect to any evidence he contacted the Board.
20. All this leads me to the conclusion that, in my view, it is more likely than not the Landlord forgot to file the application within 30 days of the termination date in the notice and attempted to file it after November 30, 2022, and therefore did not meet his obligation under the Act pursuant to section 69.
21. I find the Landlord did not submit his application with the Board within 30 days of the termination date in the N13 notice of October 31, 2022 and therefore the Landlord's application must be dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

June 16, 2023

Date Issued

Greg Brocanier

Member, Landlord and Tenant Board

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