



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

Citation: O'Shanter Development Company Ltd v Roy, 2023 ONLTB 45848

Date: 2023-06-15 **File Number:**
LTB-L-070223-22-RV

In the matter of: 112, 460 EGLINTON AVE E TORONTO
ON M4P1M3

Between: O'Shanter Development Company Ltd Landlord

And

Robert Roy Tenant

Review Order

O'Shanter Development Company Ltd (the 'Landlord') applied for an order to terminate the tenancy and evict Robert Roy (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-070223-22 issued on June 6, 2023.

On June 15, 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 review request was completed without a hearing.

Determinations:

1. On the basis of the submissions made in the request, I am not satisfied that the Tenant was not reasonably able to participate in the proceeding.
2. The Tenant does not dispute receiving the Board's notice of hearing. Rather, the Tenant writes in the review request that he tried logging into the hearing but encountered challenges and he suffered panic attacks. Additionally, the Tenant asserts that due to his disability and other mental health diagnoses, he was not reasonably able to participate.
3. I find that the Tenant's submissions do not adequately explain the Tenant's absence from the May 24, 2023 hearing. Although the Tenant lists medical conditions, there is

insufficient information to determine that these conditions interfered with the Tenant's ability to reasonably participate in the hearing.

4. In *Wang v. Oloo*, 2023 ONSC 1028 (Div. Ct.) (CanLII), the Divisional Court upheld a Board review order that determined that the tenant in that case did not prove that they were not reasonably able to participate in the Board hearing because of medical reasons. The

Board concluded that a medical report the tenant submitted did not support the tenant's submission that they could not attend the Board hearing. The Court ruled, at paragraph 10:

It is the court, not the doctor, who decides whether the adjournment will be granted. Thus, a doctor's note must obtain [sic.] sufficient information to enable the court or tribunal to exercise its own judgment as to whether the adjournment should be granted. This should, at a minimum, describe the diagnosis, the effect of the patient's condition on their ability to attend and participate in the hearing, and a statement as to when, in the doctor's opinion, the patient will be well enough to attend court and participate as required.

5. In this present case, the Tenant did not submit a medical report that describes how the medical conditions the Tenant listed in the review request affected the Tenant's ability to participate in the proceedings. Following the Court's reasons in *Wang v. Oloo*, without reliable information about the Tenant's medical conditions and the impact those conditions have, I find that the Tenant did not show that he was not reasonably able to participate in the May 24, 2023 hearing.
6. In *Lacroix v. Central-McKinlay International Ltd.*, 2022 ONSC 2807 (Div. Ct.) (CanLII) and *Wang v. Oloo*, the Court affirmed that a party to an application must follow the Board's processes to reschedule or adjourn a hearing. Here, the Tenant did not submit a request to reschedule the hearing, pursuant to Rule 21.1 of the Board's Rules of Procedure. The Tenant also did not attend the May 24, 2023 hearing, either in person or by legal representative or agent, to request an adjournment, per Rule 21.7.
7. 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 a hearing on the scheduled date.
8. Although the Tenant writes in the review request that he had difficulties connecting to the virtual hearing, he did not give any details to his efforts to join the proceeding by telephone as per the notice of hearing.
9. 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. The review request does not describe any action by the Tenant to avail himself of these available services.

10. The Tenant has accordingly not demonstrated that he exercised reasonable diligence to attend and participate in the Board hearing.
11. Based on the above, I conclude that the Tenant has not shown good cause to review the June 6, 2023 order. The Tenant did not show that he was not reasonably able to participate in the May 24, 2023 hearing, or that he exercised reasonable diligence in the circumstances to attend the hearing. The request to review the June 6, 2023 order will therefore be denied.

It is ordered that:

1. The request to review order LTB-L-070223-22 issued on June 6, 2023 is denied. The order is confirmed and remains unchanged.

June 15, 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.