



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

Citation: Jewell v Moniz, 2023 ONLTB 41148

Date: 2023-05-26

File Number: LTB-T-007363-23-RV

In the matter of: 4, 309 Strathearne Avenue Hamilton
Ontario L8H5K8

Between: Robert Jewell Tenant

And

Kevin Moniz Landlord

Review Order

Robert Jewell (the 'Tenant') applied for an order determining that Kevin Moniz (the 'Landlord') was required to allow the Tenant to move back into the unit under section 53 of the Residential Tenancies Act, 2006 (the 'Act') and failed to do so.

This application was resolved by order LTB-T-007363-23 issued on April 25, 2023.

On May 24, 2023, the Tenants legal representative 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 April 5, 2023 hearing recording and 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 April 25, 2023 hearing order, or that a serious error occurred in the proceedings or in the presiding Member's exercise of discretion.
2. To paraphrase, in the request to review, the Tenant's representative claims that the Landlord's name is misspelled in the order, the presiding Member erred in his determination for rent abatement and failed to order an administrative fine to the Landlord

which “provides for an apprehension of bias and puts the administration of justice into disrepute” and the Member offered “little support” for the Tenant’s circumstances.

3. With respect to the improper spelling of the Landlord’s name, parties may request to amend an order for clerical error.
4. The Tenant’s representative asserts that the presiding Member erred when he made a finding that the breach occurred February 1, 2023. The Tenant’s representative claims that Member ought to have considered the “anticipatory breach” sometime around January 20, 2023. I disagree. A notice of breach is not the actual breach and the contractual right, in

File Number: LTB-T-007363-23-RV

this case began February 1, 2023. The Member’s decision was consistent with the Board’s guidelines and practice.

5. In the review request, the Tenant’s representative claims that the Member erred when he failed to order an administrative fine and this determination “provides for an apprehension of bias...”
6. The Board generally does not review the discretion of the presiding Member unless the outcome is inconsistent and outside the normal range of outcomes. I find the ruling with respect to the administrative fine is reasonable and consistent with Board guidelines and practice.
7. Additionally, having listened to the hearing recording I find the presiding Member conducted the hearing with impartiality and professionalism. The assertion of bias without supporting details is inadequate.
8. The Tenant has not established a reasonable apprehension of bias.
9. Recently, in *R. v. Fraser*, [2023] 2 SCC 45 (CanLII), the Supreme Court of Canada affirmed its previous finding in *Wewaykum Indian Band v. Canada*, [2003] SCR 259. At paragraph 26 of *R. v. Fraser*, the Supreme Court repeats the traditional legal test to determine whether a reasonable apprehension of bias exists. The Court writes: “what would an informed person, viewing the matter realistically and practically ... conclude? Would he think that it is more likely than not, that [the trier of fact] whether consciously or unconsciously, would not decide fairly?”
10. At paragraph 27 of its decision in *R. v. Fraser*, the Supreme Court cites relevant paragraphs from *Wewaykum Indian Band v. Canada*. At paragraph 28, the Supreme Court summarizes the principles from *Wewaykum Indian Band v. Canada* and qualifies the traditional legal test, described above, by noting:
 - (i) There is a very strong presumption of judicial impartiality;

- (ii) this presumption places a very heavy burden on the party seeking to rebut it;
- (iii) such a rebuttal requires cogent evidence sufficient to permit a finding that the Trial Judge is disqualified from rendering a decision because of bias;
- (iv) a determination of whether the presumption has been rebutted is highly fact specific and contextual;
- (v) an allegation of judicial bias must be considered in the context of all the circumstances, so an isolated or piecemeal analysis is never appropriate.

11. When considering “all the circumstances”, above, the Supreme Court gave examples of some relevant factors in *Wewaykum Indian Band v. Canada*. This was not meant to be an exhaustive list, but rather to illustrate what one might consider when determining bias:

there are no ‘textbook’ instances. Whether the facts, as established, point to financial or personal interest of the decision-maker; present or past link with a party, counsel or judge; earlier participation or knowledge of the litigation; or expression of views and activities, they must be addressed carefully in light of the entire context. There are no shortcuts.

File Number: LTB-T-007363-23-RV

12. In the request to review, the Tenant’s representative claims that an “adjudicator is supposed to be unbiased and impartial, and the apprehension of bias received in this case is that displacement of the tenant is insignificant compared to the story of the landlord.”
13. I have already determined that the hearing recording does not support the Tenant’s submission that the presiding Member was biased and not impartial. There is nothing in the hearing recording that suggests the Member was disqualified from rendering a decision because of bias.
14. Essentially, the request to review seeks to challenge the presiding Member’s findings of fact.
15. In my view, the order sets out adequate reasons for the determinations made by the presiding Member. The Member’s findings of fact are entitled to considerable deference. I will not interfere with the assessment of the evidence by the Member of first instance, who had the opportunity of hearing the evidence in its totality.
16. Although the Tenant disagrees with the Board order, the Board’s review process is not an opportunity for a party to re-argue a matter that has been finally determined. In the absence of a demonstrable error in the April 25, 2023 order, or that a serious error occurred in the proceedings, the request to review the order must be denied.

It is ordered that:

1. The request to review order LTB-T-007363-23 issued on April 25, 2023 is denied. The order is confirmed and remains unchanged.

May 26, 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.