



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

Citation: Toronto Community Housing Corporation v. Khayatian, 2023 ONLTB 39854

Date: 2023-05-18

File Number: LTB-L-000631-23-RV2

In the matter of: 10, 16 Flemington Road
Toronto Ontario M6A2N7

Between: Toronto Community Housing Corporation Landlord

And

Hamid Khayatian Tenant

Review Order

Toronto Community Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Hamid Khayatian (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant failed to meet a condition specified in the order issued by the Board on December 5, 2019 with respect to application LTB-L-000631-23 (TNL-20098-19).

This application was resolved by order LTB-L-000631-23 issued on February 21, 2023.

The Landlord requested a review of the February 21, 2023 order. The review hearing was held on March 27, 2023. Only the Landlord attended the review hearing.

The Board granted the Landlord's review request and held a new (de novo) hearing of the Landlord's application. The review request and application were resolved by Board review order LTB-L-000631-23-RV, issued on April 18, 2023.

On May 17, 2023, the Tenant requested a review of the April 18, 2023 review order.

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 deny receiving the Board's notice of the March 27, 2023 review hearing. The Tenant writes in the review request that, because his "primary language is Farsi and he has difficulty with the English language", the Tenant "did not understand the

process of the Board and its technical requirements of remote hearings involving the use of computers and the internet.”

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Commission de la location immobilière

3. A party to a Board application is required to exercise reasonable diligence to become aware of, and to attend, a Board hearing: *Q Res IV Operating GP Inc. v. Berezovs'ka*, 2017 ONSC 5541 (Div. Ct.) (CanLII) [*'Berezovs'ka'*]. In that decision, the Divisional Court ruled, at paragraph 8:

Lack of due diligence in dealing with court proceedings is a reason for refusing to set aside an order where a party has failed to appear. In other words, it was not an error in law for the Review Board to find that lack of diligence constituted a reason not to grant the landlord a rehearing.

4. In this present review request, the Tenant does not describe taking any action, upon receiving the notice of hearing, that meets the duty to exercise due diligence. The Tenant explains that English is not his “primary language”, but does not describe asking for help to translate the Board’s notice of hearing, or the parts of the notice the Tenant did not understand. Had the Tenant taken the reasonable step of doing so, he would have noted that being unfamiliar with computer systems is not a barrier to attending and participating in a Board hearing. The notice of hearing, for example, provides a telephone number that parties may dial to join Board proceedings. The notice of hearing also invites parties to request accommodation if it is required for an adequate hearing.
5. Following the Divisional Court’s reasons in *Berezovs'ka*, I conclude that the Tenant’s request to review the April 18, 2023 review order, and to hold a re-hearing, must be denied. The Tenant received the Board’s notice of the April 18, 2023 review hearing and was afforded an adequate opportunity to be heard on the issues to be determined. The Tenant’s omission to exercise due diligence upon receiving the notice of hearing is not good cause to review the April 18, 2023 order under subsection 209(2) of the *Residential Tenancies Act, 2006*.

It is ordered that:

1. The request to review Board review order LTB-L-000631-23-RV,, issued on April 18, 2023, is denied. The order is confirmed and remains unchanged.

May 18, 2023

Date Issued

Harry Cho

Vice Chair, 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.

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