



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

Citation: Nguyen v Dupuis, 2023 ONLTB 37095

Date: 2023-05-18 **File Number:**
LTB-L-040287-22-RV

In the matter of: 2, 70 ALBANY ST
SUDBURY ON P3C2Z5

Between: Thi huyen tran Nguyen Landlord

And

Natalie Dupuis Tenant

Tenants Robert Lavoie

Review Order

Thi huyen tran Nguyen (the 'Landlord') applied for an order to terminate the tenancy and evict Natalie Dupuis and Robert Lavoie (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes.

This application was resolved by order LTB-L-040287-22 issued on March 9, 2023.

On March 29, 2023, the Tenants requested a review of the order and that the order be stayed until the request to review the order is resolved.

On April 3, 2023 interim order LTB-L-040287-22-RV-IN was issued, staying the order issued on March 9, 2023.

This application was heard in by videoconference on April 19, 2023. The Landlord's legal representative, J. Struthers, and the Tenant, R. Lavoie (RL), attended the hearing. RL stated he was attending the hearing on behalf of the Tenant, N. Dupuis (ND). ND was not present at the hearing although properly served with notice of this hearing by the Board.

Determinations:

1. The application with respect to this matter was scheduled to be heard on February 16, 2023.
2. On the hearing date, ND attended the hearing and stated she was appearing on behalf of RL. RL states that he was unable to attend the hearing as he was hospitalized. ND attended



the hearing to ask for an adjournment. Due to ND's health condition, she was not in the right state of mind to present evidence on behalf of the parties.

3. The Tenants submit that RL was not reasonably able to participate and that the Board made a serious error in proceeding with the application and making an order for arrears without considering unpaid work performed by the Tenants.
4. For the reasons that follow, I find that RL was reasonably able to participate and that the Board did not make a serious error in the order or in the proceedings.

Not Reasonably Able to Participate

5. RL submits that he was not reasonably able to participate as he was at the hospital. He stated that the Monday before the hearing, he had hernia surgery. He scheduled an appointment for his stitching on the day of the hearing. He stated that he was aware of the hearing, but he made an error and booked the appointment for the same date. He states that the error was due to the pain and medications. As such, ND attended the hearing on their behalf.
6. I find that RL was reasonably able to participate in the proceedings and elected not to. RL was aware of the hearing but booked his stitching appointment on the same date. While RL states this was an error made because of the pain and medications, there is insufficient evidence to establish that any medications were taken that affected his memory or cognition. In addition, I find that RL was reasonably able to participate as he confirmed that ND was acting as his agent and appeared at the hearing on his behalf.

Serious Errors

7. I considered whether the hearing member made a serious error in procedure by proceeding with the application without considering the request to adjourn or ND's health condition.
8. RL stated that ND was supposed to attend the hearing only to make an adjournment request. As far as he is aware, ND made the request, and it was denied.
9. I reviewed the hearing recording and ND made the adjournment request, stating that RL was in the hospital to have his stitches removed and that they did not have time to prepare. The Landlord made reply submissions. After considering the submissions, the hearing member denied ND's adjournment request. The reason for denial was that hearing member did not find that having stitches removed was a medical emergency and that an adjournment would be prejudicial to the Landlord because the arrears are substantial.
10. While the final order does not make note of the adjournment request or the reasons for denying it, I find that the hearing member's decision to deny the request was supported by the hearing application and record. The Court, in discussing the duty of a trial judge to give



reasons, stated that, “Reasons acquire particular importance when a trial judge is called upon to address troublesome principles of unsettled law, or to resolve confused and contradictory evidence on a key issue, *unless the basis of the trial judge’s conclusion is apparent from the record, even without being articulated* [emphasis added].”¹ As such, I do not find there was a serious error in the order in failing to address the adjournment request as the record is clear that the hearing member made a determination after considering the parties’ submissions.

11. I also considered whether the Board made a serious error in procedure by requiring ND to proceed despite her health condition. RL stated that ND has depression and anxiety and was not in the right state of mind to provide evidence or submissions. RL stated that ND disclosed her condition to the Board, cried and needed to stop the proceedings repeatedly to compose herself.
12. I reviewed the hearing recording and nothing in the record suggests that ND was unable to participate in the hearing appropriately. While ND became upset at some points, the hearing member afforded breaks and when they returned, the Tenant was asked if she was ready to proceed and she confirmed. In fact, ND gave evidence, made arguments and challenged the Landlord’s evidence. As such, I find that the hearing member did not make a serious error in requiring ND to proceed.
13. I also considered whether there was new evidence which was unavailable at the time of the hearing and which is determinative of one or more central issues in dispute. RL submits that the Tenants have records to prove that the rent owing in the final order is inaccurate as the Tenants performed work at the residential complex and were not compensated by the Landlord. He states that this information was not presented at the previous hearing.
14. Interpretation Guideline 8 Review of an Order states that parties are expected to make every effort to produce all relevant evidence in support of their positions in the original hearing. The review will be dismissed unless the LTB is satisfied the new evidence could not have been produced at the original hearing, is material to the issues in dispute and its consideration could change the result.²
15. In my view, the evidence the Tenants seek to rely on was available at the time of the hearing and there is no explanation why it was not raised, other than ND not being in the right state of mind. As stated above, I do not find that ND’s health prevented her from participating in the hearing. A review is not an appeal or an opportunity to change the way a case was presented.

¹ *R v. Sheppard*, 2022 SCC 26 at para 55.6.

² See, for example: *First Homes Society v Henry*, [2002] O.J. No. 1754, (Div Ct.); *NOL-16865-14-RV(Re)*, 2014 CanLII 78539 (ON LTB).



16. 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.

Lifting of the Stay

17. RL testified that this is a thirty-year tenancy, and his mother resides in the residential complex. He states that if the request to review is denied, he requires at least two months to vacate considering the amount of furniture and that much of it must be lowered from the balcony. The Landlord objected to this time frame as the Tenants have not paid rent in sixteen months and the Landlord is struggling to pay bills to maintain the property.

18. In consideration of the foregoing, I find it would not be unfair to lift the stay on June 30, 2023. While this is a long-standing tenancy, the prejudice to the Landlord in postponing termination for another two months is substantial. This postponed date will provide the Tenants with some time to organize their move.

It is ordered that:

1. The request to review order LTB-L-040287-22 issued on March 9, 2023 is denied. The order is confirmed and remains unchanged.
2. The interim order issued on April 3, 2023 is cancelled. The stay of order LTB-L-040287-22 is lifted on June 30, 2023.

May 18, 2023

Date Issued

Camille Tancioco

Member, Landlord and Tenants Board

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