



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

Citation: LA MARCA v SHIELDS, 2023 ONLTB 33528

Date: 2023-05-11 **File Number:**
LTB-L-065668-22-RV2

In the matter of: 1, 349 FRONTENAC AVENUE OSHAWA
ON L1J2A7

Between: ENZA LA MARCA Landlord

And

IONA SHIELDS Tenant

Review Order

ENZA LA MARCA (the 'Landlord') applied for an order to terminate the tenancy and evict IONA SHIELDS (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

This application was resolved by an exparte order LTB-L-065668-22 issued on November 24, 2022.

On December 2, 2022 the Tenant filed a motion to set aside order LTB-L-065668-22.

The set aside motion was heard on December 21, 2022. Neither party attended. In order L065668-22-HR issued on December 23, 2022, the Board erroneously dismissed the Landlord's application as abandoned, rather than the set aside motion.

On January 4, 2023 the Landlord filed a request to review the dismissal order LTB-L-065668-22HR on the basis that they were not reasonably able to participate in in the December 21, 2022 set aside motion.

On February 2, 2023 order LTB-L-065668-22-RV was issued. The Landlord's review was granted, and the application proceed to a de novo motion hearing. As the Tenant did not attend, the motion was dismissed as abandoned. The stay of the original exparte order LTB-L-065668-22 issued on November 24, 2023 was lifted.

On March 21, 2023, the Tenant requested a review of the review order LTB-L-065668-22-RV and that the original exparte order LTB-L-065668-22 be stayed until the request to review the order is resolved.



On March 22, 2023 interim order LTB-L-065668-22-RV-IN was issued, staying the exparte order LTB-L-065668-22 issued on November 24, 2023 and order LTB-L-065668-22-RV issued on February 2, 2023.

The second review was heard by videoconference on April 12, 2023.

The Landlord, their Representative Greanya D, and the Tenant attended the hearing.

Determinations:

Request for Review

1. The Tenant requests a review of order LTB-L-065668-22-RV issued on February 2, 2023 as they were not reasonably able to participate in the January 17, 2023 review hearing.
2. The Tenant testified that they check their mail every day but did not receive the notice of hearing.
3. The Board's records reflect that the notice of hearing was mailed to the Tenant as of January 6, 2023. However, the address is missing a unit number. I also note that order LTB-L-065668-22-RV that was mailed to the Tenant was returned to sender and was also missing a unit number.
4. The Landlord took no position on the Tenant's request to review.
5. Section 209(2) of the *Residential Tenancies Act, 2006* (the 'Act') provides that the Board has the power to review a decision or order "if a party to a proceeding was not reasonably able to participate in the proceeding."
6. I found the Tenant to be credible in her testimony that she did not receive the notice of hearing and the Board's records support that the notice of hearing may not have arrived at the Tenant's address. As such I am satisfied on a balance of probabilities that the Tenant was not reasonably able to participate.
7. The Tenant's request for review was granted and the hearing proceeded *de novo* on the Tenant's set aside motion.

Set Aside Motion

8. The Landlord and the Tenant signed an agreement on June 7, 2022 that the tenancy would terminate on September 30, 2022. The agreement mentions that the Landlord is intending to either undergo extensive renovations of the rental property or demolish and rebuild it. The agreement states that the Tenant will be given four months of free rent from



June – September 2022 in consideration for signing the agreement. The parties also signed an N11 form that the tenancy would terminate on September 30, 2022.

9. The Tenant testified that she did sign the agreement, but she thought she would be able to find somewhere else to live. The Tenant testified that she did not realize that if she could not find somewhere new to live, she could still be evicted.
10. I find on a balance of probabilities that the Landlord and Tenant entered into an agreement to terminate the tenancy as of September 30, 2022, that there are no contractual principles under section 202 the Act, nor any equitable doctrines at common law that would invalidate it.
11. It is more likely than not that the Tenant understood the agreement and its consequences when she signed it, but after being unable to find a new housing accommodation she wants to go back on the agreement she signed.
12. I make that finding for the following reasons. First, the agreement explicitly states that the Tenancy will terminate on September 30, 2022. Nowhere in the agreement does it say that the termination of the tenancy is conditional. Second, the Tenant demonstrated performance of the agreement. Prior to June 20, 2022, the Tenant was paying rent, but when the free rent period from the agreement started, she stopped paying her rent. This shows awareness of the contents of the agreement. Third, the Tenant testified that she is not aware of having any medical conditions that would affect her capacity to understand the agreement. Fourth, the Landlord testified that she spoke to the Tenant numerous times about the agreement and at no time did the Tenant raise any confusion about the agreement signed. Fifth, the N11 form states “after the landlord and tenant sign this agreement, the landlord can apply to the Board for an order evicting the tenant”.
13. The Tenant requests that the exparte order LTB-L-065668-22 be either set aside or that the lifting of the stay be delayed.
14. The Tenant is 86 years old and has limited mobility from a leg fracture. She testified that rent in the current rental market is extremely high, and she has been looking for a new place to live but has been unsuccessful. She testified that she will be homeless if evicted.
15. The Landlord testified that the rental property needs to be demolished because of its current state. The Landlord testified that they hired construction workers to do the demolition in anticipation of the rental property being empty, but the project has been significantly delayed by the Tenant’s refusal to vacate.
16. After considering all of the circumstances, I find that it would be unfair to set aside order LTB-L-065668-22. This is because the parties did sign an agreement to terminate the tenancy, the Tenant received four months of free rent in compensation for that agreement, and the Landlord has a construction project they cannot start until the Tenant vacates. Additionally, delaying the lifting the stay instead of setting aside the exparte order will sufficiently address the vulnerabilities of the Tenant and provide her with time to find new living accommodations.



17. The stay of order LTB-L-065668-22 will not be lifted until June 30, 2023. The Tenant is 86 years old with limited mobility and limited resources to find somewhere new to live. While I have considered that the Landlord has a construction project they wish to begin, and that there has been significant delay in this case resulting from two reviews, ultimately fairness dictates that the Tenant be given some additional time.

Cancel and Replace

18. Typically, a denial of a motion to set aside would result in the stay of the original exparte order being lifted. However pursuant to section 81 of the Act the eviction from the original order expires on June 6, 2023 if the order has not been filed with the sheriff. As I have determined that it is fair in the circumstances to delay the lifting of the stay until June 30, 2023, the previous eviction order will have expired by that point. As such, instead of lifting the stay I will cancel and replace the original exparte order and impose a new termination date of June 30, 2023. This will restart the clock pursuant to section 81 of the Act and ensure that the Landlord has an enforceable order.

It is ordered that:

1. The request to review order LTB-L-065668-22-RV is granted.
2. All previous orders, including LTB-L-065668-22-RV, L-065668-22-HR, and LTB-L-06566822 are canceled and replaced by the following:
3. The motion to set aside Order LTB-L-065668-22 issued on November 24, 2022, is denied.
4. The Tenancy between the Landlord and Tenant is terminated. The Tenant must move of the rental unit on or before June 30, 2023.
5. If the unit is not vacated on or before June 30, 2023, the starting July 1, 2023 the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after July 1, 2023.
7. The Tenant shall pay to the Landlord \$201.00 for the cost of filing the application.
8. If the Tenant does not pay the Landlord the full amount owing on or before June 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 1, 2023 at 6.00% annually on the balance outstanding.

May 11, 2023

Date Issued

Amanda Kovats

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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on December 31, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.