



Order under Section 21.2 of the Statutory Powers Procedure Act and the Order under 78(6) of the Residential Tenancies Act, 2006

Citation: Fred Victor Centre v Patricia "Gail" Kearns, 2023 ONLTB 35505

Date: 2023-05-04 **File Number:**
LTB-L-003037-23-RV

In the matter of: 462, 145 QUEEN ST E
TORONTO ON M5A1S1

Between: Fred Victor Centre Landlord

And

Patricia "Gail" Kearns Tenant

Review Order

Fred Victor Centre (the 'Landlord') applied for an order to terminate the tenancy and evict Patricia "Gail" Kearns (the 'Tenant') because the Tenant failed to meet a condition specified in the order issued by the Board on May 25, 2022 with respect to application TSL-20096-21-RV.

This application was resolved by order LTB-L-003037-23 issued on March 30, 2023.

On April 3, 2023, the Landlord requested a review of the order issued on March 30, 2023 because the Landlord claims she did not receive the Notice of the hearing.

On April 4, 2023 interim order LTB-L-003037-23-RV-IN was issued.

This review request was heard in by videoconference on April 26, 2023.

The Landlord's Agent, Denise Bryan and the Tenant attended the hearing. The Landlord's witnesses, Logan Bodera (LB), Senior Manager of Housing, and Tracy Henderson (TH), another tenant living in the unit, attended the hearing.

Determinations:

1. The Landlords Agent testified she did not receive the Notice of hearing. Upon review of the Board's file, I can confirm the Notice that was mailed to the Landlord was returned by Canada Post as undelivered.



2. On the basis of the submissions made in the request, I am satisfied that a serious error occurred in the proceedings and that the Landlord was not reasonably able to participate in the proceeding held on March 23, 2023.

L4 Application:

3. The Board order issued on May 25, 2022, states the Landlord could apply to the Board under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenant to terminate the tenancy and evict the Tenant if the Tenants did not meet certain condition(s) specified in the order. The Board issued an Endorsement directing the application to a hearing because additional evidence was required. out of
4. Section 78 (1) of the Act states:
78 (1) A landlord may, without notice to the tenant, apply to the Board for an order terminating a tenancy or evicting the tenant if the following criteria are satisfied:
 1. The landlord previously applied to the Board for an order terminating the tenancy or evicting the tenant.
 2. A settlement mediated under section 194 or order made with respect to the previous application,
 - i. imposed conditions on the tenant that, if not met by the tenant, would give rise to the same grounds for terminating the tenancy as were claimed in the previous application. **and** ii. provided that the landlord could apply under this section if the tenant did not meet one or more of the conditions described in subparagraph i.
 3. The tenant has not met one or more of the conditions described in subparagraph 2 i. 2006, c. 17, s. 78 (1).
5. The Landlord must establish a breach of the condition of the order, and it must also establish the Tenant's conduct gives rise to the same grounds for terminating the tenancy as were claimed in the previous application TSL-20096-21. Therefore, the Landlord has to establish both that there is a breach of the order issued on May 25, 2022 and that the Tenant's conduct substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant.
6. The conditions of the order issued on May 25, 2022, requires the Tenant to comply with the following:
 1. The Tenant shall not spray vinegar in the rental unit or on anyone in the residential complex.
 2. The Tenant shall not make excessive noise in the rental unit which includes but is not limited to slamming cupboards, loud singing or loud music.



7. I find the Landlord has not met the burden of proof required and terminating the tenancy is not reasonable under section 78(1) of the Act because of the following:
8. On November 2, 2022, LB testified he received a complaint from TH, another tenant, that the Tenant was seen spraying vinegar in the rental unit. When investigating LB testified the odor was masked with perfume. The Tenant challenged LB's testimony claiming she does not own perfume and she testified all the vinegar was given to her worker and removed from the unit. TH's testimony was not specific to the November 2, 2023 incident and appears to relate to the Tenant's conduct that led to the N5 Notice being issued. Even if the Tenant sprayed the vinegar, there was not enough evidence from LB or TH to establish that the interference caused met the threshold of substantial. There was no evidence of allergic reaction. Although it's noted that TH has breathing problems which the Tenant

out of explained is more likely due to TH being an excessive smoker, there was no evidence about the causal affect from the vinegar on TH's wellness or use of the unit.

9. On November 23, 2022, LB testified he received another complaint from TH, about a bottle of vinegar seen left on the counter in the kitchen. The Landlord investigated and found the vinegar and removed the bottle. TH testified she did wasn't staying in the rental unit that time, therefore she had no knowledge of the incident. The Tenant testified a bottle was left on the counter having discovered it in the back cabinet. There was no evidence of sprayed vinegar, and she doesn't dispute the Landlord's evidence that they removed the bottle. I find the mere presence of a bottle of vinegar on the counter does not establish there was substantial interference with other tenants' reasonable enjoyment of the rental unit.
10. The Landlord wanted to raise other incidents that occurred after the L4 application was filed which were not properly before me and were not considered. There was no evidence led about excessive noise disturbances.
11. The Landlord's application for termination of the tenancy is denied.

It is ordered that:

1. The request to review order LTB-L-003037-23 issued on March 30, 2023 is granted.
1. Order LTB-L-003037-23 issued is cancelled and replaced as follows: .
2. The L4 application is dismissed.



2. Order TSL-20096-21-RV issued on May 25, 2022 remains in effect.

May 4, 2023

Date Issued

Sandra Macchione

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.

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