



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

Citation: Moodie Apartments v Hole, 2023 ONLTB 31434

Date: 2023-05-01 **File Number:**
LTB-L-023942-22-RV

In the matter of: 24, 1731 MOODIE ST E
THUNDER BAY ON P7E4Z1

Between: Moodie Apartments Landlord

And

Laurie Hole Tenant

Review Order

Moodie Apartments (the 'Landlord') applied for an order to terminate the tenancy and evict Laurie Hole (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-023942-22 issued on January 16, 2023.

On February 15, 2023, the Tenant requested a review of the order, alleging that she was not reasonably able to participate in the hearing held on January 5, 2023.

On February 15, 2023, Interim Order LTB-L-023942-22-RV-IN was issued staying the order issued on January 16, 2023.

This request was heard in by videoconference on March 9, 2023.

The Landlord's agent, N. Mizzi, the Tenant, and the Tenant's legal representative, J. Fenton, attended the hearing. The Landlord's witness, M. Mizzi, also attended the hearing.

Determinations:

1. The Tenant did not attend the hearing for the Landlord's L1 application on January 5, 2023. After the hearing, a standard termination order was issued.
2. The Tenant filed her request for a review, alleging that she was not reasonably able to participate in the hearing held on January 5, 2023.
3. The monthly rent is \$1,088.11, due on the first day of each month.



4. The Tenant said that she was in hospital until December 31, 2022, and she was still ill when she was discharged. She said that she was vomiting, could not concentrate, and she was unaware of the date on the day of the hearing. The Tenant said that she realized that she missed the hearing the day after it was held, and she contacted the Landlord's legal representative.
5. The Tenant admits that she has not paid the rent for a number of months, but she said that she has had to pay for a lot of medication. She said that she has not paid the rent in full since the end of 2021 because she did not have sufficient income. She had a lot of expenses related to medication because she was recently diagnosed with diabetes. The Tenant said that she has an income of about \$900.00 per month from CPP. However, she said that she will soon be receiving a lump sum payment of about \$15,000.00 from her ex-husband's pension which will go towards the arrears, which are now in excess of \$9,600.00.
6. The Tenant proposed to pay \$500.00 in March, \$500.00 in April, and then she would pay up all she owes by May 31, 2023, when she receives the money from her ex-husband's pension.
7. The Landlord's witness, M. Mizzi (MM), said that he has had a discussion with the Tenant about the arrears every few months, and each time she promised to find a way to pay. He said that he spoke to the Tenant the day after the hearing in January 2023, and he informed her what had happened, but he also gave her a lot of information about where she could obtain help to pay the arrears. He said that he spoke to her some time afterward, and she told him she would pay everything by March 1, 2023. MM said that the Tenant never said that she was unaware of the hearing on January 5, 2023.
8. The Tenant submits that she was not reasonably able to participate in the hearing in January 2023 because of her medical issues. She submits she will be able to pay off all the arrears by May 31, 2023, and she will be able to pay the rent in full going forward after that time. She said that she has a number of disabilities, and a low income, and it will be very difficult to find another rental unit. The Tenant submits that she has nowhere else to go if she is evicted, and that she has taken steps to obtain help with paying for her medication.
9. The Landlord submits that the Tenant was reasonably able to participate in the hearing in January 2023 because she was aware of the hearing, and she had been aware of the hearing at least since October 2022 when the Landlord's agent discussed it with her. The Landlord said that the Tenant's own evidence is that she was aware of the hearing the day after, and yet she still waited more than a month to file her request for a review, therefore her request is not in good faith.
10. The Landlord submits that there is no credible evidence of whether, and when, the Tenant will be able to pay the arrears, and the Tenant has insufficient income to pay the rent in full and on time going forward.



11. I find that the Tenant has not proven, on a balance of probabilities, that she was not reasonably able to participate in the hearing held on January 5, 2023, for the reasons that follow. She was aware of the upcoming hearing for months, and she had been discharged from the hospital days before the hearing. She could have attended the hearing herself, or sent an agent or representative to the hearing to ask for an adjournment. There was no evidence that the Tenant communicated with the Landlord once she remembered that she had missed the hearing. In fact, the evidence suggests that it was the Landlord's employee who reached out to the Tenant immediately after the hearing to discuss the result. The Landlord's employee said that he discussed the hearing with the Tenant the day after it was held, and she at no time told him that she was unaware of the date.
12. The Tenant was well aware of the arrears, since she had not paid the rent in full for almost a year. She has only paid \$200.00 to the Landlord since January 2023 to the date of the hearing, and the arrears are increasing each month. The Tenant's own testimony proves, on a balance of probabilities, that the Tenant does not have sufficient income to pay the rent in full and on time going forward. The Tenant did not provide documentary evidence of how much she was going to receive in a lump sum, and there was no evidence of when she was going to receive it. Consequently, even if the Tenant's request for a review was granted, it is unlikely that the result would be different than the original order. As the arrears are substantial, and they are increasing, I find that it is prejudicial to the Landlord for the tenancy to continue.
13. 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 Tenant was not reasonably able to participate in the proceeding.

It is ordered that:

1. The request to review order LTB-L-023942-22 issued on January 16, 2023, is denied. The order is confirmed and remains unchanged.
2. The interim order LTB-L-023942-22-RV-IN issued on February 15, 2023, is cancelled. The stay of order LTB-L-023942-22 is lifted immediately.

May 1, 2023

Date Issued

Nancy Morris

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor Toronto
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.