



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

Citation: SCHERER and THE NIAGARA SELF STORAGE COMPANY v MACDONALD and TODD and R&H ENTERPRISES, 2023 ONLTB 32230
Date: 2023-04-13

File Number: LTB-L-074484-22-RV2

In the matter of: 1030 BERTIE STREET
FORT ERIR ONTARIO L2A5S1

Between: PAUL SCHERER Landlords
THE NIAGARA SELF STORAGE COMPANY

And

HEATHER MACDONALD Tenants
R&H ENTERPRISES
RICHARD TODD

Review Order

PAUL SCHERER and THE NIAGARA SELF STORAGE COMPANY (the 'Landlords') applied for an order to determine whether the *Residential Tenancies Act, 2006* (the 'Act') applies.

This application was resolved by order SOL-16673-20, issued on August 17, 2021.

On September 14, 2021, the Landlords requested a review of the order. The review hearing was adjourned on the parties' consent on November 8, 2022. The review hearing was held by video conference on December 2, 2022. The Landlords' review request was resolved by review order LTB-L-074484-22(-RV), issued on March 8, 2023.

On April 3, 2022, the Tenants requested a review of the March 8, 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 there is a serious error in the order or that a serious error occurred in the proceedings.
2. Rule A3.1 of Tribunals Ontario's common rules of procedure require the Board to adopt a flexible approach when interpreting its own Rules of Procedure (the 'Rules'). Rule A3.1 encourages a purposive interpretation of the Rules to promote the "fair, just and expeditious resolution of disputes".
3. The Tenants submit that Rule 26 of the Board's Rules of Procedure requires the Board to adopt a two-stage review hearing. The Tenants submit that the Board must first turn its mind to determine whether the grounds set out in the Landlords' request to review the August 17, 2021 hearing order are proven and represent good cause to review the hearing order. The Tenants submit that a reviewing Board adjudicator may only proceed to consider the merits of the underlying application if the review request is granted.
4. In this present case, the Landlords requested a review of the August 17, 2021 order, on the basis that the order contains a serious error. The Landlords submitted that the Board adjudicator-of-first-instance erred in fact and law by determining that the Act applies to this tenancy. Upon a preliminary consideration of the Landlords' written review submissions, the Board determined it was appropriate to schedule a review hearing to consider whether the Board erred by finding that the Act applies.
5. At the review hearing, in order to determine the Landlords' review request, the reviewing adjudicator was required to consider identical, or similar, evidence relevant to the merits of the original application. In the circumstances, the reviewing adjudicator was entitled under Rule A3.1 to adopt an expeditious hearing procedure to address both the review request and the merits of the original application.
6. I therefore find that the Tenants did not establish that a serious error occurred at the December 2, 2022 review hearing.
7. The March 8, 2023 review order demonstrates that there was sufficient evidence for the reviewing adjudicator to find, on a balance of probabilities, that the Act does not apply, pursuant to the exemption in section 5(h) of the Act. Having listened to the hearing recording available from the December 2, 2022 review proceeding, I find that the parties were afforded procedural fairness and were afforded the right to participate in the hearing. Although the Tenants disagree with the reviewing adjudicator's conclusion, the reviewing adjudicator's findings are supported by relevant evidence and fall within a reasonable range of outcomes. The findings are therefore entitled to deference.
8. In addition, the Board's review process permits a reviewing Board adjudicator to hold hearing de novo of the application under review. I accordingly find that, although the

adjudicator-of-first-instance reached a different conclusion, this does not represent good cause to review the March 8, 2023 review order.

9. In the circumstances, I conclude that the Tenants' request to review the March 8, 2023 review order must be denied.

It is ordered that:

1. The request to review Board review order LTB-L-074484-22, issued on March 8, 2023, is denied. The order is confirmed and remains unchanged.

April 13, 2023

Date Issued

Harry Cho

Vice Chair, Landlord and Tenant 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.