



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

Citation: Phuong Kim Nguyen v Krysyna Anna Piekarska, 2023 ONLTB 31398

Date: 2023-04-06 **File Number:**
LTB-L-023619-22-RV

In the matter of: 39 YORKVIEW DR
ETOBICOKE ON M8Z2G1

Between: Phuong Kim Nguyen Landlord

And

Krysyna Anna Piekarska Tenant

Review Order

Phuong Kim Nguyen (the 'Landlord') applied for an order to terminate the tenancy and evict Krysyna anna Piekarska (the 'Tenant') because:

- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

This application was resolved by order LTB-L-023619-22 issued on March 17, 2023. The application was heard by video conference on January 12, 2023. The Landlord's representative, the Landlord and the Landlord's son Richard Opara and the Tenant attended the hearing.

On March 31, 2023, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

A preliminary review of the Tenant's request was conducted 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 or that the Tenant was not reasonably able to participate in the proceeding.
2. I have listened to the hearing recording in its entirety.
3. This application is about the Tenant's ability to participate at the hearing and how the tenancy came to an end. The Landlord served the Tenant with an N12 notice to terminate the tenancy. On the date of the hearing, the Tenant attended and provided submissions.
4. In summary, the Tenant alleges that she was not mentally or physically able to participate at the hearing due to serious medical and cognitive challenges. She asserts that she advised the presiding Member that "she wanted to ask for adjournments to hire a paralegal...to represent her during the hearing". The Tenant claims that the Member exercised unreasonable discretion in denying the Tenant's adjournment request and this constitutes a serious error and the Tenant was not reasonably able to participate at the hearing.
5. The Tenant in the review request also claims that order contains a serious error. Specifically, the Tenant claims that the Member erred in law when she made a determination that that the Landlord has proven their case on a balance of probabilities. The Tenant takes the position that the Landlord was not present at the hearing to testify and therefore the Member could not have made such finding in the absence of the Landlord. The Tenant also claims the Member erred with the analysis of the service of the N12 notice and compensation.
6. I note that the hearing recording indicates that the Landlord and the Landlord's son were also present at the hearing. Although the original order does not reflect their attendance, they were present on behalf of the Landlord. For that reason, the Tenant's claim that the Member erred in law on the basis of their absence, will not be further analysed in this order.
7. With respect to the adjournment, The presiding Member's exercise of discretion will only be set aside if the exercise in discretion was beyond the standard of reasonableness. In the review request, the details include a summary of contact between the Tenant and potential representative. The Tenant made the initial contact on December 15, 2022, following the LTB's Notice of Hearing. The potential representative advised the Tenant that a meeting was required to establish the relationship. The Tenant did not contact the potential representative until March 22, 2023. Although in the request to review the Tenant asserts that the delay was due to medical circumstances, no documentary evidence was submitted to support this proposition.
8. I note, the Board record contained no request to reschedule from the Tenant prior to the hearing. The presiding Member denied the Tenant's request to adjourn as she found the Tenant had a reasonable amount of time to secure counsel prior to the hearing. The

hearing record shows that the Tenant's first request for an adjournment to "get a lawyer" was after the Landlord's submissions. The Tenant did not seek an adjournment at the onset of the hearing. Additionally, the Tenant did not address at the hearing any issues related to her inability to participate due to medical limitations or concerns. The Member also addressed the issue of Tenant Duty Counsel with the Tenant. In the hearing recording, the Tenant did not correct any error the Member may have made with respect to her willingness to speak with Tenant Duty Counsel.

9. In *Lacroix v. Central-McKinlay International Ltd.*, 2022 ONSC 2807 (Div. Ct.) (CanLII), the Divisional Court affirmed, at paragraph 11, that a person's "internal thought processes are not relevant to an issue before the court. Procedural fairness is assessed on an objective standard. The subjective state of mind... would only matter in this analysis if there was evidence that [a party] was incapable of participate in the hearing (by reason of factors such as (without limitation) illness, disability or language barrier)." The Divisional Court continued, ruling: "Even in these circumstances, it is incumbent on a party to raise the issue with the tribunal, or for there to be a basis on which the claim of incapability is grounded objectively in events at the hearing."
10. The hearing recording reveals that the Tenant was provided a reasonable opportunity to participate in the proceedings. The Tenant was able to lead evidence, respond to the presiding Member's questions, make submissions with respect to the issues in the application. The Tenant did not raise the issues with mental health or inability to comprehend the proceedings during the hearing.
11. Based on the above, I find the hearing Member acted reasonably in the circumstances and met the Board's duty under section 183 of the Residential Tenancies Act, 2006 (the "Act") to adopt the most expeditious method of determining the Landlord's application while affording the parties an adequate opportunity to know the issues and to be heard on the matter.
12. The balance of the Tenant's review request essentially pleads the result is unfair. The request does not properly identify any serious errors made in the hearing order. No evidence was before the Board in support of the proposition that the Landlord served the Tenant with the N12 notice with improper intention nor the fact that the notice was not served upon the Tenant and the issue of compensation. The Tenant, at the original hearing, had every opportunity to make submissions and defend their position.
13. The request to review seeks to revisit the presiding Member's decision. While the Tenant clearly disagrees with the decision, the purpose of the review process is not to provide parties with an opportunity to relitigate the issues. I would not interfere with the assessment of the evidence by the presiding Member, who had the opportunity of hearing the evidence in its totality.

14. Based on the submissions made in the review request, the record and the Divisional Court's decision in *Lacroix v. Central-McKinlay International Ltd.*, 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. As a result, the request for review must be denied.
15. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The request to review order LTB-L-023619-22 issued on March 17, 2023 is denied. The order is confirmed and remains unchanged.

April 11, 2023

Date Issued

Dana Wren

Member, 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.