



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

Citation: Saunders and Saunders v Famme, 2023 ONLTB 29547

Date: 2023-03-29

File Number: LTB-T-044569-22-RV

In the matter of: 246 PARKVALE DR
KITCHENER ON N2R1Y8

Between: Michael Saunders Tenants
Sherry Saunders

And

Melissa Famme Landlord

Review Order

Michael Saunders ('MS') and Sherry Saunders ('SS', the 'Tenants') applied for an order determining that Melissa Famme (the 'Landlord'):

- entered the rental unit illegally;
- altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys;
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household;
- harassed, obstructed, coerced, threatened or interfered with the Tenant;
- withheld or interfered with the Tenant's vital services or care services and meals in the care home;
- did not give the Tenant 72 hours to remove the Tenant's property from the rental unit or from some place close to the rental unit.

The Tenants also applied for a rent reduction and for an order determining that the Landlord collected or retained money illegally.

This application was heard by video conference on February 2, 2023. The application was resolved by order LTB-T-044569-22, issued on February 16, 2023. The order determined that the Tenants abandoned the application, because the Tenants did not attend the hearing when it was called at 1:31PM. The Tenants did not join the proceedings for the remainder of the hearing block.

On March 18, 2023, the Tenants requested a review of the 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, or that the Tenants were not reasonably able to participate in the proceeding.
2. The Tenants submit that the presiding adjudicator erred when she determined that there was no record of a request to reschedule or adjourn the hearing. The Tenants write in the review request that they submitted a request to reschedule the hearing on January 24, 2023.
3. Even if the adjudicator erred in finding that the Tenants did not submit a request to reschedule the February 2, 2023 hearing, I find that the error is not a *serious* error, because it does not affect the outcome of the February 16, 2023 order.
4. Parties to an application are required to attend the scheduled Board hearing. Although the Board has a process that allows a party to ask to have a hearing rescheduled, submitting the Board-approved form does not guarantee that the request will be approved. Indeed, the Board's Rules of Procedure require parties to consent to reschedule a hearing. Where a request to reschedule a hearing is not approved, parties are required to attend the scheduled hearing.
5. In this case, the Tenants did not receive a response to their request to reschedule the February 2, 2023 hearing. The Tenants did not attend the hearing, and did not have an agent or representative attend in their place to request an adjournment.
6. It is evident from the February 16, 2023 order that the presiding adjudicator considered relevant factors when she determined that it was appropriate to proceed with the hearing in the Tenants' absence. The order, for example, cites evidence that the Tenants were attending a funeral in Texas, on or about the hearing day. The order finds that, even if the Tenants were in Texas, they could have participated in the hearing by telephone, or could have had someone attend on their behalf to request an adjournment.
7. The order also notes the Landlord's evidence, that the Tenants' explanation for their absence from the hearing was not credible. After considering the evidence, and the history of Board proceedings involving the parties, the presiding adjudicator found that the Tenants were aware of the Board's process and concluded that it was appropriate to proceed with the hearing.
8. The hearing order shows that the presiding adjudicator was mindful of the Tenants' absence from the hearing and whether to adjourn the matter. The order also shows that the adjudicator considered relevant factors when she concluded that it was appropriate to hear the Tenants' application as scheduled. That the application had previously been adjourned on a peremptory basis against the Tenants lends further support to the reasonableness of the adjudicator's decision.
9. I accordingly find that the presiding adjudicator did not err when she proceeded with the hearing, in the Tenants' absence.
10. I also find that the Tenants did not demonstrate that they were not reasonably able to participate in the February 2, 2023 hearing. The Tenants were required to attend the hearing either by telephone or computer, or through an agent or representative. Although the Tenants did not receive a reply to their January 24, 2023 request to reschedule the hearing, this is not an adequate explanation for their absence from the hearing. In the



circumstances, a reasonable person would have attended the hearing by electronic means, or would have had an agent or representative appear on their behalf.

11. I therefore conclude that the Tenants have not established good cause to review the February 16, 2023 order. The request must accordingly be denied.

It is ordered that:

1. The request to review order LTB-T-044569-22, issued on February 16, 2023, is denied. The order is confirmed and remains unchanged.

March 29, 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.