



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

Citation: Pilotti v Martin, 2023 ONLTB 23360

Date: 2023-02-24

File Number: LTB-L-073836-22-RV

In the matter of: 2, 284 St Patrick Street
Ottawa Ontario K1N5K5

Between: Pietro Pilotti Landlord

And

Yvon Martin Tenant

Review Order

Pietro Pilotti (the 'Landlord') applied for an order to terminate the tenancy and evict Yvon Martin (the 'Tenant') because the Landlord requires possession of the rental unit for the purpose of residential occupation. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was resolved by order LTB-L-073836-22 issued on January 25, 2023.

On February 22, 2023, the Landlord requested a review of the order.

A preliminary review of the Landlord's review request was conducted without a hearing.

Determinations:

1. In the request to review, the Landlord states that the hearing member erred in preferring the Tenant's evidence over the Landlord's sworn affidavit in determining the Landlord's good faith intent. It also appears that the Landlord submits that the hearing member erred in procedure by allowing the Tenant's audio recordings to be admitted into evidence.
2. 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.

Landlord's Good Faith Intent

3. The hearing member made a finding of fact that she preferred the Tenant's evidence to the Landlord's evidence regarding the Landlord's good faith intent. The Board's Interpretation Guideline 8 Review of an Order says:

The original hearing Member's findings of fact are entitled to considerable deference. A request will not be granted simply because the reviewing adjudicator might have come to a different conclusion about the evidence. Even where it finds a factual error the LTB may not



exercise its discretion to review if the error is trivial, does not relate to a material issue in dispute or would not change the result.

The LTB must be satisfied that there appears to be no rational connection between the findings of fact and the evidence in the original hearing. See *SWL-16171-10-RV (Re)*, 2011 CanLII 13354 (ON LTB).

4. A review of the hearing recording shows that both parties made submissions and admitted evidence on the Landlord's good faith intent. In paragraph 25 of the January 25, 2023 order, the hearing member makes the finding that she preferred the Tenant's evidence that the Landlord served the N12 Notice on the Tenant not because the Landlord was going to move into the rental unit, but because the Tenant refused to agree to an illegal rent increase. There is nothing in the record to support a determination that the hearing member applied improper principles in assessing the evidence introduced or that there was insufficient evidence before the Board to support its conclusions. I would not interfere with the assessment of the evidence by the Member of first instance, who had the opportunity of observing the witnesses and of hearing the evidence in its totality. As such, I am not satisfied that there is a serious error made in this regard.
5. Furthermore, there is nothing improper about the hearing member preferring the Tenant's evidence to the Landlord's sworn affidavit. As a general principle, oral testimony is superior to affidavit/declaration evidence as it can be subject to cross-examination and the adjudicator can assess the credibility of the witness.¹ In fact, the January 25, 2023 order shows that the parties' evidence was weighed for credibility. Therefore, there was no serious error inherent in preferring the Tenant's evidence to the Landlord's sworn affidavit.

Audio Recording

6. The Landlord submits that the Tenant's audio recordings were not under oath and the Landlord was sure he could object to its presentation.
7. A review of the hearing recording shows that the Landlord did not object to the admission of the audio recordings. Furthermore, section 15 of the *Statutory Power Procedures Act, 1990* specifies that a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court, any document or other thing relevant to the subject matter of the proceeding and may act on such evidence. As such, I do not find that hearing member made a serious error in admitting the audio recordings into evidence.
8. Since the Landlord did not demonstrate good cause to review the January 25, 2023 order, the Landlord's request shall be denied.

It is ordered that:

1. The request to review order LTB-L-073836-22 issued on January 25, 2023 is denied.

¹ *Sertic v. Mergarten*, 2017 ONSC 263 (CanLII) at para 7.



2. The order is confirmed and remains unchanged.

February 24, 2023

Date Issued

Camille Tancioco

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.