



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

Citation: Nakas v M & R Holdings, 2023 ONLTB 19864

Date: 2023-02-23

File Number: LTB-T-077807-22-RV
(TET-12208-20)

In the matter of: 502, 1275 Danforth Road
Scarborough Ontario M1J1E7

Between: Nadya Nakas Tenant

And

M & R Holdings
Trudelle Court Apartments

Landlords

Review Order

Your file has been moved to the Landlord and Tenant Board's new case management system, the Tribunals Ontario Portal. Your new file number is LTB-T-077807-22.

Nadya Nakas (the 'Tenant') applied for an order determining that M & R Holdings and Trudelle Court Apartments (the 'Landlord'):

- 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.

This application was resolved by order TET-12208-20 issued on June 21, 2022.

On July 18, 2022, the Landlords requested a review of the order and that the order be stayed until the request to review the order is resolved.

On December 13, 2022, interim order LTB-T-077807-22-TET-12208-20-RV-IN was issued, staying the order issued on June 21, 2022.

This application was heard in by videoconference on February 1, 2023. The Tenant, the Tenant's legal representative, D. Saunders, the Landlords' legal agent, J. Dicorpo, and the Landlords' legal representative, J. Hoffer, attended the hearing.

Preliminary Issue:

1. The Tenant's legal representative requested that I only rely on the parties' oral submissions in making my determinations as to whether there was a serious error in the hearing member's decision. For the reasons that follow, this request is denied.



2. At the outset of the hearing, the Tenant's legal representative stated that she had not received a copy of the Landlords' Schedule to the request to review until the Landlords produced their document brief a few days before the hearing. I had asked what she was seeking to do, and she advised she was prepared to proceed with the review hearing. At the conclusion of the review hearing, the Tenant's legal representative asked that I only rely on the parties' oral submissions as she was not afforded the opportunity to draft her own responding submissions.
3. The request is denied. The Tenant's legal representative was afforded an opportunity to seek an adjournment so that she could also make written submissions. However, she chose to proceed. As such, this order makes a determination based on the written and oral submissions.

Determinations:

4. The Tenant's application was heard on November 23, 2021, December 10, 2021, and January 10, 2022. The Tenant's application was about the Landlords' alleged substantial interference with the Tenant's reasonable enjoyment and harassed, etc. the Tenant by failing to address the conduct of the tenants in the neighbouring unit, unit 602. The Landlords' request to review alleges the following serious errors:
 - a. That the hearing member made unreasonable findings of fact regarding the Landlords' response to the conduct of the tenants in unit 602;
 - b. That the hearing member made an unreasonable exercise in discretion which results in an order outside the usual range of remedies or results and where there are no reasons explaining the results;
 - c. That the hearing member made an error in law in not applying section 16 of the *Residential Tenancies Act, 2006* (the 'Act').
5. For the reasons set out below, the Landlords' request to review is denied.

Unreasonable Findings of Fact

6. The Landlords allege that the hearing member made the following unreasonable findings of fact:
 - i. That the hearing member finds that the Landlords substantially interfered with the Tenant by not addressing the conduct of the tenants in unit 602 in an incident on November 7, 2019 where the police were involved. However, there was no evidence that the police informed the Landlords of the incident.
 - ii. That the hearing member finds that the Landlords did not contemplate serving notices of termination on the tenants of unit 602, which contradicts the Landlords' submission that they did not have objective evidence upon which to base the complaints.
 - iii. That the hearing member found that the Landlords did not inform the Tenant or the tenants of unit 602 what the nature of the complaints were that prompted the warning letters, which contradicts the evidence stated in paragraphs 34, 53, 46, 49, 52 of the order.



- iv. That the hearing member found that the Landlords did not take the Tenant's complaints seriously because they called a witness from unit 602 to testify at the hearing.

7. 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.

8. I considered all of the above alleged unreasonable findings of fact and find that the order sets out in sufficient detail the reasons why the hearing member arrived at her conclusions. I am not satisfied that there was no rational connection between the findings and the evidence presented at the hearing. For example, regarding the November 7, 2019 incident, the hearing member found that the Landlords substantially interfered with the Tenant's reasonable enjoyment by not addressing the conduct of the tenants in unit 602. While the Landlords state that the police did not inform the Landlords of the incident on November 7, 2019, the hearing member found in paragraph 93 that the police were acting as the Tenant's intermediary.
9. There is nothing to suggest that the hearing member applied improper principles in assessing the evidence introduced. 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. The order is therefore an adequate order, and it is evident that the adjudicator's findings of fact are rationally connected to the evidence adduced during the hearing.

Unreasonable Exercise of Discretion

10. The Landlords allege that the hearing member unreasonably exercised her discretion in awarding 40% rent abatement from August 30, 2019 to October 31, 2020 and 10% from November 1, 2020 to January 10, 2022.

11. The Board's Interpretation Guideline 8 Review of an Order states:

Orders granting relief from eviction (RTA s. 83(1)) or awarding specific remedies involve an exercise of the original hearing Member's discretion and are entitled to deference. The LTB will not exercise its discretion to review these types of decisions where the result is within the range of reasonable, acceptable outcomes.

12. In other words, a hearing member's exercise of discretion can only be successfully challenged on review if it was exercised in an unreasonable manner. I must determine whether the hearing member's discretion to award the rent abatement was capricious or a marked departure from the range of reasonable outcomes.
13. I do not find that the hearing member's discretion to award the remedy is capricious. She made a finding that the Landlords substantially interfered with the Tenant's reasonable



enjoyment. Pursuant to section 31 of the Act, the Tenant is entitled to a remedy, including an abatement of rent. Therefore, the hearing member awarding an abatement of rent was not capricious.

14. The hearing member's award for the percentage of rent abatement for the period set out in the order was also reasonable. The amount and period were supported in the evidence regarding the ongoing nature of the offending conduct and the Tenant and the occupant's circumstances. While the Landlords disagree with the period of abatement, the period awarded is within the time required by section 29 of the Act and is therefore within the range of reasonable outcomes. As such, I do not find that the hearing member made a serious error in this regard.

Error in Law

15. The Landlord submits that the hearing member erred in law by not considering section 16 of the Act. Section 16 states that when a landlord or a tenant becomes liable to pay any amount as a result of a breach of a tenancy agreement, the person entitled to claim the amount has a duty to take reasonable steps to minimize the person's losses.
16. The Landlords submit that the Tenant ought to have kept logs of dates and times of the conduct and contact the Landlords while the noise is happening so that they could investigate. The Landlords submit that the Tenant did not and therefore, did not minimize her losses.
17. In my view, the hearing member did not make an error in law as she adequately addressed whether the Tenant minimized her losses. While not explicitly stated in the order, I find that the hearing member turned her mind to section 16 by assessing the Tenant's efforts to address the conduct of the tenants in unit 602 in paragraph 93 of the order. The hearing member found that the Tenant delivered the requested noise logs repeatedly until they were exasperated by the Landlords' failure to take effective action and then resorted to involving the police as an intermediary.
18. 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. As such, the request to review is denied.
19. This order contains all of the reasons within it. No further reasons shall be issued.

It is ordered that:

1. The request to review order TET-12208-20 issued on June 21, 2022 is denied. The order is confirmed and remains unchanged.
2. The interim order issued on December 13, 2022 is cancelled. The stay of order LTB-T-077807-22 is lifted immediately.

February 22, 2023
Date Issued

Camille Tancioco
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.