



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

Citation: 15 THORBURN HOLDINGS LIMITED v PELLETIER, 2023 ONLTB 19968

Date: 2023-02-15

File Number: LTB-L-003715-23-SA-RV

In the matter of: 102, 15 THORBURN AVENUE
TORONTO ON M6K1C4

Between: 15 THORBURN HOLDINGS LIMITED Landlord

And

DEREK PELLETIER Tenant

Review Order

15 THORBURN HOLDINGS LIMITED (the 'Landlord') applied for an order to terminate the tenancy and evict DEREK PELLETIER (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy. That application was resolved by ex parte eviction order TSL-26462-22 issued on June 1, 2022. The Tenant filed a motion to set aside order TSL-26462-22.

A hearing for the Tenant's motion was held on August 30, 2022, and October 25, 2022. The motion was denied in order TSL-26462-22-SA issued on December 5, 2022.

On January 4, 2023, the Tenant requested a review of order TSL-26462-22-SA and that the order be stayed until the request to review the order is resolved.

On January 13, 2023, interim order LTB-L-003715-23-RV-IN was issued, staying the order issued on December 5, 2022.

This review was heard by videoconference on February 1, 2023. The Landlord's legal agent, A. Ross, the Landlord's legal representative, D. Ciobutaru, the Tenant and the Tenant's legal representative, S. Mason, attended the hearing.

Determinations:

1. The Tenant alleges that TSL-26462-22-SA issued on December 5, 2022 (the "Order") contains the following serious errors:
 - (a) That the hearing member erred in law by failing to apply section 202 of the *Residential Tenancies Act, 2006* (the 'Act');



- (b) That the hearing member seriously erred by failing to consider the validity of the agreement to terminate in view of the Landlord's misrepresentations;
- (c) That the hearing member erred in law by applying the wrong legal test under section 77(8)(b) of the Act.

Section 202

2. The Tenant submits that the hearing member erred in law by failing to apply section 202 of the Act. Section 202 of the Act states that in making findings in an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants. In doing so, the Board may disregard the outward form of a transaction or the separate corporate existence of participants and may have regard to the pattern of activities relating to the residential complex or the rental unit.
3. The Tenant submits that the hearing member found that the primary reason the Landlord wants to terminate the tenancy is that there are likely repairs to the apartment underneath the rental unit which may require the rental unit to be vacant for a period of time. However, the hearing member failed to consider the Landlord's intent to obtain vacant possession without having to abide by the statutory scheme, namely the service of an N13 Notice.
4. I am satisfied that the hearing member ascertained the real substance of all transactions and activities and therefore, I do not find that there is a serious error in this regard. In paragraph 21 of the Order, the hearing member expressly turned her mind to whether the Landlord ought to have served the N13 Notice or provide the Tenant with first refusal rights given the repair issues. The hearing member found that the parties entered a valid agreement to terminate the tenancy and therefore, the service of an N13 Notice was not required. This is consistent with the Act, as section 77 of the Act allows tenancies to terminate by way of agreement.
5. The determination that the agreement to terminate was valid was supported in the hearing member's findings of fact that there was no duress, that the Tenant was aware of the circumstances surrounding the termination, and that compensation was paid to the Tenant for the agreement to terminate. Therefore, I cannot find that there was an error in how the hearing member considered this issue.

Validity of the Agreement

6. The Tenant also submits that the hearing member seriously erred by failing to consider the validity of the agreement to terminate the tenancy in view of the Landlord's misrepresentations. Specifically, the Tenant submits that the Tenant's evidence at the hearing was that the Landlord led the Tenant to believe that he would lose his home and receive nothing in return if he did not agree to terminate the tenancy.
7. At the review hearing, it was uncontested that the parties provided evidence and submissions regarding the Landlord's alleged misrepresentations to the Tenant. I find that the hearing member considered the validity of the agreement, including any



misrepresentations, and provided cogent reasons for her rejection of the Tenant's claims of misrepresentation.

8. The hearing member addresses the nature of the discussions between the Landlord's agent and the Tenant respecting the agreement to terminate and determined that the Tenant was not forced to sign the agreement and had sufficient time during the conversations to obtain legal advice if he wished. Furthermore, the hearing member went into great detail in paragraphs 10 - 12 why she preferred the Landlord's evidence that the parties entered a valid agreement to terminate the tenancy devoid of any duress. The fact that the hearing member did not explicitly reference what the Tenant was told in these negotiations does not mean she did not consider it. There is no requirement that a hearing member articulate every argument put forth in reaching their conclusions
9. There is nothing 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. Therefore, I am not satisfied that there is a serious error in this regard

Application of Section 77(8)(b) of the Act

10. The Tenant submits that the hearing Member erred in law by applying the wrong legal test under section 77(8)(b) of the Act. Specifically, the Tenant argues that the test is that the Board is to grant the set aside motion if it is satisfied that "it would not be unfair" to make an order having regard to all of the circumstances. However, the hearing member articulated the test as "it would be unfair to set aside the eviction order." This is not the test as described in *Pinto v. Regan and White v. Regan*.¹
11. The Tenant's argument regarding the phrasing of the test is a matter of semantics as the hearing member's application of section 77(8)(b) is consistent with *Pinto*. The hearing member was required to determine whether it would not be unfair to grant the Tenant's motion in consideration of all of the circumstances. I am satisfied this was done as paragraphs 19 – 21 set out the Tenant's circumstances in considerable detail including the length of tenancy and the tenant's monthly rent and the Landlord's circumstances such as the extensive repairs to the building.
12. 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.
13. I took submissions on the lifting of the stay. The Tenant testified to his monthly rent and length of tenancy. He stated that he has been looking for a new unit since last year and has submitted several applications. However, he has not received a response. The Landlord submitted that the agreement to terminate the tenancy was entered into a year ago and that the length of time should be considered in determining when to lift the stay.

¹ 2021 ONSC 5502 (CanLII) [*Pinto*].



14. In consideration of the parties' submissions, I find it would not be unfair to lift the stay on March 15, 2023. This period will allow the Tenant some time to organize his move.

It is ordered that:

1. The request to review order TSL-26462-22-SA issued on December 5, 2022 is denied. The order is confirmed and remains unchanged.
2. The interim order issued on January 13, 2023 is cancelled. The stay of order LTB-L-003715-23 is lifted on March 15, 2023.

February 15, 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.