



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

Citation: McGowan v Fleming and Holoday, 2023 ONLTB 20046

Date: 2023-02-09

File Number: LTB-L-076905-22-RV

In the matter of: 40769 Feeder Road E
Wainfleet ON L0S1V0

Between: Ann McGowan Landlord

And

Brooke Fleming Tenant
John Holoday

Review Order

Ann McGowan (the 'Landlord') applied for an order to terminate the tenancy and evict Brooke Fleming and John Holoday (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order SOL-14893-20, issued on December 21, 2020.

On December 30, 2020, the Landlord requested a review of the December 21, 2020 order. The Landlord's request to review the order was resolved by Board interim review order SOL-14893-20-RV-IN, issued on April 6, 2021.

A hearing de novo of the Landlord's application was held on August 25, 2022. The Landlord's application was resolved by Board review order LTB-076905-22-RV, issued on January 25, 2023.

On February 6, 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.
2. The Tenants submit that they are entitled to compensation from the Landlord equal to one month's rent, pursuant to section 48.1 of the *Residential Tenancies Act, 2006* (the 'Act'). The Tenants further submit that the amount they believe they are entitled to receive - \$1,500.00 - should be set-off against the \$4,845.00 amount the January 25, 2023 order requires them to pay to the Landlord.



3. In *Marineland of Canada Inc. v. Olsen*, 2011 ONSC 6522 (Div. Ct.) (CanLII), the Divisional Court determined that the Board erred when it failed to set-off the tenant's rental arrears against compensation the landlord was required to pay under section 52 of the Act. The Divisional Court ruled that the Board should have dismissed the tenant's application requiring the landlord to pay compensation, because the amount the tenant owed to the landlord exceeded the amount of compensation payable. The Divisional Court granted the landlord's appeal and dismissed the tenant's application.
4. In this present case, the Tenants have not cited any Board order requiring the Landlord to pay the Tenants compensation under section 48.1 of the Act, or any other amount. I accordingly find that it has not yet been determined whether the Landlord owes the Tenants money, which may be set-off against the amount the Tenants must pay to the Landlord, per the January 25, 2023 order.
5. Additionally, the January 25, 2023 order shows that the Tenants did not raise the issue of compensation payable under section 48.1 of the Act at the August 25, 2022 hearing. The issue setting-off compensation payable to the Tenants against their debt to the Landlord was therefore not before the presiding Board Vice Chair.
6. In the circumstances, I find that the Tenants have not shown that the Board erred when it did not set-off an amount equal to one month's rent from the amount payable to the Landlord in the January 25, 2023 order. The request to review the order must therefore be denied.
7. The Tenants may wish to seek legal advice if they believe they are entitled to a payment under section 48.1 of the Act.

It is ordered that:

1. The request to review Board review order LTB-L-076905-22-RV, issued on January 25, 2023, is denied. The order is confirmed and remains unchanged.

February 9, 2023

Date Issued

Harry Cho

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.