



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

Citation: North Edge Properties Ltd. v Hayat, 2023 ONLTB 20213

Date: 2023-02-07

File Number: LTB-L-081864-22-RV

In the matter of: 714, 25 Mabelle Avenue
Toronto Ontario M9A4Y1

Between: North Edge Properties Ltd. Landlord

And

Fakin Ain-El Hayat Tenant

Review Order

North Edge Properties Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Fakin Ain-El Hayat (the 'Tenant') because the Tenant failed to meet a condition specified in the order issued by the Board on February 2, 2022 with respect to application LTB-L-081864-22.

This application was resolved by order LTB-L-081864-22, issued on January 5, 2023.

On February 3, 2023, the Tenant requested a review of the order.

A preliminary review of the review request was completed without a hearing.

Determinations:

1. I have listened to the November 14, 2022 hearing recording and I have reviewed the Board's application record. 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 Tenant submits that the presiding adjudicator did not afford her procedural fairness. The Tenant writes in the review request: "The Judge did not let me talk and did not give me the time to speak and answer the questions. Always interruption."
3. The hearing recording shows that the presiding adjudicator was required to interrupt the proceedings from time to time to repeat instructions about Board procedure to the unrepresented Tenant and to help the Tenant focus on relevant evidence and submissions during the proceeding. I find that the presiding adjudicator's actions were appropriate and necessary to promote a fair and orderly hearing. The interruptions did not interfere with the Tenant's ability to participate in the hearing. The Tenant, for example, gave testimony denying that she interfered with the upstairs resident by striking the Tenant's rental unit ceiling with a broomstick or other device. Furthermore, the Tenant was afforded, and



exercised, the right to cross-examine the Landlord's complainant witness and the Landlord's agent.

4. I therefore find that the Tenant did not demonstrate that the presiding adjudicator denied her procedural fairness by interrupting the proceedings.
5. The Tenant writes in the review request that she was not represented by a Licensee of the Law Society of Ontario. The Tenant also suggests that a language barrier may have interfered with her ability to participate in the November 14, 2022 hearing. The Tenant writes in the review request: "I had no lawyer and I do not speak English very good."
6. In *Lacroix v. Central-McKinlay International Ltd.* 2022 ONSC 2807 (Div. Ct.) (CanLII), the Divisional Court affirmed at paragraph 14: "Parties are entitled to be represented by counsel before the LTB. However, they are not required to be represented by counsel, and a great many parties before the LTB are self-represented." The Divisional Court also ruled at paragraph 11 that a party who is not able to participate in a hearing because of a language barrier must "raise the issue with the tribunal, or for there to be a basis on which the claim of incapability is grounded objectively in events at the hearing."
7. In this present case, the Tenant did not request that the hearing be rescheduled before the November 14, 2022 hearing in accordance with the Board's Rules of Procedure. The Tenant also did not request an adjournment at the hearing for the purpose of obtaining legal representation, or because the Tenant was unable to participate due to a language barrier. The hearing recording shows that the Tenant understood and was able to respond to the Landlord's allegation that the Tenant interfered with the upstairs neighbour on August 24, 27, 28 and 29, 2022. There was therefore no objective basis for the presiding adjudicator to determine that the Tenant was not reasonably able to participate in the November 14, 2022 hearing because of a language barrier, or any other reason.
8. I accordingly find that the Tenant did not show that she was not reasonably able to participate in the November 14, 2022 hearing because of a language barrier, or because she was not represented by a Licensee of the Law Society of Ontario, or any other person.
9. The January 5, 2023 order recites the relevant evidence and submissions the presiding adjudicator considered when he determined that the Tenant breached the February 2, 2022 conditional Board order. The January 5, 2023 order therefore adequately explains how and why the adjudicator made his findings.
10. The order also explains how and why adjudicator determined that the Tenant's evidence was not credible. The adjudicator analyzes the evidence the parties introduced at the hearing and concludes that the Tenant's documentary evidence to support her assertion that she was not home to make noise on August 27 and 28 is not credible. Since the adjudicator was in the best position to consider the parties' credibility, and because it is apparent from the order that the adjudicator considered relevant factors when making his determination, his finding with respect to the Tenant's credibility is entitled to deference.
11. Similarly, the presiding adjudicator was in the best position to consider and assess the Landlord's evidence of the alleged breach. Based on the hearing recording and the Board application record, I find there was sufficient evidence for the adjudicator to find, on a balance of probabilities, that the Tenant breached the February 2, 2022 conditional Board order. The adjudicator's finding is entitled to deference. The Tenant's repetition of



submissions in the review request that were also introduced at the November 14, 2022 hearing therefore does not represent cause to review the January 5, 2023 order.

12. The Tenant has therefore not established that a serious error may exist in the January 5, 2023 order, or that a serious error may have occurred in the proceedings. The Tenant's request to review the order must accordingly be denied.

It is ordered that:

1. The request to review order LTB-L-081864-22, issued on January 5, 2023, is denied. The order is confirmed and remains unchanged.

February 7, 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.