



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

Citation: Catalfamo v St. John and Yovanovski, 2023 ONLTB 19980

Date: 2023-02-07

File Number: LTB-L-017364-22-RV2

In the matter of: Unit 2 (Upper Level), 49 JESSIE ST
BRAMPTON ON L6Y1L5

Between: Sam Catalfamo Landlord

And

Connie St. John Tenants
Miranda Yovanovski

Review Order

Sam Catalfamo (the 'Landlord') applied for an order to terminate the tenancy and evict Connie St. John ('CS') and Miranda Yovanovski ('MY', the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was resolved by order LTB-L-017364-22, issued on November 22, 2022.

On December 1, 2022, the Landlord requested a review of the order. The review request was heard on December 21, 2022 and January 20, 2023. The review request was resolved by review order LTB-L-017364-22-RV, issued on January 24, 2023.

On February 2, 2023, the Tenant requested a review of the January 24, 2023 review order.

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

Determinations:

1. I have listened to the December 21, 2022 and January 23, 2023 review hearing recordings, and I have reviewed the Board's application record. On the basis of the submissions made in the review request, I am not satisfied that there is a serious error in the review order or that a serious error occurred in the proceedings.
2. The Tenant CS disagrees with the adjudicator on review's finding of the amount of rent arrears owing for the period ending January 31, 2023.
3. The hearing recordings show that the adjudicator on review allowed both parties to introduce detailed evidence of the Tenants' rental payment history, including amounts and payment dates. The January 24, 2023 review order summarizes and compares the parties' evidence. The evidence supports the adjudicator on review's findings: that the Tenants did not discontinue the Landlord's application to terminate the tenancy and evict



the Tenants for non-payment of rent; and had not paid the Landlord \$6,850.00 for the period ending January 31, 2023.

4. The adjudicator's findings are therefore rationally connected to the evidence. That is, the findings are not capricious and are therefore entitled to deference. As the Board's review process is not an opportunity for a party to re-argue an application that has been finally determined, the Tenants' review submissions concerning rent arrears do not represent good cause to review the January 24, 2023 review order.
5. The hearing recordings also show that the Tenants were afforded – and exercised – the opportunity to test the Landlord's credibility and evidence by cross-examining the Landlord and by introducing their own evidence during the proceedings. As such, the adjudicator on review was in the best position to determine each witness' credibility. The Tenant CS' submission, that the Landlord was untruthful during the tenancy and Board proceedings, is therefore not good cause to review the order.
6. The Tenants have filed their own tenant rights and maintenance and repair applications with the Board. The Board will consider issues that are properly before it when the Tenants' applications are heard. Matters that are, or could be, part of the Tenants' applications are not grounds to review the January 24, 2023 review order.
7. CS writes that, after her legal representative withdrew services at the January 20, 2023 hearing, she "was left having to scramble to get my documents together and find all my notes on the spot". CS writes further: "That was not a fair position for me to be put in. I was originally told I didn't have to attend the hearing because I had legal representation, but I did only to be a bystander."
8. In *Lacroix v. Central-McKinlay International Ltd.*, 2022 ONSC 2807 (CanLII) ('*Lacroix*'), the Divisional Court affirmed at paragraph 14 that, although "Parties are entitled to be represented by counsel before the LTB... they are not required to be represented by counsel, and a great many parties before the LTB are self-represented." The Divisional Court noted from the appeal record: "The tenant did not request an adjournment of the hearing. There is no evidence that the tenant raised his lawyer's non-participation in the hearing with the LTB."
9. I find from *Lacroix* that it is not an error to allow a party to appear at a Board proceeding without a legal representative. I also find that a person who wishes to have an adjournment to seek legal representation must make the request in accordance with the Board's Rules and procedures. While I am mindful that CS did not have a reasonable opportunity to request that the review hearing be rescheduled before the January 20, 2023 hearing, the hearing recording shows that CS did not request an adjournment at the hearing, or any other accommodation or assistance following her legal representative's withdrawal of service. In the circumstances, the Tenants may not now submit they were denied procedural fairness when their legal representative withdrew legal services at the January 20, 2023 hearing..
10. In the review request, CS repeats evidence that she introduced at the January 20, 2023 hearing to describe the Tenants' circumstances. The January 24, 2023 review order shows that the adjudicator on review admitted and considered the Tenants' evidence, and also the Landlord's evidence of his circumstances. The adjudicator explains that she



concludes from the evidence that the Tenants are unable to afford the monthly rent and an additional amount to extinguish their rental arrears in a reasonable period.

11. Although the Tenants may disagree with the adjudicator's exercise of discretion to postpone the eviction/enforcement date until February 28, 2023, I find that the exercise was guided by relevant evidence and falls within a reasonable range of potential outcomes. While another Board adjudicator may have exercised their discretion differently, the adjudicator on review's exercise is entitled to deference.
12. Section 86 of the *Residential Tenancies Act, 2006* (the 'Act') entitles the Landlord to compensation for the use and occupation of the rental unit after the tenancy is terminated by order, notice or agreement. The January 24, 2023 order requiring the Tenants to pay the Landlord compensation is correct.
13. The Tenant has therefore not demonstrated that a serious error may exist in the January 24, 2023 review order, or that a serious error may have occurred during the review proceedings. The request to review the January 24, 2023 review order must accordingly be denied.

It is ordered that:

1. The request to review Board review order LTB-L-017364-22-RV, issued on January 24, 2023, is denied. The review order is confirmed and remains unchanged.

February 7, 2023

Date Issued

Harry Cho

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

