



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

Citation: Homestead Land Holdings Limited v De kufrin, 2023 ONLTB 18671

Date: 2023-02-02

File Number: LTB-L-026211-22-RV

In the matter of: 1115, 195 CLEARVIEW AVE
OTTAWA ON K1Z6S1

Between: Homestead Land Holdings Limited Landlord

And

Draggan De kufrin Tenant

Review Order

Homestead Land Holdings Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Draggan De kufrin (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-026211-22, issued on January 23, 2023, after a hearing was held on January 16, 2023, where the Landlord, the Landlord's Legal Representative, and the Tenant were in attendance.

On January 31, 2023, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

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

Determinations:

1. The Tenant alleges there is a serious error in the order or that a serious error occurred in the proceedings, and that the Tenant was not reasonably able to participate in the proceedings.
2. In summary, the Tenant submits that the arrears as found by the presiding adjudicator is wrong and that he does not owe any rent arrears. The Tenant says that he did not understand that he would have to provide proof of rent payments for the past year at the hearing. The Tenant further submits that the presiding adjudicator was biased in refusing to give him the opportunity to provide bank statements as proof of rent payments. The Tenant further submits that the presiding adjudicator refused to hear evidence of alleged harassment by the Landlord.
3. 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 or that the Tenant was not reasonably able to participate in the proceeding.



4. I have listened to the hearing recording. The submissions made by the Tenant in the review request were made at the hearing. The presiding adjudicator summarizes these very same submissions at paragraphs 9 and 10 of the order.
5. These submissions were considered and rejected by the presiding adjudicator. The presiding adjudicator provides sufficient reasons to explain how and why she arrived at her decision with respect to the amount of rent arrears. The reasons provided are supported by the evidence adduced at the hearing. For example, the presiding adjudicator states that while the Tenant disputes the quantum of arrears, he was unable to provide proof of payments to refute the Landlord's numbers. This is supported by the hearing record. The order recites some of the parties' relevant evidence and submissions that guided the member's decision. The order is therefore an adequate order.
6. The Tenant also submits that they were not reasonably able to participate in the hearing. However, the January 23, 2023 hearing order shows that the Tenant was afforded an adequate opportunity to address the issues raised in the Landlord's application. As mentioned earlier in these reasons, the order recites some of the parties' evidence. This demonstrates that the parties were able to lead evidence and make submissions during the proceedings.
7. While the Tenant's adjournment request to provide proof of rent payments from his bank was denied, I do not find that this means he was not reasonably able to participate in the proceeding.
8. Parties are required to come prepared to the hearing with their evidence. The Notice of Hearing makes it clear that any documentary evidence must be disclosed to the other side and to the LTB seven days before the hearing. The N4 notice of termination and the L1 application are clear with respect to the rental period for which the arrears are claimed. The LTB's records indicate that the Notice of Hearing, the L1 application, and the N4 notice of termination was mailed to the Tenant by the LTB on December 13, 2022. The Tenant is deemed to have received the above documents on December 18, 2022. This supports the presiding adjudicators finding that the Tenant was aware of the allegations of rent arrears and the period for which the arrears were claimed. Accordingly, the Tenant was afforded an adequate opportunity to know the issues in the application and gather his evidence prior to the hearing. The Tenant was therefore afforded procedural fairness.
9. I do not find that the presiding adjudicator exhibited bias towards the Tenant by refusing to adjourn the matter to allow the Tenant time to provide proof of payments from his bank.
10. For bias to exist, there has to be a reasonable, demonstrable apprehension of bias proven. The onus of demonstrating bias lies with the person who is alleging its existence. The test of bias is objective, not subjective. The Tenant's perception of bias is not enough. A real likelihood or probability of bias must be demonstrated. There is presumption of judicial impartiality and the threshold to establish bias is high. [*R. v. S. (R.D.)* 1997 CanLII 324 (SCC), 1997 3 S.C.R. 484]
11. The legal test of a reasonable apprehension of bias is whether an informed, reasonable and right-minded person, viewing the matter realistically and practically, and having thought the matter through, would conclude that it was more likely than not that the trial judge would not decide fairly. [*Bailey v. Barbour*, 2012 ONCA 325]



12. Applying the legal tests set out above, nothing in the hearing recording or the order suggests that an informed and reasonable person, having thought the matter through, would conclude that it is more likely than not that the presiding adjudicator would not decide fairly.
13. As indicated above in these reasons, the Tenant was given an adequate opportunity to know the issues in the application, gather his evidence to dispute the Landlord's claim, disclose his evidence and be heard on the matter. Considering the LTB's mandate to adopt the most expeditious method of determining questions arising in the proceedings that affords all parties an adequate opportunity to know the issues and be heard, the decision to deny the Tenant's adjournment falls within a range of reasonable and acceptable outcomes. Accordingly, I find that there is no reasonable apprehension of bias in this case.
14. The Tenant did not raise the issue of harassment at the hearing. I also note that the Tenant did not give advance written notice to the Landlord of his intent to raise the issue of harassment at the hearing in accordance with subsection 82(2) of the *Residential Tenancies Act*, 2006 and Rule 19.4 of the LTB's Rules of Procedure. Therefore, it is not a serious error for the presiding adjudicator to not have considered this issue.
15. The request to review seeks to revisit the presiding adjudicator's decision. While the Tenant clearly disagrees with the decision, the purpose of the review process is not to provide parties with an opportunity to relitigate the issues, or raise new issues, in hopes of achieving a better outcome. I would not interfere with the assessment of the evidence by the hearing member, who was in the best position to assess the credibility of the parties and had the opportunity of hearing the evidence in its totality.

It is ordered that:

1. The request to review order LTB-L-026211-22, issued on January 23, 2023, is denied.
2. The order is confirmed and remains unchanged.

February 2, 2023
Date Issued

Khalid Akram
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.