



**Order under Section 78(6) of the
Residential Tenancies Act, 2006
And Section 21.2 of the
Statutory Powers Procedure Act**

Citation: OSGOODE PROPERTIES LTD v Melo, 2023 ONLTB 17273

Date: 2023-01-27

File Number: LTB-L-076223-22/EAL-99369-22-SA and

LTB-L-076162-22/ EAL-98203-21-RV

In the matter of: 101, 52 BAYSWATER PLACE
KINGSTON, ON K7M 2C

Between: OSGOODE PROPERTIES LTD

Landlord

And

Luis Melo

Tenant

OSGOODE PROPERTIES LTD (the 'Landlord') applied for an order to terminate the tenancy and evict Luis Melo (the 'Tenant') because:

- The Tenant failed to meet a condition specified in the order issued by the Board on May 2, 2022 with respect to application EAL-98203-21. (file LTB-L-076223-22/EAL-99369-22-SA), and
- The Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant. (file LTB-L-076162-22/EAL98203-21-RV)

With respect to LTB-L-076223-22/EAL-99369-22-SA, the Tenant filed a motion to set aside order EAL-98203-22. This motion was heard on November 22, 2022.

With respect to LTB-L-076162-22/ EAL-98203-21-RV, application EAL-98203-21 resolved by order EAL-98203-21 issued on February 1, 2022. On April 20, 2022, the Tenant requested a review of the order.

Both the motion to set aside and request for review were heard by videoconference on November 22, 2022.

Regan Whatley, for the Landlord, the Landlord's Legal Representative, David Lyman, the Tenant, and the Tenant's Legal Representative, John Done, attended the hearing.

Determinations:

1. In respect of file LTB-L-076223-22/EAL-99369-22-SA, order EAL-99369-22-SA provided that the Landlord could apply to the Board under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenant to terminate the tenancy and evict the Tenant if the Tenant did not meet certain condition(s) specified in the order. The Board found the Tenant breached the conditional order issued at hearing requiring the Tenant to provide proof of insurance to the Landlord by February 28, 2022, consequently an ex parte order was issued March 25, 2022, terminating the tenancy April 6, 2022. The Tenant requested a set aside of this order.
2. With respect to file LTB-L-076162-22/ EAL-98203-21-RV, the Tenant requested a review of order EAL-98203-21-RV on the basis that he was reasonably able to participate in the original hearing on January 26, 2022.
3. The Tenant's Legal Representative submitted that the request to review should be granted because the Landlord knew the Tenant had mental health issues and should have advised the Board of this when the Tenant did not show for the hearing. The Tenant missed the hearing due to these issues as such, he was not reasonably able to participate in the proceedings. Plus, the Tenant's unit is only 35 feet from the office, and no one reached out to him about not being at the hearing, the Landlord should have done this considering the Tenant's mental health issues; the Landlord's Legal Representative may not have known about the Tenant's disability, but the Landlord's Agent had a duty to reach out. In respect of the set aside, it should be granted because of serious errors in the process. There was no evidence supporting a finding that the lease required the Tenant to have insurance; there was no evidence admitted and the Landlord's Agent was not called as a witness. The matter should have been dismissed based on lack of evidence. For all these reasons, the review and set aside should be granted and it should be included that the Landlord has a basic duty to alert the Board if they know the Tenant has, for example, no phone and mental health issues.
4. The Landlord's Legal Representative submitted that this matter should have resolved very simply, all the Tenant needed to do was provide proof of insurance; that the Tenant chose not to do this is not a reason to grant the review or set aside, although it is fair under the circumstances to give the Tenant another chance to provide the necessary proof. The Landlord had no knowledge of the extent of the Tenant's disability nor whether he had a phone; the Landlord had no knowledge about why the Tenant did not appear at the

hearing. As for the hearing itself, the rules permit a representative to submit evidence and testimony, and it was not unreasonable for the member to conclude that that the reason for not providing proof of insurance was that the Tenant had none. In any event, the matter was handled in the same manner that it would have had the Tenant attended; the Tenant was given the opportunity to obtain insurance and provide the Landlord with proof of coverage.

5. For the reasons that follow, the review and set aside are granted and the Tenant will be required to provide the Landlord with proof of such insurance. There was no evidence that the Landlord had any knowledge of the extent of the Tenant's disability or that he did not have a phone, therefore the Landlord did not breach its duty to the Board. Section 83 of the *Residential Tenancies Act, 2006* (the 'Act'), requires the Landlord to advise the Board if they know any reasons to delay or deny the eviction; having no knowledge is not a breach of this duty. However, based on the Tenant's Legal Representative's submissions, the reason the Tenant did not participate in the original hearing was linked to his disability. Even though the outcome would likely not have differed had the Tenant attended the original hearing, a reasonable accommodation is to allow him another opportunity to provide the requisite proof to the Landlord of insurance. With respect to the set aside, I find there were no serious errors in the process at the original hearing. The member determined the lease required the Tenant to have insurance, was given opportunities to provide proof of insurance, and despite providing such proof in the past, did not in this instance; there is nothing unreasonable about these findings and nothing that amounts to a serious error in the process. However, it is reasonable under the circumstances to grant the set aside using my discretion under section 78(11)(b) of the Act, having regard to all the circumstances.
6. There is no dispute that the Tenant's lease requires him to have tenant's insurance or that the Tenant did not provide the Landlord with proof of such insurance when requested; this was established by the lease and the Landlord's testimony. Logically, the only way a landlord would be able to know if a tenant has complied with this term is to ask for proof of insurance coverage. Therefore, I find not having insurance, as required by the lease, or refusing/failing to provide the Landlord with proof of insurance is substantial interference with the Landlord's lawful right, interest, or privilege.
7. Taking into consideration all the disclosed circumstances in accordance with section 78(11)(b), I find it is reasonable to allow the Tenant the opportunity to preserve his tenancy by obtaining insurance, if necessary, and providing to the Landlord with proof of said insurance.
8. In respect of the Tenant's Legal Representative's request for the order to include a duty on the Landlord to disclose any known mental health, or other issues, to the Board, this request is denied. Section 83 of the Act requires the Board to consider all the disclosed circumstances when determining whether it would be fair to delay, deny, or grant, with or

without conditions, an eviction. This determination is made based on the Landlord's disclosure/knowledge, as such it is already a requirement on the Landlord; no further duty is necessary or required.

9. With respect to the Landlord's Legal Representative's request that the Landlord be reimbursed the \$24.07 per month they have paid since July 2022 for having obtained insurance on the Tenant's behalf, this request is denied without prejudice. The application is based on a N5 notice of termination for substantial interference based on the Tenant not proving the Landlord with proof of insurance coverage, it does not encompass the Tenant reimbursing the Landlord for insurance coverage taken out on the Tenant's behalf.
10. This order contains all the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. Oder EAL-99369-22-SA (file LTB-L-076223-22/EAL-99369-22-SA), issued on March 25, 2022, is set aside; the order is cancelled and replaced with the following:
2. Order EAL-98203-21-RV (file LTB-L-076162-22/ EAL-98203-21-RV), issued on February 1, 2022, is cancelled and replaced with the following:
3. The Landlord's application for eviction of the Tenant is denied on the condition that the Tenant shall provide to the Landlord proof of liability insurance on or before February 26, 2023.
4. If the Tenant fails to abide by the terms in paragraph, then the Landlord may apply for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition set out in paragraph 1 of this order.

January 27, 2023

Date Issued

Diane Wade

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.

