



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

Citation: LEI v MALLETT, 2023 ONLTB 15284

Date: 2023-01-12

File Number: LTB-L-001280-23-SA-RV2 (SWL-58305-22-SA-RV2)

In the matter of: 201, 352 RICHMOND STREET
LONDON ON N6A3C3

Between: GUOQING LEI Landlords
JIN FENG

And

LES MALLETT Tenant

Review Order

Your file has been moved to the Landlord and Tenant Board's new case management system, the Tribunals Ontario Portal. Your new file number is LTB-L-001280-23.

GUOQING LEI and JIN FENG (the 'Landlords') applied for an order to terminate the tenancy and evict LES MALLETT (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant failed to meet a condition specified in the order issued by the Board on January 21, 2022 with respect to application SWL-55459-21.

This application was resolved by order SWL-58305-22, issued on July 4, 2022.

The Tenant filed a motion to set aside order SWL-58305-22. The Tenant's motion was resolved by order SWL-58305-22-SA issued on November 10, 2022.

On November 25, 2022, the Tenant requested a review of the order. The request was resolved by order SWL-58305-22-SA-RV, issued on December 22, 2022.

On January 3, 2023, the Landlords requested a review of order SWL-58305-22-SA-RV.

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

Determinations:

1. The Landlords submit that the order contains serious errors. Specifically, the Landlords submit that the reviewing member did not consider important facts of additional breaches by the Tenant. Additionally, the Landlords submit that the reviewing member accepted questionable evidence.



2. 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.
3. Although the order is silent with respect to the additional breaches by the Tenant, this evidence was before the reviewing member. However, given all the circumstances – including the amount of arrears owed as of the date of the review hearing, the Tenant’s change in circumstances, the Tenant’s authorization for ODSP to pay the rent to the Landlord directly, the purpose, intent and remedial nature of the *Residential Tenancies Act, 2006* (the ‘RTA’) – the reviewing member’s decision to grant the Tenant’s motion was a reasonable exercise of discretion pursuant to s.78(11) of the RTA. The decision falls within a range of reasonable outcomes. The decision is therefore entitled to deference. Accordingly, I would not interfere with it.
4. The questionable evidence the Landlords refer to in their request appears to be with respect to two different copies of a letter from the Tenant’s ODSP, dated October 18, 2022. This is addressed by the reviewing member at paragraph 3 to 5 of the review order. At paragraph 3, the reviewing member finds it likely that the differences between the letters were the result of human error and the order provides adequate reasons for this finding.
5. While the Landlords clearly disagree with the decision, the purpose of the review process is not to provide parties with an opportunity of relitigating the issues. I would not interfere with the assessment of the evidence by the reviewing 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.
6. As the Landlords have failed to show a serious error in the order or in the proceedings, the request to review must be denied.
7. While I appreciate the Landlords do not believe that the Tenant has the intention to pay the arrears based on the Tenant’s payment history, the review order dated December 22, 2022 provides the Landlords with the right to apply to the LTB for an order terminating the tenancy and arrears if the arrears are not paid on or before January 31, 2023 or if rent for the month of January 2023 is not paid on or before the first business day of January 2023.
8. I want to make it clear to the Tenant that this decision should not be misunderstood as protection for the Tenant from the consequences of any future breaches, including the consequences of eviction. Any future breaches may likely result in a very different outcome for the Tenant.

It is ordered that:

1. The request to review order SWL-58305-22-SA-RV, issued on December 22, 2022, is denied.
2. The order is confirmed and remains unchanged.

January 12, 2023
Date Issued

Khalid Akram
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.