



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

Citation: Hunters Lodge Apts. Inc. v Aliabadi, 2023 ONLTB 13929

Date: 2023-01-05

File Number: LTB-L-045259-22-RV

In the matter of: 1201, 2600 Don Mills Road
Toronto Ontario M2J3B4

Between: Hunters Lodge Apts. Inc. Landlord

And

Elizabeth Fadil and Sara Aliabadi Tenants

Review Order

Hunters Lodge Apts. Inc. ('HLAI' or the 'Landlord') applied for an order requiring Elizabeth Fadil and Sara Aliabadi ('EF' and 'SA' or collectively, the 'Tenants') to pay the rent that the Tenants owe. (L9 application)

This L9 application was resolved by order LTB-L-045259-22 issued on October 27, 2022 (the 'LTB Order').

On October 27, 2022, the Landlord requested a review of the LTB Order alleging they were not reasonably able to participate in the proceedings that took place on October 24, 2022.

On November 4, 2022, interim order LTB-L-045259-22-RV-IN was issued, sending the matter to a review request hearing.

The Landlord's review request was heard in by videoconference on November 24, 2022.

The Landlord's Legal Representative, Howard Levenson ('LLR'), and one of the Tenants, Sara Aliabadi (SA), attended the hearing. SA declined the chance to consult with Tenant Duty Counsel prior to the commencement of the hearing.

Determinations:

1. LLR stated that when the LTB Order was received, the Landlord realized that something had not happened correctly. LLR averred that the Landlord never received a Notice of Hearing to the October 24, 2022 hearing.
2. Had the Landlord been aware of the notice of hearing, LLR confirmed the Landlord had the full intention of attending the proceedings for the L9 application.
3. SA was unable to provide any submission on this point except to state that LLR himself was not shown as a recipient of any Notice of Hearing.



4. Based on the submissions before me, both in the request to review and at this review hearing, I was satisfied that the Landlord was not reasonably able to attend the October 24, 2022 hearing, which resulted in the LTB Order being issued on October 27, 2022.
5. As a result, I find the Landlord's request to review is granted. The LTB Order is to be cancelled and the original L9 application was directed to an immediate *de novo* (new) hearing before me.

De Novo Merits Hearing for the L9 Application

6. LLR submitted that the Tenants entered into a one-year lease with the Landlord for the rental unit on July 1, 2021. LLR stated that the Landlord received from the Tenants a signed N9 notice to terminate the tenancy, that was signed by both Tenants with a date of March 7, 2022. The N9 notice set out a termination date of April 30, 2022. This was not disputed by the Tenant SA who confirmed the N9 was given to the Landlord (exhibit TT#1).
7. The Tenant SA stated the Tenants vacated the rental unit on March 15, 2022 and submitted exhibit TT#2 to support her testimony. This means the Tenants were in possession of the rental unit on the date the application was filed (which was on March 8, 2022).
8. LLR stated that the Landlord was able to confirm that the rental unit was fully vacated as of April 30, 2022. Whether the Tenants vacated on March 15/22 or April 30/22, LLR stated the Landlord's position which was that the Tenants were not able to terminate the tenancy before June 30, 2022 because of the one-year term under the lease (exhibit LL#2). He referred to section 47 of the *Residential Tenancies Act, 2006* (the 'Act') for the statutory basis of this position.
9. LLR provided an L9 update sheet (which was corrected slightly in a post-hearing submission as requested by me) which showed that after the L9 application was filed, the Tenants made one final payment of \$1,010.00 on March 17, 2022. With this final payment, the Tenants had therefore paid the full monthly rent for March 2022.
10. LLR confirmed that the Landlord is holding a last month's rent (LMR) deposit of \$2,020.00 which had been collected on July 2, 2021. The interest owing on that deposit to April 30, 2022 is \$7.97. (The LTB guidelines set out 0% increase on LMRs in 2021 and 1.2% in 2022.)
11. LLR submitted that once the Landlord established the Tenants had vacated, the Landlord tried hard to re-rent the unit to new tenants. He submitted exhibit LL#1 to support this- LL#1 comprises several invoices billed to the Landlord by various renting agencies, which were paid to advertise the rental unit to the public. LLR submitted that despite all efforts, the Landlord was only able to re-rent the unit as of July 1, 2022 and submitted a copy of the new lease to show this (exhibit LL#3).
12. As set out in the L9 application, LLR submitted the Tenants therefore did not pay the total rent they were required to pay for the period from March 1, 2022 to June 30, 2022.
13. The lawful rent was \$2,020.00. It was due on the 1st day of each month.



14. The Tenant SA testified as to her circumstances which led to the Tenants needing to break their lease. SA said she consulted repeatedly with a personal friend of hers who is in law school, and basically followed the advice she was given by her friend. SA testified briefly about the harassment she was subjected to by the other Tenant (EF) which made “her life terrible”. However, SA said she thought about, but stopped short of trying, to secure a restraining order against EF. SA testified she had tried to tell one of the Landlord’s on-site staff about her predicament, but never formalized her situation to the Landlord. In this latter regard, SA testified the Landlord’s portal had locked her out so she could not submit her circumstances to the Landlord in any formal way. Under cross-examination, SA was unable to provide any further details surrounding her “locked out” efforts within the Landlord’s online portal.
15. The Tenant SA testified she is still unemployed and had missed a job interview because of this review hearing. She indicated her desire to pay her half of any amounts owing but would need to do so under a long-term payment plan. SA stated her belief that the other Tenant, EF, has a full-time job, but she was unable to provide any further details.
16. Based on the foregoing submissions, I find the Tenants are no longer in possession of the rental unit but that the tenancy was not lawfully terminated in accordance with a notice of termination that is set out under section 47 of the Act.
17. It is clear the notice given by the Tenants was a 60-day notice, but that notice was not valid as the Tenants were obligated to complete a one-year tenancy under their signed lease (LL#2). Further, I find the Landlord conducted itself diligently (LL#1) in trying to minimize losses by re-renting the rental unit as soon as practicable –reference is made to section 16 of the Act.
18. Unfortunately, the Landlord was only able to re-rent the rental unit starting on July 1, 2022 (LL#3). I also note that with reference to subsection 88(1)(1.) of the Act, the earliest termination that could have been specified in the Tenants’ notice to terminate would have been June 30, 2022.
19. This means, and I so find, that the Tenants were obligated to pay monthly rents up to June 30, 2022, the date that I find the tenancy effectively terminated, and therefore the Landlord’s L9 application for rent arrears is to encompass rent arrears up to June 30, 2022.
20. LLR confirmed that the Landlord is holding a last month’s rent (LMR) deposit of \$2,020.00 which had been collected on July 2, 2021. The interest owing on that deposit to April 30, 2022 is \$7.97. (The LTB guidelines set out 0% increase on LMRs in 2021 and 1.2% in 2022.)
21. The rent deposit and interest thereupon are to be applied to the arrears of rent because the tenancy is terminated.
22. The total arrears owing by the Tenants to the Landlord are \$4,032.03. This is calculated as follows: March 2022 rent paid in full; and 3 months of rent owing for April, May and June 2022 – this adds up to \$6,060.00. The LMR and interest together is subtracted from that total to leave \$4,032.03.



23. Finally, the Landlord incurred costs of \$201.00 for filing the L9 application and is entitled to reimbursement of those costs, which is to be added to the amount in paragraph 21 above.
24. The total arrears and costs amount to \$4,233.03.
25. Based on the submissions of both parties, I indicated I would order a repayment of the total arrears and costs by instituting a regimen of \$100.00 per month payments, subject to an acceleration clause should the \$100.00 monthly amount not be paid in full and on time in any given month. As this order is issued a little more than a month after the hearing date, the first payment by the Tenants will become due on or before February 1, 2023.

It is ordered that:

1. The Tenants shall pay to the Landlord \$4,233.03*. This amount represents the rent arrears owing up to June 30, 2022 and the costs related to the application fee for the L9 application, less the last month's rent deposit and interest the Landlord owes on the rent deposit.
2. The Tenants shall make the following payments to the Landlord in respect of the monies owing under paragraph 1 of this order:
 - a) \$100.00 on or before February 1, 2023 and every month thereafter on/before the 1st day of each corresponding month for a total of 42 months, up to and including July 1, 2026; and
 - b) \$33.03 (balance of arrears) on or before August 1, 2026.
3. If the Tenants fail to make any one of the payments in paragraph 2 of this order, in full and on time, the full balance owing becomes due and payable immediately and the Tenants will start to owe interest. This will be simple interest calculated from the date of the missed payment at 5.00% annually on the balance outstanding.

January 5, 2023
Date Issued

Alex Brkic
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.