



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

Citation: AYLESWORTH v HARRISON, 2022 ONLTB 5934

Date: 2023-01-04

File Number: LTB-L-019095-22-RV

In the matter of: BACK APARTMENT, 138 BOBCAYGEON ROAD
MINDEN ON K0M2K0

Between: ROBIN AYLESWORTH Landlord

And

SIMONE HARRISON Tenant

Review Order

ROBIN AYLESWORTH (the 'Landlord') applied for an order to terminate the tenancy and evict SIMONE HARRISON (the 'Tenant') because:

- the Landlord requires possession of the residential complex for personal residential occupation.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was resolved by order LTB-L-019095-22 issued on June 13, 2022.

On June 28, 2022, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On June 29, 2022, interim order LTB-L-019095-22-RV-IN was issued, staying the order issued on June 13, 2022.

This application was heard by videoconference on September 8, 2022.

The Landlord, the Landlord's Representative, Daniel English, the Tenant and the Tenant's Representative, Stephanie Boomhour attended the hearing.

Determinations:

Review:

1. The Tenant testified she did not receive the Notice for the hearing held on June 9, 2022.

2. On the basis of the submissions made in the request, I am satisfied that the Tenant was not reasonably able to participate in the proceeding because she did not receive the notice of hearing.
3. The Tenant has no phone, access to internet or an email address, therefore the only method of service is by mail. The mail from Canada Post is not delivered to the rental unit but to a post office box which the Tenant retrieves once a week. The Tenant obtains assistance from a local community mental health support office and connects with them when she receives important mail. She did not have cause to connect because she did not receive the Notice. The Tenant testified she has no recollection of either receiving the Notice or seeking assistance from her support worker. The Tenant recalls receiving the order issued on June 13, 2022 at which time she connected with her worker and legal clinic.
4. Although mail is deemed received 5 days from the date of issuance under section 191(1) of the Act, based on the Tenant's testimony I'm satisfied that Notice did not come to her attention. As such, the Tenant did not have an adequate opportunity to participate at the hearing on June 9, 2022.

N12 Notice:

5. The Landlord is required to pay the Tenant one-month compensation before the date of termination on the N12 Notice in accordance with section 48.1 of the *Residential Tenancies Act, 2006 (the 'Act')* which states,

A landlord shall compensate a tenant in an amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if the landlord gives the tenant a notice of termination of the tenancy under section 48. 2017, c.13, s.8
6. The N12 Notice was given to the Tenant on November 15, 2021 terminating the tenancy on January 31, 2022. The Landlord showed a cheque dated August 31, 2021 in guaranteed funds equivalent to the Tenant's rent charge and verification from the post office tracker that the Tenant signed and received the cheque on September 9, 2021. The Landlord states that compensation was paid by the predecessor landlord in August 2021 and therefore requirements of section 48.1 of the Act has been met.
7. I disagree. I'm not satisfied the Landlord has paid the Tenant one month compensation before the date of termination on the N12 Notice which is required before an eviction order can be issued in accordance with section 55.1 and 83(4) of the *Residential Tenancies Act, 2006 (the 'Act')*.
8. At the review hearing, the Landlord testified the purpose of that August 2021 cheque was for compensation because the predecessor landlord was her estranged spouse who had given the Tenant an N12 Notice under section 49.1 of the Act (for purchaser's own use). There were two N12 Notices given under different sections of the Act, at different times by two different landlords.
9. The August 2021 cheque predates the N12 Notice dated November 15, 2021 and did not come from the Landlord. The cheque itself was issued in the Tenant's name and shows that it came from Kenneth George Berry (KGB) who was the predecessor Landlord. He did

not attend the hearing to explain the purpose of that cheque. There was nothing on the face of the cheque that tells the Tenant what the payment was for. There was also no dispute that the cheque was not accompanied by a note or letter to the Tenant that identify its purpose.

10. There was nothing that connect the cheque given to the Tenant in August to the compensation the Landlord was required to pay to comply with section 48.1 under N12 Notice dated November 15, 2021 until the review request was made.
11. The Landlord provided no statutory authority or jurisprudence from the courts that compensation paid by one landlord under a different notice can be transferred and applied to compensation required to be paid by a different landlord, under a different notice given under a different section of the Act.
12. The Act gives some guidance about compensation in the wording section 73.1 of the Act which allows the Board to refund compensation that is paid "in connection with a notice of termination and the Board refuses to grant an application under section 69 for an order terminating the tenancy and evicting the tenant based on the notice...". The language suggests there must be a connection with the Notice that is given to the compensation that is refunded. Whether compensation is refunded or paid, I find it reasonable that it must be made in connect to the Notice that is given.
13. Even if I'm wrong, neither the predecessor landlord nor the Landlord told the Tenant that the cheque was for compensation. The Landlord at a minimum would have had to tell the Tenant before the termination date of January 31, 2022 about the transfer of compensation paid in August to apply to the N12 Notice given in November 2021. In my view, a landlord can't wait until the hearing to state compensation has been paid by applying it as a credit to compensation paid from one landlord to the other unless it is clearly and concisely communicated as such.
14. Section 83.4 of *the Act* states:

The Board shall not issue an eviction order in a proceeding regarding termination of a tenancy for the purposes of residential occupation, demolition, conversion to non-residential rental use, renovations or repairs until the landlord has complied with section 48.1, 52, 54 or 55, as the case may be.
15. Since the Landlord has not met the statutory requirement of section 55.1 of the Act, the Board has no authority to consider eviction pursuant to Section 83.4 of the Act.

It is ordered that:

1. Order LTB-L-019095-22 issued on June 13, 2022 is cancelled and cannot be enforced.
2. The L2 application is dismissed.

January 4, 2023
Date Issued

Sandra Macchione
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.