



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

Citation: SHAH v CHEVALIER, 2023 ONLTB 13932

Date: 2023-01-03

File Number: LTB-L-047883-22-RV

In the matter of: 03, 34-38 ST. LAWRENCE STREET WEST
MADOC ON K0K2K0

Between: JASHVANT K SHAH Landlord

And

SHERRY CHEVALIER Tenant

Review Order

JASHVANT K SHAH (the 'Landlord') applied for an order to terminate the tenancy and evict SHERRY CHEVALIER (the 'Tenant') because:

- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

This application was resolved by order LTB-L-047883-22 issued on November 15, 2022 based on a hearing held on October 18, 2022 where only the Landlord was in attendance.

On November 29, 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 November 30, 2022, interim order LTB-L-047883-22-RV-IN was issued, staying the order issued on November 15, 2022.

This request was heard in by videoconference on December 21, 2022.

The Landlord and the Tenant attended the hearing. The Tenant consulted with Tenant Duty Counsel prior to the hearing.

Determinations:

1. 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 held on October 18, 2022. As such, the request to review is granted and the Landlord's application is dismissed.

REQUEST TO REVIEW

Tenant's Evidence

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2. The Tenant's request to review alleges that she was not reasonable able to participate at the hearing held on October 18, 2022 because she did not receive the notice of hearing until three days after the hearing. When she realized she had missed the hearing, she called the LTB and was told to wait for the order before filing a review request.
3. The Tenant testified that she receives mail in her PO Box, that she does not receive notifications when she gets mail, that she checks her mailbox 2-3 times a week and that she was not experiencing mail issues between September 28, 2022 when the Board's serving list indicates it was mailed, to the hearing date.
4. The Tenant seeks that the review request is granted so that she can defend against the Landlord's L2 application.

Landlord's Response

5. The Landlord opposes the Tenant's review request indicating that he received his notice of hearing and the Tenant should have too. The Landlord does not believe the Tenant did not get her paperwork in time.
6. The Landlord confirmed that he did not speak with the Tenant to inform her of the hearing date as their relationship has deteriorated.
7. The Landlord seeks that the review request be denied and the original order remain.

Analysis

8. In *King-Winton v. Doverhold Investments Ltd.*, [2008] O.J. No. 4697 (Ont. Div. Ct.) the tenant did not attend the hearing because she misread the notice of hearing and got the dates mixed up. The Divisional Court ruled the Board should have granted her request to review on the grounds of not reasonably able to participate because the tenant genuinely intended all along to participate and otherwise she would be denied the right to be heard. The Court stated: "Being reasonably able to participate in the proceeding must be interpreted broadly, natural justice requires no less."
9. In both *Bouillon v. Kennedy*, [2011] O.J. No. 2223 (Ont. Div. Ct.) and *Kewallal v. Jackson*, [2011] O.J. No. 1219 (Ont. Div. Ct.) the Court indicated that the Board should have granted review requests where the allegation was that the notice of hearing was not actually received.
10. Based on the evidence before the Board, I am satisfied it is more likely than not that the Tenant was unaware of the hearing on October 18, 2022 and therefore was not reasonably able to participate at that hearing. As a result, the request to review is granted.

L2 APPLICATION

11. The Landlord's L2 application is based on a N12 notice of termination served to the Tenant on February 18, 2022 with a termination date of April 30, 2022 pursuant to subsection 48(1) of the *Residential Tenancies Act, 2006*.



12. As of the hearing date, the Tenant remains in possession of the rental unit.
13. By way of background this is a month-to-month tenancy in which rent is due on the first of the month in the amount of \$837.00. This tenancy began in 2018.

Landlord's Evidence

14. The Landlord describes the residential complex as a building with four apartments with a commercial unit on the main floor, all of which are owned by the Landlord. The Landlord testified that the rental unit is a two-bedroom unit with a living room, dining room, kitchen, and bathroom as well as a veranda and storage space.
15. With respect to the compensation required pursuant to section 48.1 of the Act, the Landlord testified that he had initially provided a cheque to the Tenant dated April 30, 2022 but it was not cashed by the Tenant as of the October 18, 2022 hearing date and had become stale-dated. As a result, a new cheque was issued to the Tenant, as ordered, on November 30, 2022. The Landlord is unsure whether this was cheque has been cashed as of the hearing date.
16. With respect to previous N12s served to the Tenant, the Landlord testified that when there was a roof problem in the spring of 2020, he had provided all of his tenants at the residential complex with a N12 notice of termination but did not file applications based on this notice once the roof work was complete.
17. The Landlord testified that he requires the rental unit for his personal occupation; he explains that he lives in Toronto and travels every weekend to Madoc to manage his properties; given his age, this is exhausting for him. As well, because he is vegetarian, he prefers to cook his own meals, which he is currently unable to do so as he stays in the commercial unit which does not have shower or cooking facilities.
18. The Landlord testified that he has chosen this rental unit because it is most economical for him and because the other units have been recently rented.
19. The Landlord further testified that in Toronto, he currently lives in his four-bedroom house with his family which include his wife, son, and grandkids. He testified that once he receives vacant possession of the rental unit, he plans to live there for 3-4 days of the week and return to his wife and kids and grandkids for the remainder of the week.
20. The Landlord seeks a termination of the tenancy and is agreeable to extend the eviction date to the end of February 2023.

Tenant's Evidence

21. The Tenant testified that she has lived in the rental unit for eight years. She also testified that she knows that the Landlord is targeting her because she pays less rent compared to the rest of his rental units. The Tenant denies receiving the compensation cheque in April 2022.



22. The Tenant testified that the Landlord currently stays in the commercial unit downstairs and has been doing so for the past two years. She also believes the Landlord owns another home in Madoc and one of the units there are empty.
23. The Tenant explains that the relationship between her and the Landlord deteriorated after the Landlord was ordered to compensate the Tenant for the damage to her car. Since then, she has received notices of termination from the Landlord. The Tenant also testified that in November 2022, the Landlord told her if she pays back half of the car damage amount that he had to pay her, and if she agrees to a rent increase of \$40.00, the Landlord will allow her to stay in the rental unit and that she had until February 2023 to decide.
24. The Tenant seeks to preserve her tenancy and remain in the rental unit; she testified that she has a disability and lives alone, close to her son.

ANALYSIS

25. Subsection 48(1) of the Residential Tenancies Act, 2006 states:

48 (1) A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the **purpose of residential occupation** for a period of at least one year by,
(a) the landlord;

26. Based on the evidence before the Board, I am not satisfied that the Landlord's intentions to use the rental unit align with the definition of residential occupation. I say this because without the rental unit, the Landlord is currently travelling on weekends to Madoc which he claims is exhausting for him. The Landlord's evidence was, if he was granted vacant possession of the rental unit, he would live in Madoc for 3-4 days a week and did not intend to have his wife move to Madoc; instead, he'd travel back. Thus, even with the rental unit, the Landlord would still be travelling.
27. In *MacDonald v. Smith*, [1993] O.J. No. 1680 (Ont. Ct. Gen. Div), the Landlord sought possession of the rental unit to use occasionally when she travelled there or make it available to her family and friends or visit it on the weekend.
28. The Courts dismissed the Landlord's application because they found that the rental unit was not intended to be the main residence of the Landlord and thereby inconsistent with the definition 'residential occupation.' Furthermore, paragraph 2 of the order describes normal residency as "that is, use and control of the property for residential purpose as commonly understood as a main residence."
29. Similarly, in TNL-26384 (2001 O.R.H.T.D. No. 69), issued May 21, 2001, the Member considered the definition "residential occupation" as found in subsection 51(1) of the TPA. In that application, the landlord sought termination so that his son could use the rental unit occasionally when the weather prevents him from driving home to Port Perry. The Member determined that the Landlord's intended use for the rental unit is not consistent with residential occupation under the *Tenant Protection Act, 1997*.



30. I do not think that using the rental unit 3-4 days a week as a temporary place of shelter can be considered as “residential occupation”. The plain meaning of these two words, when read together as single term, suggests to me that the unit must be occupied by a person engaged in activities or conduct that is residential, or primarily residential, in nature. This is not the Landlord’s stated intention for the rental unit in the instant application as the unit would only be occupied 3-4 days a week.
31. In light of the above, I find that the Landlord has failed to establish, on the balance of probabilities, that he in good faith requires possession of the rental unit for the purpose of residential occupation. Thus, the Landlord’s L2 application must be dismissed.
32. If I am wrong in this regard, then I still find that the Landlord’s application must be dismissed as I am not satisfied that the Landlord, in good faith, requires the rental unit for his own use. I say this because at the hearing, when I asked the Landlord whether he would still require the rental unit if the Tenant agreed to pay him ½ of what he paid her for the damage to her car and agreed to the rent increase he proposed, the Landlord’s initial response was “only if necessary.”
33. I take this to mean the Landlord’s motives and intentions for requiring the rental unit are less to do with his need, as his circumstances will not change with respect to his travels, and more to do with generating greater rental income. As such, I find that the Landlord has failed to establish, on the balance of probabilities, that he in good faith requires possession of the rental unit for his own use. Thus, the Landlord’s L2 application must be dismissed.
34. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The request to review order LTB-L-047883-22 issued on November 15, 2022 is granted.
2. The interim order issued on November 30, 2022 is cancelled.
3. The Landlord’s L2 application is dismissed.
4. On or before January 14, 2023, the Tenant shall return to the Landlord the cheques dated April 30, 2022 and November 30, 2022, if they are still in her possession.
5. If the Tenant has already cashed in the cheque for November 2022, the Tenant shall return the compensation of \$837.00 to the Landlord on or before January 14, 2023.
6. If the Tenant does not pay the Landlord the full amount owing on or before January 14, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 15, 2023 at 5.00% annually on the balance outstanding.



January 3, 2023
Date Issued

Sonia Anwar-Ali
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.