



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

Citation: Saeed v Fraz, 2022 ONLTB 14635

Date: 2022-12-22

File Number: LTB-L-038455-22-RV &
CET-97341-20-RV &
CET-97340-20-RV &
CET-03102-21-RV

In the matter of: 270 Mountainberry Road
Brampton Ontario L6R1H7

Between: Adeel Saeed Landlords
Nabil Saeed

And

Muhammad Fraz Tenants
Muhammad Qureshi

Review Order

Adeel Saeed and Nabil Saeed (the 'Landlords') applied for an order to terminate the tenancy and evict Muhammad Fraz and Muhammad Qureshi (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

The Tenants applied for an order determining that the Landlords harassed, obstructed, coerced, threatened or interfered with them, substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household, and withheld or deliberately interfered with the reasonable supply of a vital service, care service, or food that the Landlords are obligated to supply under the tenancy agreement.

The Tenants also applied for an order determining that the Landlords failed to meet the Landlords' maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards.

This application was resolved by order LTB-L-038455-22 & CET-97341-20 & CET-97340-20 & CET-03102-21 issued on November 21, 2022.

On December 20, 2022, M. Fraz (MF), requested a review of the order alleging that the order contains serious errors.

Determinations:



1. The Landlords filed L1 and L2 applications, and the Tenants filed T2 and T6 applications. The Landlords withdrew their L2 application before the other applications were heard. The Member consented to the withdrawal of the L2 application, and after the hearing, she ordered a rent abatement for the Tenants, and subtracted this amount from the amount of rent arrears owed. The Member issued a voidable standard termination order for the amount of rent owed.
2. MF filed a request for a review alleging that the order contains serious errors. MF alleges that the Member made a serious error in granting the Landlords their request to withdraw their L2 application. He also alleges that the Member made a serious error in failing to permit the Tenants to amend their remedy claim for \$30,273.89, and in failing to permit the Tenants to present their evidence with respect to a verbal agreement between the Landlords and the Tenants. Finally, MF alleges that the Member made a serious error in including him as a Tenant in the order.
3. I have reviewed the full recording of the hearing, and I find that the Tenants have failed to allege a serious error in the order for the reasons that follow.

Withdrawal of Landlords' L2 application:

4. Subsection 200(4) of the Act permits an applicant to withdraw an application after the hearing begins with the consent of the Board. Permission to withdraw an application is therefore at the discretion of the Board. MF alleges that the Member's granting of the request to withdraw was prejudicial to him. However, the Landlords' L2 application sought eviction of the Tenants and utility costs as well as out-of-pocket expenses. MF has failed to explain how withdrawal of this application is in any way prejudicial to him.
5. Upon review of the recording, I was unable to find any request or suggestion by the Tenants that they should have an opportunity to speak to costs as a result of the Landlords' withdrawal of the L2 application.
6. It is fully within the discretion of the Member to permit a party to withdraw their application, and the Member's granting of the request to withdraw was reasonable. Consequently, I do not find that there is a serious error with respect to the withdrawal of the Landlords' L2 application.

The Tenants' Amendment to their Remedies:

7. The Tenants attempted to amend their remedies in order to ask for a substantial amount of damages. The Member did not permit this amendment because it was sent in the day before the hearing, and it was not disclosed to the Landlords. The Tenants did not dispute that they sent in their amendment to the remedies immediately prior to the hearing.
8. This amendment was, in fact, discussed at length during the hearing, and the Member explained repeatedly why the amendment was not going to be permitted. The Member repeated that the Tenants had filed their applications years ago, and they had had ample opportunity to make any amendments, as well as the opportunity to disclose those



amendments at least seven day before the hearing as required by the Board's Rules, and as communicated to parties in the notice of hearing.

9. The Tenants' only explanation for their failure to disclose their amendments in sufficient time, despite having had years to do so, was that they were not experts in the Act, and they should be granted leeway because they are not legal professionals. The Member found that this explanation was not reasonable. She also found that the Landlords had not had sufficient time to review the amendments and understand the case they would have to meet in order to defend their side. Consequently, the Member did not permit the Tenants to amend their remedies.
10. The Board will not interfere with the proper exercise of discretion by a Member (Guideline #8 of the *Landlord and Tenant Board Interpretation Guidelines*). The Member's exercise of discretion was reasonable. The Tenants' circumstances are not paramount. The Member's denial to permit the amendments to the remedies does not constitute a serious error.

The Tenants' Alleged Verbal Agreement with the Landlords:

11. The hearing involved a number of applications by both sides, and it ran to almost 4 hours of hearing time. Contrary to MF's allegations, the Member permitted the Tenants to give lengthy oral testimony about the alleged verbal agreement between the parties, and much of it was repetitious and irrelevant to the applications before the Member.
12. The Member found, at paragraphs #14 and #15 of her Determinations that there was no written documentation of such an agreement, and there was no supporting evidence for such an agreement. The Tenants did not dispute that there was no written agreement. The Member found no "meeting of the minds or any implied agreement concerning waiver of rent." The Member permitted the Tenants to submit what they themselves called their "circumstantial evidence," and she found that there was no agreement to waive rent. MF has not shown that there was no evidence to support the Member's finding or that the Member's finding was capricious or unreasonable. It is important to note that the Member was in the best position to assess the credibility of the witnesses before her. MF has failed to allege a serious error with respect to the verbal agreement to waive rent.

Including MF in the Order as a Tenant:

13. There is nowhere in the four hours of hearings where the Tenants alleged that MF was not a Tenant, or that he was not living in the rental unit during the period for which the Landlords claimed rent arrears. There was also no allegation that MF had ceased being a Tenant. In any case, even if MF moved out of the rental unit at any point, that action does not sever a joint tenancy.
14. MF's allegation is an attempt to introduce new evidence that he could have presented at first instance.



15. The purpose of the review process is not to provide the parties with an opportunity to present a better case than they did at first instance or to rehash issues decided.
16. The inclusion of MF as a named Tenant is not a serious error.
17. 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.

It is ordered that:

1. The request to review order LTB-L-038455-22 & CET-97341-20 & CET-97340-20 & CET-03102-21 issued on November 21, 2022, is denied. The order is confirmed and remains unchanged.

December 22, 2022
Date Issued

Nancy Morris
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.