



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

Citation: Zervas v Thomas, 2022 ONLTB 14296

Date: 2022-12-16

File Number: LTB-L-015582-22-RV

In the matter of: Unit 2, 323 QUEENSTON ST
ST CATHARINES ON L2P2X7

Between: Athanasios Zervas Landlord

And

Tabatha Thomas Tenant

Review Order

Athanasios Zervas (the 'Landlord') applied for an order to terminate the tenancy and evict Tabatha Thomas (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.

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-015582-22 issued on November 28, 2022.

On December 9, 2022, the Tenant requested a review of the order.

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

Determinations:

1. 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.
2. The constitutional questions raised in the review request were not raised at the hearing. The request does not explain why these questions were not raised at the hearing. The purpose of the review process is not to provide parties with an opportunity to relitigate the issues or raise new issues. Therefore, the constitutional questions raised in the request to review will not be considered.
3. Similarly, the last month's rent deposit was not raised as an issue at the hearing and therefore does not constitute a serious error in the order.
4. The Tenant sought to introduce photo evidence with respect to the outstanding repairs and maintenance issues at the residential complex. The Tenant did not seek to admit these pictures during her evidence in chief. These pictures were not disclosed to the Landlords in



accordance with Rule 19.1. It appears the Landlord was made aware of the pictures during the late stages of the hearing. The Tenants submit that the hearing members seriously erred by refusing to accept the photo evidence. I disagree.

5. In accordance with Rule 19.7, a party may not rely on evidence not disclosed. The decision to refuse to accept the evidence was a reasonable exercise of discretion by the hearing members. The record reveals that the photos were of the maintenance issues the Tenant testified to in chief. After considering the parties submissions, at 1 hr and 53 minutes on the record, the hearing members give their oral reasons for refusing to accept the photos. In doing so, they note that it was the Tenant who first raised the maintenance issues in her evidence, the parties both agreed to disclosure through the Tribunals Ontario Portal and the deadline to disclose had passed.
6. The hearing members considered the lateness of the disclosure. They did not accept the reasons for late disclosure by noting the Tenant first raised the maintenance issues in her evidence in chief. At the hearing, the Landlord objected to the late disclosure as prejudicial because they were not provided disclosure of the photos and had not had time to review them. The Tenant did not request an adjournment to have the photo evidence disclosed and considered. The photos should have been disclosed in accordance with the Rules or, at the least, the Tenant should have requested an adjournment if the evidence sought to be admitted was relevant to a material issue.
7. Given the above, the hearing members' decision to refuse to accept evidence not properly disclosed in accordance with the Rules falls within a reasonable range of outcomes. It is therefore not a serious error and entitled to deference.
8. It was also reasonable to conclude on the evidence before the hearing members that the Tenant had not made out the grounds for mandatory refusal of eviction pursuant to s.83(3) of the RTA. The order determines that the maintenance issues alleged by the Tenant were not a serious breach of the Landlord's obligations to justify mandatory refusal of the Landlord's application. In doing so, the members state – and the record reflects – that throughout the 9-year tenancy, the Tenant had not sought any resolution from the LTB, despite the maintenance issues predating the Landlord's purchase of the residential complex in 2021. When asked on cross-examination why the Tenant did not provide particulars of the alleged maintenance issues despite the Landlord's request (shortly after the N12 was served), the Tenant's response was "I don't know". I also note the Tenant's testimony with respect to the maintenance issues was brief and lacked particulars. If there was a serious breach of the Landlord's obligations under the RTA or the lease, it would be reasonable to expect a tenant to file a dispute and provide particulars to the Landlord as soon as possible.
9. The order determines that it would not be unfair to postpone the termination date to December 11, 2022 after considering all the disclosed circumstances. This determination is reasonable given the evidence and submissions before the hearing member. The disclosed circumstances of the Tenant were that: this is a 9-year tenancy; the Tenant is on ODSP; the Tenant has no dependants; she has applied to over 60 places with no success; the places are unaffordable; she testified she has no alternative housing options and confirmed she has 3 adult children that live elsewhere.



10. While I sympathise with the Tenant's circumstances and submission that the order provides her with less than 2 weeks to move, the N12 notice which this application is based on was given to the Tenant on February 28, 2022. The N12 terminates the tenancy on April 30, 2022. Although the Tenant chose to dispute the validity of the N12, the Tenant has known since at least February 28, 2022 that her tenancy was terminating. As of the date of the hearing, the Landlord had been waiting almost 6 months to reclaim the rental unit. As of the date of the order, the Tenant has had approximately 10 months to make alternative arrangements since receiving the N12 notice.
11. The Tenant submits that during the hearing, the Tenant requested accommodation for her disabilities and that she be provided additional time if the LTB were to render a decision against her. The hearing recording reveals the only accommodation requested was at the start of the hearing where the Tenant requested that she be allowed to convey her answers through her Legal Representative to accommodate for her anxiety. This accommodation was granted by the hearing members. The Tenant did not request any further accommodation or make submissions with respect to additional time needed to move, despite being specifically asked by the hearing members.
12. Taking the above into consideration, the decision to postpone the eviction to December 11, 2022, falls within a range of reasonable outcomes in my view. It is therefore entitled to deference.
13. The Tenant submits that the hearing members seriously erred in determining the rental unit is a 3 bedroom. I disagree. Evidence with respect to the size of the rental unit was given by the Landlord on cross-examination when the Landlord testified the Tenant's rental unit is a 3 bedroom and his current residence is a 2 bedroom. The Tenant failed to contradict this evidence on cross and did not give evidence on the issue in her testimony. There is nothing to suggest that the Tenant was prevented from leading this evidence in her testimony. Accordingly, the hearing members were entitled to rely on the Landlord's uncontradicted evidence with respect to the size of the rental unit.
14. The Tenant's submission that they have paid rent for December 2022 does not amount to a serious error in the order or in procedure. Section 135(1) of the RTA provides that a tenant or former tenant may apply to the LTB for an order for the landlord to pay money collected or retained in contravention of the RTA. The Tenant is advised to seek legal advice in this regard.

It is ordered that:

1. The request to review order LTB-L-015582-22, issued on November 28, 2022, is denied.
2. The order is confirmed and remains unchanged.

December 16, 2022
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.