



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

Citation: Lusitania Villas of Cambridge Inc. v Rees, 2022 ONLTB 12358

Date: 2022-12-12

File Number: LTB-L-005021-22-RV

In the matter of: 72, 95 MORNINGCALM DR
CAMBRIDGE ON N1R8H7

Between: Lusitania Villas of Cambridge Inc. Landlord

And

Destiny Rees Tenant

Review Order

Lusitania Villas of Cambridge Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Destiny Rees (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-005021-22 issued on August 29, 2022.

On October 3, 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 October 4, 2022 interim order LTB-L-005021-22-RV-IN was issued, staying the order issued on August 29, 2022.

This review was heard by videoconference on November 10, 2022.

The Landlord's Legal Representative Peter Schroeder, the Landlord David Glithero and the Tenant attended the hearing. Prior to the review hearing, the Tenant declined service offered by Tenant Duty Counsel.

Determinations:

1. The Tenant says she was not reasonably able to participate in the August 3, 2022 hearing because she did not receive the notice of hearing. The Tenant submits that she did not receive the notice of hearing package that was mailed to her by the Board nor did she receive any mailings from the Landlord and Tenant Board but for the notice of hearing for this review.
2. The Tenant stated that she receives her mail from a locked mailbox and has had no issues with receiving her mail for the past four years she has resided in the rental unit. The mailbox is locked with one slot assigned to the Tenant's rental unit. The Tenant has the

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key for the mailbox. The Tenant acknowledged that there are times where her 12 year old son will retrieve mail for the Tenant and place the mail on the counter if the Tenant is occupied with her smaller children. The Tenant submitted that she went through every piece of paper and that the notice of hearing package was not thrown in the garbage.

3. The Landlord disputes the Tenant's position. Property Manager, David Glithero testified that has been a Property Manger for 22 years and that he personally delivered the notice of hearing package as well to the Tenant by placing it in her locked mailbox on July 28, 2022. The Landlord submits that the Tenant would have therefore received two notice of hearing packages, one from the Board and the other from him, yet the Tenant claims to not have received either.
4. Subsection 191(1) of the Act provides that a notice or a document is sufficiently given to a person in certain specified ways, such as by handing it to the person, by leaving it in the mail box where mail is ordinarily delivered to the person, or by sending it by mail to the person, or by any other means allowed in the Board's Rules of Practice. Rule 5 of the Rules lists other methods by which a notice or document may be given to another person.
5. The Board's records indicate that the notice of hearing was mailed to the Tenant at #72, 95 Morningcalm Drive, Cambridge, Ontario N1R 8H7 on July 9, 2022.
6. Subsection 191(3) says when a notice is served/sent by mail (which is a permissible method of service), it is deemed to have been received five days after mailing. In this instance, the notice of hearing would be deemed served on or before July 14, 2022.
7. The Tenant did not attend the August 3, 2022 hearing although the Board's records show that the Tenant was mailed the notice of hearing by the Board to the address of the rental unit. This package was not returned to the Board as undelivered by Canada Post. As well, the Property Manager of the Landlord testified that he provided an additional copy of the notice of hearing package to the Tenant on July 28, 2022 by placing it directly into the Tenant's locked mail box.
8. The Tenant acknowledged that she did receive mail throughout the month of July, 2022 during the period the Board mailed the notice of hearing to the Tenant.
9. Based on the evidence and submissions, and on a balance of probabilities, I found at the hearing the Tenant was deemed given proper notice of the hearing on August 3, 2022 and therefore would have been aware of the upcoming hearing and reasonably able to participate in the hearing. The Tenant's review was denied.
10. The Tenant submits that she is a single mother of 4 children and will require additional time, at least into the new year, to find alternate accommodations. The Landlord submitted that the arrears are substantial and requested that the stay of Order LTB-L-005021-22 be lifted shortly after January 1, 2023.
11. This order contains all of the reasons for this matter and no other reasons will be issued.

It is ordered that:

1. The request to review order LTB-L-005021-22 issued on August 29, 2022 is denied. The order is confirmed and remains unchanged.

2. The interim order issued on October 4, 2022 is cancelled. The stay of order LTB-L-005021-22 is lifted effective January 31, 2023.
3. Order LTB-L-005021-22 provides that unless the Tenant voids the order, the tenancy between the Landlord and Tenant is terminated. The Tenant must move out of the rental unit.
4. Order LTB-L-005021-22 further provides that the Tenant may make a motion to the Board under subsection 74(11) of the Act to set aside that order if they pay the total amount required under that subsection to void the order before the Sheriff gives vacant possession to the Landlord. The Tenant is only entitled to make this motion once during the period of the tenancy agreement with the Landlord.

November 29, 2022
Date Issued

Heather Chapple
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.