



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

Citation: BOYAR v SMITH, 2022 ONLTB 14110

Date: 2022-12-09

File Number: LTB-L-042820-22-SA-RV

In the matter of: 2ND FLR APT 1, 1382 BARTON STREET
EAST
HAMILTON ON L8H2W5

Between: GERRY BOYAR, Landlords
ZOFIA POMAGIEL-BOYAR

And

CHRIS MILLER, Tenants
JOHNATHAN SMITH

Review Order

GERRY BOYAR and ZOFIA POMAGIEL-BOYAR (the 'Landlords') applied for an order to terminate the tenancy and evict CHRIS MILLER and JOHNATHAN SMITH (the 'Tenants') because the Tenant entered into an agreement to terminate the tenancy. (L2 application)

This L2 application was resolved by order LTB-L-042820-22 issued on September 16, 2022 (the 'LTB Order').

On September 23, 2022, the Tenants filed a motion to set aside the LTB Order along with a request to stay the LTB Order until the motion was resolved. On September 26, 2022, the LTB Order was stayed pending the results of the motion hearing.

On October 19, 2022, the Tenants' motion to set aside was heard. The Tenants were not present for their set aside motion hearing and order LTB-L-042820-22-SA issued on October 21, 2022 (the "SA Order"). The SA Order denied the motion to set aside and immediately lifted the stay on the initial LTB Order.

On October 28, 2022, the Tenants filed a request to review the SA Order, alleging they were not reasonably able to participate in the October 19, 2022 hearing.

On October 31, 2022, interim order LTB-L-042820-22-RV-IN was issued, staying the SA Order.

This request to review the SA Order was heard in by videoconference on November 24, 2022.

Only the Landlords and the Landlord's Legal Representative, Adam Hamdani, attended the hearing. I waited until 9:34 am to give the Tenants a chance to attend the hearing – when I commenced the hearing, the Tenants were not present or represented at the hearing.

Determinations:

1. At the hearing, the Landlords stated that the Tenants moved out of the rental unit on or about November 15, 2022. The Landlords' Legal Representative ('LLR') submitted there was no request (to the Landlords or the LTB) made by the Tenants to cancel this hearing so he and his clients had to prepare for today's hearing, much like they did for the set aside hearing of October 19, 2022.
2. LLR argued that both the set aside motion hearing and this review hearing were never needed.
3. LLR quoted the statement provided by the Tenants in their motion to set aside request, namely that they had: "*important information to provide the Board for consideration under Section 77(8) of the Residential Tenancies Act*".
4. LLR submitted that the Tenants never had any important information to provide but were simply using delay tactics in respect of the LTB Order that had issued and which set out a tenancy termination date of September 27, 2022. LLR submitted the parties had signed the underlying N11 agreement in good faith, and subsequently, the Tenants really had no "*important information*" to provide, and therefore their conduct in filing both the motion to set aside and review request was unreasonable.
5. Pursuant to the LTB's Rules 23.2 and 23.3, LLR requested that the costs the Landlords incurred for having LLR attend both hearings is being sought. LLR stated that he spent 2-½ hours on October 19, 2022 in the videoconference room, even after the set aside hearing had been concluded, waiting to see whether the Tenants would show up, which they did not. For this hearing, LLR was here for 9:00 am and the hearing commenced at 9:34 am. The Landlords are seeking ¾ of an hour for LLR's attendance costs.
6. With respect to the state of the LTB's legal records at the time of hearing, I found nothing submitted by the Tenants to indicate they wanted to cancel this review hearing. Further, I found nothing in the records to indicate any submission was ever made by the Tenants to explain or detail the important information they said was going to be provided.
7. As a result, and based on the Landlords' submissions, I determined at the hearing that the Tenants most probably were just delaying the process of termination unreasonably, causing undue delay or expenses for the Landlords. As a result, I informed the Landlords that I would grant their request for attendance costs -- \$250.00 for the October 19, 2022 hearing (2-1/2 hours) and \$75.00 (3/4 hour) for this review hearing.
8. However, later on November 24, 2022 (after the hearing block altogether), I was informed by LTB staff that the Tenants did send in a request on November 16, 2022, to withdraw their review request hearing. Unfortunately, the LTB was late in appending the Tenants' submission to the LTB's legal records. As I cannot fault the Tenants for the LTB's lateness, I am therefore modifying my determination above to ordering costs only for the 2-1/2 hours of undue delay and costs in respect of the October 19, 2022 hearing.

It is ordered that:

1. The request to review order LTB-L-042820-22-SA issued on October 21, 2022, is denied. That order is confirmed and remains unchanged.

2. As well, interim order LTB-L-042820-22-RV-IN issued on October 31, 2022 is cancelled.
3. The stay that relates to the initial order LTB-L-042820-22 issued on September 16, 2022 is lifted immediately. Order LTB-L-042820-22 issued on September 16, 2022 remains unchanged and in full effect.
4. The Tenants shall pay the Landlords' attendance costs in the amount of \$250.00 by December 20, 2022. If the Tenants do not pay the Landlords \$250.00 on or before December 20, 2022, the Tenants will start to owe interest. This will be simple interest calculated from December 21, 2022 at 4.00% annually on the balance outstanding.

December 9, 2022
Date Issued

Alex Brkic
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.