



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

Citation: Depikolozvane v Cassidy, 2022 ONLTB 13761

Date: 2022-12-02

File Number: LTB-L-020504-22-RV

In the matter of: 2057 PARKLANE CRES
BURLINGTON ON L7M3V6

Between: Andelko Depikolozvane Landlord

And

Dan Cassidy Tenants
Leanne Cassidy

Review Order

Andelko Depikolozvane (the 'Landlord') applied for an order to terminate the tenancy and evict Dan Cassidy, Leanne Cassidy (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-020504-22 issued on November 23, 2022.

On November 30, 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 request seeks to challenge the hearing member's finding that the N4 was valid.
3. The requirements for a notice of termination are set out in the following provisions of the *Residential Tenancies Act, 2006* (the 'RTA'):

43 (1) Where this Act permits a landlord or tenant to give a notice of termination, the notice shall be in a form approved by the Board and shall,

- (a) identify the rental unit for which the notice is given;
- (b) state the date on which the tenancy is to terminate; and
- (c) be signed by the person giving the notice, or the person's agent.

Same

(2) If the notice is given by a landlord, it shall also set out the reasons and details respecting the termination and inform the tenant that,

- (a) if the tenant vacates the rental unit in accordance with the notice, the tenancy terminates on the date set out in clause (1) (b);
- (b) if the tenant does not vacate the rental unit, the landlord may apply to the Board for an order terminating the tenancy and evicting the tenant; and
- (c) if the landlord applies for an order, the tenant is entitled to dispute the application.

Non-payment of rent

59 (1) If a tenant fails to pay rent lawfully owing under a tenancy agreement, the landlord may give the tenant notice of termination of the tenancy effective not earlier than,

- (a) the 7th day after the notice is given, in the case of a daily or weekly tenancy; and
- (b) the 14th day after the notice is given, in all other cases. 2006, c. 17, s. 59 (1).

Contents of notice

(2) The notice of termination shall set out the amount of rent due and shall specify that the tenant may avoid the termination of the tenancy by paying, on or before the termination date specified in the notice, the rent due as set out in the notice and any additional rent that has become due under the tenancy agreement as at the date of payment by the tenant.

4. Interpreting the requirements of s.43 of the RTA, the Divisional Court in *Ball v. Metro Capital Property*, [2002] O.J. No. 5931 (*Ball*), at paragraph 10, states:

In reviewing the sufficiency of the details in a Form N5, it is necessary to consider the context of the notice. There are several purposes for requiring the landlord to provide the reasons and details. The tenant needs to know the specific allegations against her in order:

- (a) to be in a position to know the case that must be met;
- (b) to decide whether to dispute the allegations made against her before the Tribunal; or
- (c) to consider whether to stop the conduct or activity or correct the omission within seven days and thereby void the notice.

- 5. While *Ball* dealt with a Form N5 as opposed to a Form N4 (the notice served in this case), the above test equally applies to all notices of termination.
- 6. The hearing member's finding is reasonable and applies the correct legal test. The member finds that the notice complied with s.59(2) of the RTA and *Ball*. This finding is supported by the evidence. The member notes in the order that the Tenants did not deny the total amount due in the notice is correct. The member then applies this factual determination to the test set out in *Ball* to conclude the Tenants were in a position to know the case to be met, decide whether to dispute the allegations, or consider whether to void the notice. These findings are reasonable given the evidence before the member and must be given deference. I would not interfere with them.
- 7. Similarly, the hearing member's decision to refuse to grant relief in all the circumstances was a reasonable exercise of discretion that falls within the range of acceptable outcomes. The hearing member considers both the Tenants' and the Landlord's circumstances in

coming to this decision. There was an evidentiary basis to support the finding and the hearing member provides sufficient reasons which “read in context, show why the judge decided as he or she did” (*R. v. R.E.M.*, 2008 SCC 51, at paragraph 17).

8. The Tenants feel that they were given incorrect legal advice prior to the hearing. As unfortunate as that may be, this does not amount to a serious error in the order or in the LTB’s procedure. The LTB does not provide legal advice or assign tenants paralegals. Therefore, the legal advice the Tenants received could not have been provided by a paralegal assigned by the LTB. The Tenants may be referring to Tenant Duty Counsel who regularly appear at LTB hearings to provide brief and free legal advice to unrepresented tenants. However, this program is funded by Legal Aid Ontario and is not associated with the LTB.
9. The member did not award a remedy that was not appropriate in the circumstance. The Tenants allege that they paid the amount noted in the N4 as of May 2022 and therefore the N4 should have been “zeroed out.” I take this to mean that the Tenants allege they voided the N4 and therefore eviction should not have been ordered as a remedy. I disagree.
10. The N4 notice sets out the amount of rent that is due and informs the Tenants that they may void the notice by paying \$4,900.00 by March 30, 2022. The Tenants do not allege that they complied. Therefore, the notice was not voided.
11. Even after the voiding period, s. 74(2) of the RTA allows tenants to discontinue an application to terminate the tenancy for rent arrears by essentially paying the amount of arrears, the amount of additional rent that came due, and the Landlord’s application fee before an eviction order is issued by the LTB. In other words, reaching a zero balance before an eviction order is issued. There is nothing on the record or the Tenants’ submissions to suggest that the Tenants discontinued the application.
12. The request to review seeks to revisit the member’s decision. While the Tenants clearly disagree with the member’s decision, the purpose of the review process is not to provide parties with an opportunity to relitigate the issues. I would not interfere with the assessment of the evidence by the member, who had the opportunity of hearing the evidence in its totality.

It is ordered that:

1. The request to review order LTB-L-020504-22, issued on November 23, 2022, is denied.
2. The order is confirmed and remains unchanged.

December 2, 2022
Date Issued

Khalid Akram
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.