



Tribunals Ontario

Landlord and Tenant Board

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

Citation: Greater Sudbury Housing Corporation v Lachapelle, 2022 ONLTB 13007

Date: November 29, 2022

File Number: LTB-L-009253-22-RV

In the matter of: 212, 744 BRUCE AVE
SUDBURY ON P3C5H5

Between: Greater Sudbury Housing Corporation Landlord

and

Francis Lachapelle, Jamie Nesci, Tenants
Paige Kivisto

Review Order

Greater Sudbury Housing Corporation (the 'Landlord') applied in a L1 application for an order to terminate the tenancy and evict Francis Lachapelle, Jamie Nesci and Paige Kivisto (the 'Tenants') because the Landlord claimed that the Tenants did not pay the rent that the Tenants owe.

The L1 application was heard by telephone/video-conference on September 14, 2022 and was resolved by order LTB-L-009253-22 issued on October 18, 2022, which was a voidable eviction order. The Tenants did not attend the L1 hearing.

On October 25, 2022, the Tenants requested a review of the L1 order alleging they were not reasonably able to participate in the L1 hearing.

On October 28, 2022, interim order LTB-L-009253-22-RV-IN was issued, granting a review hearing and staying the order issued on October 18, 2022.

The Tenants' request for a review was heard by telephone/video-conference on November 17, 2022. Tenants Francis Lachapelle and Jamie Nesci attended the hearing on behalf of all 3 Tenants and spoke with tenant duty counsel before the start of the review hearing. The Landlord's agent and fulltime employee Melissa Chicoine also attended the review hearing.

Determinations:

1. The L1 hearing was held on September 14, 2022. The Board's file contained a certificate by staff that the Notice of Hearing package for the L1 hearing was mailed to the Tenants by the Board at least 3 weeks before the L1 hearing.
2. Both Mr. Lachapelle and Ms. Nesci confirmed receipt of the Notice of Hearing for the L1 hearing scheduled for September 14, 2022. They both testified that they received the mailed notice about a week before the hearing.
3. The Tenant Mr. Lachapelle testified that about a week before the L1 hearing, he tried to ask his work for time off but there were no other workers available to take his shift. He described that he worked as a manager at a gas station, so it was nearly impossible to find a replacement for his shift. He believed that his Co-Tenant Jamie Nesci would handle the L1 hearing on behalf of all of them.
4. The Tenant Ms. Nesci confirmed that she learned about the L1 hearing about a week before the hearing when Mr. Lachapelle got the Notice of Hearing. She testified that she tried joining the meeting but could not connect to Zoom. She speculated there may have been a problem with her internet. She testified that she had emailed the Board that she was having trouble signing in. When asked for the email, she produced an email with a different date. Ms. Nesci corrected her testimony and said that she had emailed the Board regarding the earlier adjourned hearing date in August, 2022. The L1 hearing had been rescheduled from August to September since it was not heard the first time. Ms. Nesci testified that she had gotten confused and had mixed up her actions regarding the hearing dates. There was no evidence she had tried to call or email the Board when she realized she was having trouble signing into the September 14th, 2022 L1 hearing. Ms. Nesci testified that she has memory issues. Although she confirmed that she knew about the September 14th rescheduled hearing, she testified that it completely slipped her mind on the hearing date.

Findings

5. On a balance of probabilities, I am not satisfied that the Tenants were not reasonably able to participate in the L1 hearing held on September 14, 2022. In making this finding, I considered both Mr. Lachapelle's and Ms. Nesci's evidence that they knew about the hearing and had gotten notice of it about a week prior by mail. Despite knowing about the hearing, there was no evidence from either of the Tenants that they reached out to their Landlord or to the Board before the date of the hearing, to ask for it to be rescheduled or even to tell anyone that Mr. Lachapelle and Ms. Nesci could not attend due to work. Even though 2 of them were working, there was no reasonable explanation why Ms. Nesci did not attend, especially when Mr. Lachapelle testified that he had expected Ms. Nesci would be attending on behalf of them. Ms. Nesci testified

that the September 14th hearing “slipped her mind”; however, this is not a reasonable explanation for failing to attend an important hearing date.

6. There was no evidence that the Tenants had any genuine intention to participate in the L1 hearing on September 14, 2022. The only evidence of prior planning leading up to the hearing was by Mr. Lachapelle who asked for time off. However, there was no letter from work, any witness such as his boss, or any other corroborating evidence that he had tried to get time off work.
7. There was no evidence that any of the Tenants made any alternate arrangements with anyone else to call into the hearing as their agent or on their behalf.
8. The Tenants were also aware of the rent arrears since they were served with the N4 Notice of Termination and other documents in the L1 hearing package from the Board; however they provided no evidence that they tried to reach out to their Landlord to discuss the rent arrears issue at any point before the hearing.
9. I find that based on the testimony and evidence given by the Tenants, it is more likely than not that they failed to exercise due diligence with respect to their rent arrears and the Board’s proceedings. A lack of due diligence is not grounds to grant a request for review. This has been confirmed by the Courts in *Q Res IV Operating GP Inc. v. Berezovs’ka*, 2017 ONSC 5541 CanLII (Div. Ct.) paragraph 8 which states:

If parties are not diligent in dealing with legal proceedings then they cannot demand that a Tribunal waste its resources by rehearing matters a second time. To allow this would undermine the ability of the administration of justice to deliver timely, cost-effective and final orders.
10. Based on the above, the Tenants are not entitled to have the Landlord’s L1 application re-heard because they failed to exercise due diligence. Therefore, the request to review is denied.

It is ordered that:

11. The request to review order LTB-L-009253-22 issued on October 18, 2022, is denied. The order is confirmed and remains unchanged.

12. The interim order issued on October 28, 2022, is cancelled. The stay of order LTB-L-009253-22 is lifted immediately.

November 29, 2022
Date Issued

Michelle Tan
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.