



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

Citation: Wellington Hamilton Corporation c/o DMS Property Management Ltd. v Sigurdsson, 2022 ONLTB 13286

Date: 2022-11-25

File Number: LTB-L-016996-22-RV

In the matter of: 19, 1169 UPPER WELLINGTON ST
HAMILTON ON L9A5A6

Between: Wellington Hamilton Corporation c/o DMS Property Management Ltd. Landlord

And

Ian Sigurdsson, Melissa Flanagan Tenants

Review Order

Wellington Hamilton Corporation c/o DMS Property Management Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Ian Sigurdsson and Melissa Flanagan (the 'Tenants') because the Tenants did not pay the rent the Tenants owe. The Landlord also claimed charges related to NSF cheques.

This application was resolved by order LTB-L-016996-22, issued on October 19, 2022. The order determined that the Landlord had abandoned the application, because the parties did not attend the September 29, 2022 Board hearing.

On November 9, 2022, the Landlord the requested a review of the order.

Determinations:

1. On the basis of the submissions made in the request, I am not satisfied that the Landlord was not reasonably able to participate in the September 29, 2022 hearing.
2. The Landlord explains that it missed the September 29, 2022 Board hearing because its legal representative's office staff failed to enter the hearing date in the office's calendar.
3. In *Q Res IV Operating Gp Inc. v Berezovs'ka*, [2017] O.J. No. 4863 (Div. Ct.), the Divisional Court ruled that a party to an application must exercise due diligence to attend and participate in the hearing. In that case, the Court upheld the Board's order, which determined that the Landlord failed to exercise due diligence when office staff failed to act appropriately upon receiving the Board's notice of hearing. The Court ruled at paragraph 8:

Lack of diligence in dealing with court proceedings is a reason for refusing

to set aside an order where a party has failed to appear. In other words, it was not an error in law for the Review Board to find that a lack of diligence constituted a reason not to grant the landlord a rehearing. 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.

4. I find that the Landlord's legal staff's failure to properly diarize the September 29, 2022 hearing date represents a lack of due diligence. Following the Divisional Court's reasons, I must conclude that the Landlord has not demonstrated that it was not reasonably able to participate in the hearing. The request to review the October 19, 2022 order must therefore be denied.

It is ordered that:

1. The request to review order LTB-L-016996-22, issued on October 19, 2022, is denied. The order is confirmed and remains unchanged.

November 25, 2022

Date Issued

Harry Cho

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.

