



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

Citation: Gonzalez v Leaf, 2022 ONLTB 12544

Date: 2022-11-16

File Number: LTB-L-025197-22-RV

In the matter of: Basement, 56 TRUDEAU DR
WOODBIDGE ON L4H0T7

Between: Gerardo Gonzalez, Paolina Spremulli Landlords

And

Michael Leaf, Vanessa Carvalho Tenants

Review Order

Gerardo Gonzalez, Paolina Spremulli (the 'Landlords') applied for an order to terminate the tenancy and evict Michael Leaf, Vanessa Carvalho (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or a person the Tenants permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex;
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the building has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords in a building that has three or fewer residential units and the Landlords reside in the building.

The Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was resolved by order LTB-L-025197-22 issued on November 9, 2022.

On November 14, 2022, the Tenant requested a review of the order alleging that the order contains serious errors.

A preliminary review of the request was completed without a hearing.

Determinations:

1. After the merits hearing held on August 22, 2022, the hearing Member issued an eviction order.
2. The Tenants filed their request for a review alleging that the order contains serious errors.
3. The Tenants' allegations of serious error relate to following. The N7 notice of termination was defective as it did not contain sufficient detail for the Tenants to prepare a defence,

the hearing Member failed to consider whether the allegations in the N7 notice of termination had been proven, and there was procedural unfairness caused because the hearing Member did not permit the Tenant to raise valid evidence that they wished to raise at the hearing.

4. The Tenants have failed to substantiate their allegations that the order contains serious errors for the reasons that follow.

N7 Notice of Termination:

5. The Tenants raised the exact same objection to the validity of the N7 notice of termination at the hearing. In paragraph 3 of the hearing Member's determinations, they make a clear finding that the "notice of termination provides sufficient particulars, including dates on which the Tenants allegedly smoked marijuana in the rental unit."
6. In fact, a perusal of the Landlord's N7 notice of termination demonstrates that it contains 2 pages of allegations that are meticulously detailed, and which provide numerous dates on which the activities complained about took place. In relation to the primary complaint the Landlords had, that the Tenants' constant marijuana smoking was substantially interfering with the Landlords reasonable enjoyment of the residential complex, and that it was causing health issues for the Landlords' children, the N7 notice of termination is highly detailed. The Landlords allege that the marijuana smoke travels through the residential complex via the HVAC system, it permeates the Landlords' unit, leaves a strong odour, and causes adverse symptoms like waking during the night, coughing, headaches and vomiting. The Landlords provide dates on which the Landlords' children were taken to see their pediatrician.
7. The Landlords provided dates and times of the alleged offensive conduct, marijuana smoking that substantially interfered with the Landlords, sufficient for the Tenants to be aware of what the application was about.
8. The Tenants are attempting to once again raise the same objection that they raised at the hearing. They take issue with the Member's finding that the N7 notice of termination contained sufficient particulars and details for the Tenants to know the case against them, and therefore be prepared to defend themselves against these allegations. The Tenants were well aware that the main point in dispute was the Tenants' marijuana smoking and its effects on the Landlords and the Landlords' children. This was clearly set out in the N7 notice of termination. Both sides gave extensive evidence in a hearing that took about 3 hours. In fact, the Tenants themselves admitted that they smoked marijuana in the rental unit, as stated by the Tenants in their request for a review in paragraph 1f. To now allege that there were insufficient particulars in the notice of termination is merely an attempt to rehash evidence that was already provided and considered at the hearing, in the hope of a better result.
9. The Tenants have not shown that the Member's finding that the notice was valid is capricious or unreasonable. The Board will not interfere with the proper exercise of discretion by a Member (Guideline 8 of the *Landlord and Tenant Board Interpretation*

Guidelines). The Member's exercise of discretion with respect to the notice of termination was reasonable.

Finding that allegations in the N7 Notice of Termination were proven:

10. The hearing Member made a clear finding that the allegations about marijuana smoking in the N7 notice of termination were proven in paragraphs 5 and 6 of the Determinations. In fact, it was not necessary for the hearing Member to weigh the evidence to make that finding since the Tenants themselves admitted it. The Tenants even repeat it in their request for a review, paragraph 1f, as noted above.
11. The hearing Member found, based on the testimony, as well as the documentary evidence provided at the hearing that the Landlords do not like the smell of marijuana, and the smell made the Landlords' children ill. This testimony, in addition to the Landlords' documentary evidence, a letter from their doctor, led the hearing Member to make the finding that the marijuana smoke induced vomiting episodes in the Landlords' child.
12. The Tenants objected to the hearing Member's consideration of the doctor's letter, calling it "double hearsay". They then make allegations about how the doctor arrived at his diagnosis in an improper way. It is puzzling, to say the least, that the Tenants would claim any knowledge about how a doctor arrives at their diagnosis. Although it is not clear exactly what the Tenants mean by calling it "double hearsay", a hearing Member at the Board is permitted to consider any evidence put before them, and it is within their discretion to weigh and consider it. While it is true that the Landlords' doctor was not present at the hearing to provide testimony to accompany the letter, nor to be cross-examined, it is not a serious error for the hearing Member to consider the letter in his determinations. There was also testimony provided by the Landlords on this issue, to support the documentary evidence.
13. The hearing Member found that the Tenants smoke marijuana. This was based on the Tenants' own evidence. In addition, there was evidence provided by the Landlords. That was the first point for which the hearing Member had to make a finding. With regard to the second point, whether the smoking caused substantial interference, the hearing Member found, based on all the evidence given at the hearing, that the marijuana smoking substantially interfered with the reasonable enjoyment of the Landlords and their children, and that it actually created a serious impairment to the safety of the Landlords' children by inducing vomiting episodes.
14. The Tenants have not shown that these findings were capricious or unreasonable. There is no serious error, and therefore there is no basis upon which to interfere with the hearing Member's finding that the allegations in the notice of termination were proven.

Procedural Fairness of the hearing:

15. The Tenants attempted to raise points about the Landlords, in their examination in chief, that were actually assertions of fact that had not been put to the Landlords in their

examination in chief. The hearing Member did not permit it, and he told the Tenant that “you can’t rely on evidence you didn’t put to the witness.”

16. The Tenants now characterize this as a lack of procedural fairness, and a failure to allow the Tenants to testify.
17. The Tenants in their request, themselves proceed to cite the rule in *Browne v. Dunn*, with the intention of distinguishing it from what the Tenants were seeking to do at the hearing.
18. The Tenants allege that the hearing Member was wrongly applying the rule in *Browne v. Dunn*. However, a review of the hearing recording demonstrates that the Tenant’s alleged “evidence” was exactly an attempt to adduce evidence to impeach the credibility of the Landlords.
19. Consequently, I find that the Tenants have not supported their allegation that the order contains serious errors.
20. 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.

It is ordered that:

1. The request to review order LTB-L-025197-22 issued on November 9, 2022, is denied. The order is confirmed and remains unchanged.

November 16, 2022
Date Issued

Nancy Morris
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.