



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

Citation: 140-148 Roxborough Ave Holdings Corp. v Elliot, 2022 ONLTB 12399

Date: 2022-11-16

File Number: LTB-L-001226-21-RV

In the matter of: 6, 140 ROXBOROUGH AVE
KITCHENER ON N2M1P9

Between: 140-148 Roxborough Ave Holdings Corp. Landlord

And

Trisha Elliot Tenant

140-148 Roxborough Ave Holdings Corp. (the 'Landlord') applied for an order to terminate the tenancy and evict Trisha Elliot (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on September 22, 2022. The Landlord's legal representative, F.Gomez, the Tenant, and their legal representative V.JM attended the hearing.

The Landlord and the Tenant attended the hearing.

Determinations:

REVIEW REQUEST

1. The Tenant's request for a review is based on the grounds of not being able to reasonably participate in the proceedings.
2. At the review hearing the Tenant testified that she did not receive the notice of hearing and that the first time she became aware of the hearing was when she received a copy of the order on August 10, 2022.
3. The Board's records show that the Board sent out the Notice of Hearing and application package to the Tenant by regular mail on May 27, 2022. This package was not returned by Canada Post.
4. In *King-Winton v. Doverhold Investments Ltd.*, 2008 CanLII 60708, the Divisional Court held that "being reasonably able to participate in the proceeding must be interpreted broadly, natural justice requires no less."
5. Interpreting this situation broadly, I find that the Tenants were not reasonably able to participate in the proceedings. The fact that the Notice of Hearing package was not

returned by Canada Post does not necessarily mean that the Tenants received the package, especially in the face of the Tenant's testimony to the contrary. The Tenant also testified that she usually does not have an issue with mail being delivered to the residential complex.

6. For the reasons above, at the hearing I granted the Tenants' request for a review. A hearing of the Landlord's application proceeded *de novo* (anew).

L1 APPLICATION

7. The Tenant paid the Landlord for the period ending September 30, 2022. The amount paid represents all the rent that is in arrears under the tenancy agreement, all additional rent that would have been due under the tenancy agreement on the date of the Tenant's payment, and the filing fee for this application.
8. The Landlord's application for an order terminating the tenancy and evicting the Tenant based upon arrears of rent is discontinued.

It is ordered that:

1. The Tenant's request to review order LTB-L-001226-21 is granted.
2. Order LTB-L-001226-21 issued August 3, 2022, is cancelled and replaced with the following.
3. The Landlord's application is discontinued to September 30, 2022.

November 16, 2022
Date Issued

Curtis Begg
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.