



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

Citation: Aggarwal v McNeil, 2022 ONLTB 11420

Date: 2022-11-07

File Number: LTB-L-031373-22-RV

In the matter of: 1803, 3880 Duke of York Blvd
Mississauga Ontario L5B4M7

Between: Arun Aggarwal Landlord

And

Shane McNeil Tenant

Review Order

Arun Aggarwal (the 'Landlord') applied for an order to terminate the tenancy and evict Shane McNeil (the 'Tenant') because the Tenant did not pay the rent the Tenant owes and because the Tenant has been persistently late in paying the rent.

This application was resolved by order LTB-L-031373-22, issued on September 27, 2022. The Board heard the Landlord's application by video conference on August 8, 2022. The Tenant did not attend the hearing.

On November 3, 2022, the Tenant requested a review of the order.

Determinations:

1. On the basis of the submissions made in the request, I am not satisfied that the Tenant was not reasonably able to participate in the August 8, 2022 hearing, or that there is a serious error in the order or that a serious error occurred in the proceedings.
2. The Tenant submits that he was not able to receive a copy of the Board's notice of hearing, which the Board mailed to the Tenant on July 14, 2022. The Tenant explains that Canada Post was unable to deliver the Board's mail because his mailbox was filled with junk mail. But for the excessive amount of junk mail in the Tenant's mailbox, Canada Post would have delivered the Board's notice of hearing.
3. The Board's application record confirms that Canada Post returned the Board's notice of hearing as undeliverable on August 16, 2022. However, the Tenant did not explain in the review request why he permitted his mailbox to become, and remain, filled with junk mail in the summer of 2022. The Tenant therefore did not comply with Rule 26.7.e of the Board's Rules of Procedure; and he did not demonstrate that he was not reasonably able to receive the Board's mailed notice of hearing.

4. The Tenant writes in his review request that he did not monitor his email for the Board's electronic notice of hearing, which the Board sent to the Tenant as an email attachment on June 28, 2022.
5. Although the Tenant writes that the Board's email message was delivered to his spam folder, I find that this does not adequately explain the Tenant's failure to attend the August 8, 2022 hearing. Instead, I find that the Tenant did not act with appropriate diligence by failing to monitor his email. The Tenant writes in his review request that he is able to use email. The Tenant's submission that he is not "tech savvy" is accordingly not a satisfactory explanation for his omission.
6. In *Q Res IV Operating Gp Inc. v. Berezovs'ka*, [2017] O.J. No. 4863 (Div. Ct.), the Divisional Court reaffirmed that a party to an application must exercise due diligence to be aware of, and to be prepared to participate in, a Board hearing. In that decision, the Court upheld the Board's order, which determined that the landlord failed to exercise due diligence when its office staff failed to monitor Board correspondence, including the Board's notice of hearing.
7. In this present case, the Tenant did not exercise due diligence by failing to maintain his mailbox free of excessive junk mail. This prevented Canada Post from delivering the Board's notice of hearing by mail. Additionally, the Tenant's failure to monitor his email resulted in the Tenant missing the Board's electronic notice of hearing.
8. The Board afforded the Tenant an adequate opportunity to participate in the August 8, 2022 hearing by issuing notices of hearing by mail and email. Following the reasons in *Berezovs'ka*, I conclude that the Tenant did not demonstrate that he was not reasonably able to participate in the August 8, 2022 hearing.
9. The Tenant's opportunity to lead evidence about rental arrears was at the August 8, 2022 hearing. Having determined that the Tenant was reasonably able to participate in that proceeding, I find that the Tenant's submission that a serious error exists in the September 27, 2022 order is not good cause to review the order.

It is ordered that:

1. The request to review order LTB-L-031373-22, issued on September 27, 2022, is denied. The order is confirmed and remains unchanged.

November 7, 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.