



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

Citation: Rivera v Fioravanti, 2022 ONLTB 11281

Date: 2022-11-04

File Number: LTB-L-000539-21-RV

In the matter of: 308, 15 ALBRIGHT RD
HAMILTON ON L8K5J2

Between: Juana Silvia Rivera Landlords
Victor Tomas Viacava
Victor Viacava Rivera

And

Nick Fioravanti Tenant

Review Order

Juana Silvia Rivera, Victor Tomas Viacava, Victor Viacava rivera (the 'Landlords') applied for an order to terminate the tenancy and evict Nick Fioravanti (the 'Tenant') because the Landlords entered into an agreement of purchase and sale of the rental unit and the purchaser in good faith requires possession of the rental unit for the purpose of residential occupation.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was resolved by order LTB-L-000539-21 issued on October 27, 2022.

On October 31, 2022, the Tenant requested a review of the order.

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

Determinations:

1. The Tenant's request is based on serious error and not reasonably able to participate.
2. The Tenant says that he cannot afford another rental unit in this current rental market. This is not a serious error. This issue was raised and considered by the hearing member in exercising discretion to grant relief from eviction. Although the Tenant takes issue with the hearing member's decision to deny relief from eviction, the result is within the range of reasonable and acceptable outcomes. The hearing member's exercise of discretion is entitled to deference.
3. In the request, the Tenant also says that the Landlords did not comply with their maintenance obligations under the RTA and the Board's form "Issues the Tenant Intends to Raise" was not made available to him.

4. A tenant is permitted to raise issues that could be the subject of a tenant's application under the *Residential Tenancies Act, 2006* (the 'RTA') only an application to terminate the tenancy based on a notice of termination for rent arrears (s.82 of the RTA). This application was an L2 application based on Purchaser's own use, not based on a notice of termination for rent arrears. Therefore, the Tenant is not permitted to raise issues that could be the subject of a tenant's application under the RTA. The Tenant may file the appropriate tenant's application to address the lack of maintenance he alleges.
5. Despite the above, on any application for an eviction order, the Board shall refuse to grant the application where satisfied that a landlord is in serious breach of the landlord's responsibility under the RTA or of any material covenant in the tenancy agreement (s.83(3) of the RTA). The Tenant says that he was not able to bring up the maintenance issues because the Landlord's Legal Representative was late to the hearing and took up hearing time by "incessantly" arguing with the hearing member.
6. Based on a review of the hearing recording, I do not find that the Tenant was prevented from bringing up the maintenance issues due the actions of the Landlord's Legal Representative. There was nothing in the recording to support the allegation that the Landlord's Legal Representative took up hearing time by "incessantly" arguing with the hearing member. The Tenant was given the opportunity to be heard and he gave oral testimony that numerous repairs were needed to be done to the residential complex. However, the Tenant did not provide sufficient evidence to prove that the Landlords were in serious breach of the RTA of the tenancy agreement. While the Tenant says in his request that he uploaded and disclosed his evidence to the Board and the Landlord, the Board's records do not contain any submissions made by the Tenant. Moreover, the Tenant confirmed at the hearing that he did not submit any pictures or other documentary evidence to substantiate his claims of serious maintenance issues.
7. 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 or that the Tenant was not reasonably able to participate in the proceeding.

It is ordered that:

1. The request to review order LTB-L-000539-21, issued on October 27, 2022, is denied.
2. The order is confirmed and remains unchanged.

November 4, 2022
Date Issued

15 Grosvenor Street, Ground Floor
 Toronto ON M7A 2G6

 Khalid Akram
 Member, Landlord and Tenant Board

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