



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

Citation: Daley v Maxwell, 2022 ONLTB 9891

Date: 2022-10-27

File Number: LTB-L-008489-22-RV

In the matter of: 302, 75 CAROL RD
BARRIE ON L4N4S5

Between: Angeleka Daley Landlord

And

Devin Maxwell Tenant

Review Order

Angeleka Daley (the 'Landlord') applied for an order to terminate the tenancy and evict Devin Maxwell (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-008489-22 issued on August 25, 2022.

On September 16, 2022, the Tenant requested a review of the order.

On September 19, 2022 interim order LTB-L-008489-22-RV-IN was issued, staying the order issued on August 25, 2022.

This application was heard in by videoconference on October 13, 2022.

The Landlord's Representative, Angeleka Darey and the Tenant attended the hearing.

Determinations:

1. The Tenant stated she did not receive the Notice of hearing held on August 18, 2022 and did not have an opportunity to participate in the proceedings. She also indicated she became aware of the hearing when she received the Sheriff's Notice.
2. 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.
3. Section 191(3) of the Act states a notice given by a mail shall be deemed to have been given on the fifth day after mailing. The Board's record also shows the Notice was mailed to the Tenant's address on August 2, 2022. That mail was not returned by Canada Post as undelivered.

2022 ONLTB 9891 (CanLI)

4. The Tenant stated did not make attempt to access her mail since March 2022. I considered the Tenant's claim her estranged husband had access to the mailbox and she had no key to access her mail, however the Tenant did not contact the Landlord to obtain a replacement key nor was there enough evidence provided to establish that someone had reasonable cause to tamper with her mail.
5. The Board emailed the Notice to the Tenant on July 15, 2022 to email address devinamaxwell1320@gmail.com and the Tenant confirmed this is one of two emails that belong to her. The Tenant stated she had no access to email because she didn't have internet at the time. . The Tenant stated she didn't have internet from August 3, 2022 to end of September 2022. The notice was emailed on July 15, 2022 which was before the Tenant lost her internet. Even if the Tenant's dates are wrong the Tenant stated she accessed internet using free wifi from Tim Hortons when she had a baby-sitter. It's unlikely between July 15, 2022 to August 18, 2022 which is the date the Notice was given to the date of the hearing, that did not access her email
6. Even if I accept the Tenant didn't receive the Notice she took no action to enquire with the Board about the hearing. She would have been aware of the proceedings having received the email that contained the L1 application which she spoke to Daley about before the hearing.
7. On a balance of probabilities, it's very unlikely that the Tenant did not have adequate notice of the hearing held on August 18, 2022.
8. The Tenant does not dispute the arrears calculated in the Order issued August 25, 2022. As such, there is no serious error contained in the order.
9. The Tenant offered another payment plan in case the review was granted which was considered, however a review is not an opportunity to reargue or make submission that ought to have been made at first instance.

It is ordered that:

1. The request to review order LTB-L-008489-22 issued on August 25, 2022 is denied. The order is confirmed and remains unchanged.
2. The interim order issued on September 19, 2022 is cancelled. The stay of order LTB-L-008489-22 is lifted immediately.

October 27, 2022

Date Issued

Sandra Macchione

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.