



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

Citation: Khoshaba v Franze, 2024 ONLTB 53513

Date: 2024-07-22

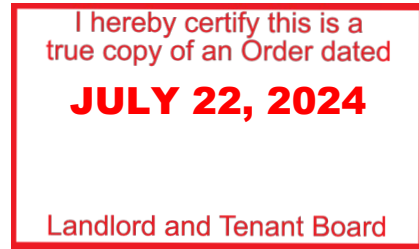
File Number: LTB-L-026771-24-RV

In the matter of: 126, 1725 ERNEST AVE
LONDON ON N6E2W3

Between: Sargon Khoshaba

And

Elizabeth Franze
Tyla Franze



Landlord

Tenants

Review Order

Sargon Khoshaba (the 'Landlord') applied for an order to terminate the tenancy and evict Elizabeth Franze and Tyla Franze (the 'Tenants') and for an order to have the Tenants pay the rent they owe because the Tenants failed to meet a condition specified in the order issued by the Board on March 14, 2024, with respect to application LTB-L-058337-23.

This application was resolved by order LTB-L-026771-24 issued on May 27, 2024.

On June 11, 2024, the Tenant Elizabeth Franze ('E.F') requested a review of the order.

The review request was heard by videoconference on July 12, 2024.

The Landlord and the Tenant E.F attended the hearing. E.F stated at the hearing that the Tenant Tyla Franze ('T.F') would not be attending the review hearing because she was at work.

The Tenant E.F spoke to tenant duty counsel prior to the hearing.

Determinations:

1. Neither Tenant attended the May 16, 2024 hearing that resulted in order LTB-L-026771-24 issued on May 27, 2024. The Tenant E.F submits that she was not reasonably able to participate in the proceeding.
2. For the following reasons, I am not satisfied that the Tenants were not reasonably able to participate in the proceeding.
3. In the review request the Tenant E.F provides the following explanation for her absence:

"I informed the board days before and at the previous hearing of my mental and physical disorders. I got legal representation that would not be available until after the 29th. with my anxiety I cannot do the hearing myself my anxiety that I've suffered from for 30 yrs so we were denied a chance to argue or defend our side and due to not being able to personally attend which the day of my son-law was murdered then my daughters mother in-laws house burnt down it's been a rough time. and there is a side id like heard please."

4. Both the Tenant E.F and her daughter Nikki Franze ('N.F') provided testimony at the review hearing regarding why the Tenants were not reasonably able to participate in the proceeding. N.F is not a tenant of the rental unit but testified that she assisted her mother in retaining legal representation.
5. Rather than relying on the issues raised in the review request, E.F and N.F both testified primarily about an additional reason that E.F did not attend the hearing. That reason was that the Tenants had retained a paralegal named Damian Cordaie ('D.C') to represent them but he failed to attend the hearing. E.F testified that she did not attend the hearing because she believed D.C would be there on her behalf. E.F testified that she later learned that D.C only called into the hearing after it had concluded. N.F testified that D.C told her that he was unavailable to attend the hearing but that he would send someone to seek an adjournment.
6. D.C testified at the hearing that he had spoken to the Tenants, but that he was never retained by the Tenants, nor did he tell them that he would attend or send someone to the May 16, 2024 hearing date.
7. For the following reasons, I am not satisfied that the Tenants retained D.C or that D.C told the Tenants that someone would attend the May 16, 2024 hearing on their behalf.
8. First, I did not find E.F or N.F to be credible witnesses. Neither testified in a forthright manner and both seemed unsure of the dates and specific details of the discussions that were had with D.C. In contrast, I found D.C to be a credible witness. D.C is licensed by the Law Society of Ontario and had no motivation to lie about his involvement with the Tenants. D.C testified in a forthright manner and the Tenants did not meaningfully challenge his testimony with cross examination.
9. Second, the review request does not mention that D.C had said he would attend the hearing but then failed to do so. At the hearing E.F could not provide an explanation for why such crucial information was missing from her review request.
10. Third, the Tenants could not produce a signed retainer agreement. The Tenants did produce an email from after the hearing that says that D.C was retained, but in light of D.C's credible testimony that I accept, I am not satisfied regarding the authenticity of this email.
11. Fourth, I did not find the Tenants' supporting documentation regarding a \$1,000.00 e-transfer they claim to have sent to D.C to be probative. The Tenants introduced into evidence a text message regarding a security alert for a \$1,000.00 e-transfer. N.F testified that the transfer was the retainer for D.C's services. The text message does not show who

the money went to or contain any information that supports it was a retainer for D.C's services. As such, I do not find it to be probative.

12. As I have found that E.F and N.F were untruthful that they had retained D.C to attend the hearing on the Tenants' behalf, I find that the Tenants have not provided a reasonable explanation for their failure to attend the review hearing.
13. I also find that the Tenants did not have a genuine intention to participate in the hearing process. This is because the Tenants were clearly aware of the hearing, as illustrated by their May 12, 2024 request to the Board to have the hearing rescheduled, and yet the Tenants made the active choice not to attend the hearing.
14. The review request stated that E.F could not attend the hearing unrepresented because she suffers from anxiety and because her son in law was murdered and her daughter's mother in law's house burned down. As E.F testified that the reason she did not attend the hearing was because she believed she was being represented by D.C, I am not satisfied that these additional reasons are why D.C did not attend the hearing.
15. Additionally, E.F did not introduce into evidence any supporting documentation, such as a doctor's note, that supports that her anxiety prohibited her from attending the hearing.
16. While I am very sympathetic to E.F regarding the passing of her son-in-law, E.F testified at the hearing that occurred significantly before the hearing. As such I am not satisfied that it was a reason that she did not attend the hearing.
17. E.F testified that the house fire mentioned in the review request occurred on the day of the hearing but given E.F's evolving explanation for why she did not attend the hearing I am not satisfied with this explanation. E.F also led insufficient evidence about the house fire, for example what time of day it occurred, when she learned about it etc., to support that it is the reason that she could not attend the hearing.
18. E.F testified at the hearing that the Tenant T.F did not attend the May 16, 2024 hearing because she was working. I am also not satisfied that T.F was not reasonably able to participate in the proceeding. This is because she made the active choice to attend work rather than the hearing.
19. For those reasons I am not satisfied that the Tenants were not reasonably able to participate in the proceeding and the review request is accordingly denied.

It is ordered that:

1. The request to review order LTB-L-026771-24 issued on May 27, 2024 is denied. The order is confirmed and remains unchanged.
2. The interim order issued on June 18, 2024 is cancelled. The stay of order LTB-L-026771-24 is lifted immediately.

July 22, 2024
Date Issued



Amanda Kovats
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.