



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

Citation: Duplessis v Murray, 2024 ONLTB 55290

Date: 2024-08-13

File Number: LTB-L-090759-23-RV

In the matter of: 1801, 28 FREELAND ST
TORONTO ON M5E0E3

Between: Eva Marie Duplessis

And

Oneill James Murray

I hereby certify this is a
true copy of an Order dated

Aug 13, 2024

Landlord and Tenant Board

Landlord

Tenant

Review Order

Eva Marie Duplessis (the 'Landlord') applied for an order to terminate the tenancy and evict Oneill James Murray (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-090759-23 issued on July 26, 2024.

On August 12, 2024, the Tenant requested a review of the order.

A preliminary review of the review request was completed without a hearing. In determining this request, I reviewed the materials in the LTB's file.

Determinations:

1. This application was heard by videoconference on May 2, 2024. The Landlord, the Landlord's Legal Representative Kenneth Wakely, and the Tenant attended the hearing. The Landlord's application was granted.
2. The Tenant filed this request to review alleging that the hearing member made serious errors in procedure and/or the final order.
3. For the reasons set out below, the review request is denied.
4. The Tenant submits that the hearing member seriously erred in refusing to hear their section 82 arguments. Pursuant to section 82 of the *Residential Tenancies Act, 2006* (the 'Act'), a tenant is permitted to raise any issue that could be the subject of an application if the tenant complies with disclosure requirements or provides an explanation satisfactory to the Board explaining why the tenant could not comply. The Tenant submits that they incorrectly concluded they could file their evidence on the date of the hearing. However,

the hearing member finds that the Notice of Hearing identifies the deadlines and methods for submitting evidence and the Tenant could not explain why they could not email the evidence to the Landlord or the Board. The final order demonstrates that the hearing member considered the Tenant's request and was not satisfied with the Tenant's explanation for why they could not comply. As such, the Board had the jurisdiction to refuse to consider issues not properly disclosed. There is a logical connection between the decision and the evidence before the member. The reasons, viewed in light of the record and submissions on relevant issues reasonably support the findings.¹ Therefore, I do not find there is a serious error in this regard.

5. The Tenant further submits that the hearing member did not adequately consider their submission on subsection 83(3)(a) of the Act. At the hearing, the Tenant submitted his belongings were stolen from the unit in December 2023 and the Landlord is responsible. In paragraphs 14 and 15, the hearing member found that the Tenant was not credible. The Tenant submits that the hearing member did not consider that the Landlord's testimony was brief, only stating that they were cooperating with the police. There is nothing in the record to support a determination that the hearing member applied improper principles in assessing the evidence introduced or that there was insufficient evidence before the Board to support its conclusions. I would not interfere with the assessment of the evidence by the Member of first instance, who had the opportunity of observing the witnesses and of hearing the evidence in its totality. As such, I am not satisfied that there is a serious error made in this regard.
6. Moreover, even if I am wrong, and the hearing member did not properly consider the evidence on subsection 83(3)(a), I do not find that this error would materially change the outcome of the order. Subsection 83(3)(a) of the Act provides in part that the Board shall refuse an application for eviction where it is satisfied that the Landlord is in serious breach of their responsibilities under the Act. In order to engage the mandatory refusal of eviction, the Landlord must be in serious breach of the Act, and that breach must be continuing at the time of the hearing. The final order and the review request confirm that the Tenant's submission is that the event took place in December 2023. As such, the event could not be considered 'continuing' at the time of the hearing on May 2, 2024.
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 and/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-090759-23 issued on July 26, 2024 is denied. The order is confirmed and remains unchanged.

¹ See: *R. v. R.E.M.*, 2008 SCC 51, [2008]. See also *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708

August 13, 2024
Date Issued



Camille Tancioco
Member, Landlord and Tenant Board

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