



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

Citation: Shah v Seyaie, 2024 ONLTB 73980

Date: 2024-10-21

File Number: LTB-L-093746-23-RV

In the matter of: Apt 96, 400 MISSISSAUGA VALLEY BLVD
MISSISSAUGA ON L5A3N6

Between: Minesh Shah Landlords
Poornima Shah

And

Vahid Seyaie

Tenant

And

Habib N/A
To Unknown
Unknown Unknown
Unknown Unknown
Unknown Unknown

Unauthorized
Occupant

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

Oct 21, 2024

Landlord and Tenant Board

Review Order

Minesh Shah and Poornima Shah (the 'Landlords') applied for an order to terminate the tenancy of Vahid Seyaie (the 'Tenant') and evict Habib N/A, To Unknown, Unknown Unknown, Unknown Unknown and Unknown Unknown (the 'Unauthorized Occupant') because the Tenant transferred occupancy of the rental unit to the Unauthorized Occupant without the Landlord's consent. The Landlord also applied for compensation by the unauthorized Occupant for the use of the rental unit.

This application was resolved by order LTB-L-093746-23 issued on October 2, 2024.

On October 15, 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 as well as the audio recording for this hearing.

Determinations:

1. The Landlords' application was heard by videoconference on September 25, 2024. The Landlord Minesh Shah, the Landlords' legal representative, Alta Choudry, and the Tenant

attended the hearing. The Unauthorized Occupants were present or represented at the hearing. The Landlords' application was granted.

2. The Tenant submits that they were not reasonably able to participate in the proceedings and that there were serious errors in procedure and/or the final order. In sum, the Tenant submits:
 - (a) The Tenant was not reasonably able to participate in the proceedings.
 - (b) The hearing member seriously erred in finding that the Tenant transferred occupancy of the rental unit to the Unauthorized Occupants without the Landlords' consent.
 - (c) The hearing member seriously erred in ordering the Unauthorized Occupants to pay compensation.
 - (d) The proceedings were unfair.
3. For the reasons set out below, the review request is denied.

Reasonably Able to Participate

4. The Tenant states that they were not reasonably able to participate in the proceedings. This ground for review is reserved for instances where a party is absent from the proceedings. The Tenant was present at the hearing and provided submissions and presented evidence. As such, I am not satisfied that the Tenant was not reasonably able to participate in the proceedings.

Transferred Occupancy

5. A review of the final order demonstrates that the hearing member's determination that the Tenant transferred occupancy to the Unauthorized Occupants was reasonable. The hearing member based her determination on the Tenant's testimony that they reside in another location, the affidavit evidence that the Tenant did not live in the rental unit while collecting rent by the five other occupants, and the video evidence where the occupants state that the Tenant does not reside in the rental unit. The order sets out in sufficient detail the reasons why the hearing member arrived at her conclusions. The order is therefore an adequate order, and it is evident that the hearing member's findings of fact are rationally connected to evidence adduced at the hearing. In other words, the hearing member's findings of fact are not capricious.

Compensation

6. The Tenant further argues that the hearing member seriously erred in ordering the Unauthorized Occupants to pay compensation. The hearing member ordered the unauthorized occupants to vacate the rental unit on or before October 31, 2024. The hearing member also ordered them to pay compensation for the use of the unit from October 1, 2024 to the date they move out of the unit. The Tenant submits that the Landlord already received a last month's rent deposit from the Tenant. As such, it would be an error for the Landlord to apply the last month's rent to October 2024 and receive compensation from the Unauthorized Occupants.

7. A review of the Landlord's application demonstrates that they requested from the Board compensation for each day the Unauthorized Occupants remained in the rental unit. Subsection 103(1) of the *Residential Tenancies Act, 2006* (the 'Act') entitles a landlord to compensation for the use and occupation of the rental unit by an unauthorized occupant of the unit. As such, the hearing member had the jurisdiction to grant the Landlord's request.
8. While the Tenant submits that they paid a last month's rent deposit, this is separate and apart from compensation paid pursuant to subsection 103(1). Pursuant to subsection 106(10) of the Act, a landlord shall apply the last month's rent deposit to the last month of the tenancy. If the Landlord fails to apply the last month's rent deposit to the last month of the tenancy or return it to the Tenant, the Tenant has relief under the Act. Accordingly, I find no serious error in this regard.

Fair Proceedings

9. The Tenant also submits that the hearing proceeded unfairly because the Member "bulldozed" through the hearing and there were repeated interruptions by other applications. Nothing on the hearing record demonstrates that the hearing member used intimidation or force to get through the proceedings. In addition, the proceedings were only interrupted for the hearing member to consider brief consent agreements and to move parties to different rooms. Brief interruptions are a normal part of the virtual hearing room environment.
10. Furthermore, as required by the Divisional Court in *Sutton v. Riddle*,¹ if the Tenant had fairness concerns regarding the pace of the proceedings or the brief interruptions, they were obligated to make this known to the Board at the hearing, not wait until the review process to raise these concerns. A review is not an appeal or opportunity to change the way a case is presented.
11. Moreover, there is nothing to suggest that the Tenant was unable to meaningfully participate in the proceedings. For example, the order shows that the Tenant was able to make fulsome submissions on where they reside, their arrangement with the Unauthorized Occupants, where their possessions are, etc. As such, I find that there was no procedural fairness issue, and therefore, no serious error in this regard.
12. The Tenant also submits that the hearing member challenged their evidence because it was not submitted in a timely manner. A review of the hearing recording shows that the Tenant served and filed the document they sought to rely on the day of the hearing. The hearing member advised the Tenant that their evidence was not properly disclosed. Rule 19.1 of the Board's Rules of Procedure specifies that all parties must provide the other parties and the LTB with a copy of all documents, pictures or other evidence they intend to rely upon at least 7 days before the hearing. Pursuant to Rule 19.7 of the Board's Rules of Procedure, a party who fails to comply with Rule 19 may not rely on the evidence that

¹ 2021 ONSC 1403

was not disclosed. As such, the hearing member had the jurisdiction to not consider the evidence not properly disclosed.

13. The remaining balance of the Tenant's review request is that there were issues with the assessment of the evidence. A review of the final order demonstrates that 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 hearing 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.

14. 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-093746-23 issued on October 2, 2024 is denied. The order is confirmed and remains unchanged.

October 21, 2024
Date Issued



Camille Tancioco
Vice Chair, 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.