



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

Citation: Kamali v Leach, 2024 ONLTB 94817

Date: 2024-12-19

File Number: LTB-L-042986-24-RV

In the matter of: Basement Unit, 5311 BRIDGE ST
NIAGARA FALLS ON L2E2T4

Between: Hadi Kamali

And

Jim Leach

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

DEC 19, 2024

Landlord and Tenant Board

Landlord

Tenant

Review Order

Hadi Kamali (the 'Landlord') applied for an order to terminate the tenancy and evict Jim Leach (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-042986-24 issued on November 13, 2024.

On December 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 as well as the audio recording for this hearing.

Determinations:

1. The order that the Tenant seeks to review is a consent order. At the hearing, prior to the parties reaching consent, the Member told the Tenant that he had not properly disclosed his tenant issues pursuant to section 82 of the *Residential Tenancies Act, 2006* ('the Act'). The Tenant submits that determination was a serious error. The Tenant also submits that he was not reasonably able to participate in the proceeding.
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 the Tenant was not reasonably able to participate in the proceeding.
3. I have listened to the hearing recording. The order accurately reflects the terms agreed upon by the parties. There is nothing in the recording that supports that the Tenant did not freely enter into the consent order.
4. The parties agreed to delay terminating the tenancy by approximately two and half months. The Landlord also waived half of the outstanding arrears, reducing the amount

owing from \$29,328.00 to \$14,664.20, to resolve both the Landlord's application and the tenant issues. The Tenant submits that he was not reasonably able to participate in the proceeding because he could not refer to his evidence. If the Tenant wished to contest the Landlord's application and seek a higher award for his tenant issues, he did not have to consent to the order issued. A review is not an opportunity to change the way that a case was presented. The Tenant was present at the hearing and participated. I am not satisfied that he was not reasonably able to participate in the proceeding.

5. I do not find that the Member made any serious errors in determining that the tenant issues were not disclosed properly. The Tenant uploaded his evidence and list of issues to the Tribunal's Ontario Portal but did not serve a copy upon the Landlord. Section 82(2) of the Act, Rule 19.4 of the Board's Rules of Procedure, and the notice of hearing sent to the parties all establish that the list of issues and any supporting documentation must be sent to the Landlord. The Tenant did not do so, and as such it was not unreasonable for the member to state that the tenant issues were not properly disclosed.
6. Additionally, even if the Member did make an error in her determination that the tenant issues had not been properly disclosed, I do not find that it would change the outcome of the order. The parties chose to enter into a consent agreement and not have a hearing on either the Landlord's application or the tenant issues. The Landlord waived half of the outstanding arrears to resolve both the Landlord's application and the tenant issues. The Tenant received a remedy for his issues.
7. I do not find that any comments by the Member about the disclosure of the tenant issues impacted the Tenant's ability to have informed consent. While the Member remarked that the Tenant did not file his issues properly, there was discussion that the tenant issues might be heard at an adjourned hearing date for the Landlord's application or in a separate application filed by the Tenant. The Tenant was not told that his issues could never be heard if he did not consent to the order.
8. The Divisional Court states in *Li V. Gibson*, 2018 ONSC 1347, at paragraph 23 that "the court will typically uphold a consent order on the basis that such orders can only be set aside on grounds such as common mistake, misrepresentation, fraud or other grounds that would invalidate a contract". The review request does not establish any of those grounds.
9. For those reasons the review request is denied.

It is ordered that:

1. The request to review order LTB-L-042986-24 issued on November 13, 2024 is denied. The order is confirmed and remains unchanged.

December 19, 2024
Date Issued


Amanda Kovats
Member, Landlord and Tenant Board

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