



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

Citation: SILLS v KHAN, 2023 ONLTB 67946

Date: 2024-01-19

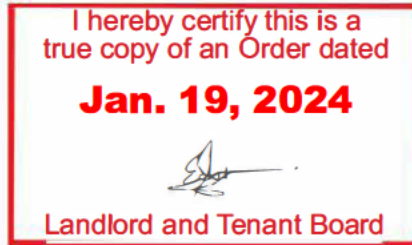
File Number: LTB-L-074650-22-RV/ LTB-T-074714-22-RV

In the matter of: 401, 7 MICHAEL POWER PLACE
ETOBICOKE ON M9A 0A4

Between: RYAN SILLS

And

MOHAMMAD BAQIR KHAN



Landlord

Tenant

Review Order

RYAN SILLS and HORLICK LEVITT DI LELLA (the 'Landlord') applied for an order to terminate the tenancy and evict MOHAMMAD BAQIR KHAN (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (LTB-L-074650-22).

MOHAMMAD KHAN (the 'Tenant') applied for an order determining that RYAN SILLS (the 'Landlord'): entered the rental unit illegally; altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys; and withheld or interfered with their vital services or care services and meals in a care home (LTB-T-074714-22).

Both applications were resolved by order LTB-L-074650-22 / LTB-T-074714-22 issued on October 13, 2023.

On November 9, 2023, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved. The Tenant alleged that they were not reasonably able to participate in the proceeding.

On November 9, 2023, interim order LTB-L-074650-22-RV-IN was issued, staying the order issued on October 13, 2023.

This request was heard by videoconference on January 8, 2024. The Tenant, the Landlord, and the Landlord's Legal Representative, C. Salgado, attended the hearing.

Determinations:

1. The hearing of both applications took place over two days on June 5, 2023 and October 5, 2023. While the Tenant was present at the hearing on the earlier date, he was absent on the latter.



2. The Tenant alleged that he was not reasonably able to participate in the proceeding of October 5, 2023, which resulted in order LTB-L-074650-22/LTB-T-074714-22 issued on October 13, 2023, directing him to pay outstanding arrears and dismissing his application against the Landlord.
3. The Tenant testified that he received a Notice of Hearing by email informing him of a rescheduled hearing on October 2, 2023. He attended the hearing and waited for a while but no one showed up so he proceeded to call the LTB repeatedly on that date, and again on October 3, 2023. The Tenant eventually sent an email to the LTB on October 5, 2023 at 2:27 p.m., stating that he attended the hearing on October 2, 2023, and waited an hour but the Adjudicator did not attend. In response to his email, the LTB informed him that the hearing had taken place and a final order would be issued.
4. In support of the request to review the order, the Tenant attached a copy of the Notice of Hearing showing LTB-T-074714-22 was scheduled for October 2, 2023; his email to the Board on October 5, 2023; and a copy of the LTB's response to the email.
5. The Tenant argued that the Landlord's Legal Representative, who previously informed the LTB that she was unavailable on October 5, 2023, attended the hearing and did not respond to the disclosure he provided on October 1, 2023. This assertion has no bearing on the Tenant's request because even though she previously indicated that October 5, 2023 was one of her unavailable dates, the Landlord's Legal Representative showed up to the hearing on receipt of the Notice of Hearing.
6. The Tenant acknowledged his email address is [REDACTED] but denied receiving an email containing the Notice of Hearing which the Landlord presented as evidence. The email titled '*Notice of Hearing-Rescheduled-Adjourned-LTB-T-074714-22-October 05 , 2023*' was sent from the LTB to the Landlord, the Landlord's Legal Representative, and to the Tenant at [REDACTED]
7. The Tenant also denied receiving an email dated July 27, 2023, from the Landlord's Legal Representative to the LTB, the Tenant, and the Landlord, seeking clarification on the hearing date.
8. The Landlord stated that they received a Notice of Hearing for an October 2, 2023 rescheduled hearing on July 19, 2023 but subsequently, on July 26, 2023, another email indicated that the hearing date was changed to October 5, 2023. The Landlord understood that it was because of the LTB's closure on October 2, 2023 in observance of the National Day for Truth and Reconciliation.
9. The Landlord opposed the Tenant's request stating that the Tenant was aware of the hearing, and waited until it was underway on October 5, 2023 before sending an email to the LTB to feign ignorance and prolong the process.



Analysis

10. The Landlord and Tenant Board Interpretation Guideline 8 states that “*The LTB will only exercise its discretion to grant a review when it is satisfied the order contains a serious error, a serious error occurred in the proceeding or the requestor was not reasonably able to participate in the proceeding*”.
11. Although the Notice of Hearing states categorically that if you are the Tenant and you do not attend the hearing or send a representative, the Board can hold the hearing without you and make a decision based on what is claimed by the Landlord, the Board’s power to review a decision may be exercised if a party to a proceeding was not reasonably able to participate in the proceeding. The courts have enjoined that the phrase “not reasonably able to participate” should be interpreted broadly to ensure natural justice and, where a party shows that they genuinely intended to participate in a hearing but were prevented from so doing, then they should be entitled to a hearing through the review process.
12. In this case, I am not satisfied that the Tenant genuinely intended to participate in the hearing. Our records show that two emails to the Tenant on July 19, 2023 titled ‘*Notice of Video Hearing - Adjourned - LTB-T-074714-22 - Hearing Date October 2, 2023*’ and ‘*Notice of Video Hearing - Adjourned - LTB-L-074650-22 - Hearing Date October 2, 2023*’, were sent to the Tenant at [REDACTED] informing him of the scheduled hearing. The Tenant acknowledged receipt of at least one of these emails.
13. In two further emails sent to the Tenant on July 26, 2023 titled ‘*Notice of Hearing-Rescheduled-Adjourned-LTB-L-074650-22- October 05 , 2023*’, and ‘*Notice of Hearing-Rescheduled-Adjourned-LTB-T-074714-22- October 05 , 2023*’, the LTB informed the Tenant of the rescheduled hearing and both emails were sent to the Tenant at [REDACTED]. The Tenant denied receiving both emails.
14. On September 17, 2023, the LTB sent another email to the Tenant at [REDACTED] titled ‘*LTB-L-074650-22, LTB-T-074714-22-HEARING DATE-OCTOBER 05, 2023-PUBLIC ACCESS TERMINAL*’. During his testimony, the Tenant denied requesting access to the LTB’s Public Access Terminal, but that does not negate the fact that he was again informed by email that the hearing would take place on October 5, 2023.
15. Although the Tenant only acknowledges receipt of the email from July 19, 2023, none of the others, sent to the same email address [REDACTED] were returned undelivered. This is not a case where the Tenant is claiming confusion about the actual date of the hearing. The Tenant simply claims, without more, that he did not receive multiple emails containing the Notice of Hearing for October 5, 2023.
16. The Tenant failed to provide a plausible reason on why he would not have received the three emails from the LTB on July 26, 2023 and September 17, 2023 or why he did not immediately send an email to the LTB on October 2, 2023, following repeated fruitless calls. Instead, the Tenant conveniently waited until the hearing on October 5, 2023, before



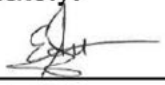
contacting the LTB via [REDACTED] thereby avoiding any chance of a reminder that it was scheduled for October 5, 2023.

17. Given the evidence presented, I am satisfied that the Tenant received the various emails containing the Notice of Hearing for October 5, 2023, and he has no explanation to the contrary. The emails were not returned to the Board, the Tenant has continued to use the email address [REDACTED] and although the Tenant stated in the request that he attended previous scheduled hearings, that is not a reason to grant this request when I am satisfied that he chose not to attend the hearing.
18. In requesting a review of an order, a party is essentially asking the LTB to disregard the fact that the LTB expended time and resources in scheduling the hearing; that the other party diligently attended the hearing and presented their evidence; and the presiding Member devoted time to hear the case and issue an order. As stated by the Court in *Q Res IV Operating CP Inc. v. Berezovs'ka* 2017 ONSC 5541 “[I]f parties are not diligent in dealing with legal proceedings, then they cannot demand that a Tribunal waste its resources by rehearing matters a second time. To allow this would undermine the ability of the administration of justice to deliver timely cost-effective and final orders.”
19. Based on the submissions made in the request, I am not satisfied that the Tenant was not reasonably able to participate in the proceeding.

It is ordered that:

1. The request to review order LTB-L-074650-22/LTB-T-074714-22 issued on October 13, 2023, is denied. The order is confirmed and remains unchanged.
2. The interim order issued on November 9, 2023, is cancelled. The stay of order LTB-L-074650-22/LTB-T-074714-22 is lifted immediately.

January 19, 2024
Date Issued



Jitewa Edu
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.