



AUG 02, 2024

Landlord and Tenant Board

**Order under Section 57
Residential Tenancies Act, 2006**

Citation: Hunt v Trevisan, 2024 ONLTB 55987

Date: 2024-08-02

File Number: LTB-T-074559-23

In the matter of: 711, 2212 Lakeshore Boulevard West
Toronto ON M5T1X5

Between: Jabari Hunt Tenant

And

Meaghan Trevisan Landlord

Jabari Hunt (the 'Tenant') applied for an order determining that Meaghan Trevisan (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on July 22, 2024.

The Landlord, the Landlord's representative Jessica Travers, the Tenant and the Tenant's representative Oyeyinka Oyelowo attended the hearing.

Preliminary issue: the Tenant's adjournment request

1. The Tenant's representative requested an adjournment for several reasons. As explained below I do not find the adjournment necessary or appropriate and I denied the adjournment request.
2. The first reason for the adjournment request was that there is an ongoing appeal of the LTB's order that resolved the related application based on the N12 notice of termination, file number LTB- L-060634-23, and the Divisional Court issued a stay of that order. The Tenant's Representative submitted the issues in this application are the same as the issues in the L2 application. She also submitted she was 'in discussion' with the Divisional Court regarding this T5 matter. She requested an adjournment until after the appeal is resolved. However, I find the stay does not affect this matter and there is no stay of the current proceedings, which would prevent this hearing from going ahead.
3. The Tenant's representative also requested an adjournment on the basis that the Tenant could not attend the hearing because of stress related symptoms caused by the eviction order issued in file LTB-L-060634-23. However, that order is stayed and there is no impending eviction. Ms. Oyelowo stated the Tenant would experience serious prejudice if the matter was not adjourned but did not identify how the Tenant's would be prejudice. Insufficient information was provided by Ms. Oyelowo to explain why that stayed eviction

order would prohibit the Tenant from participating in this virtual hearing. Therefore, I was not satisfied that the eviction order prohibited the Tenant's attendance today.

4. Ms. Oyelowo drew my attention to an accommodation request made by the Tenant in his Application. She further submitted that because of the Tenant's medical issues he could not attend or adequately participate in the hearing. I do not find this argument compelling. The accommodation request states the applicant experiences anxiety and needs a virtual hearing or an in-person hearing. Given this hearing is a virtual hearing, that accommodation has been provided by the Board.
5. If the Tenant was experiencing stress related symptoms during the hearing, the Member can manage the pace of the hearing accordingly and it would be possible for the Tenant to take frequent breaks. The Tenant had the option to also appear by phone without video. Mr. Hunt had legal representation by Ms. Oyelowo who did appear on his behalf and also could have informed him of the various options for participation. This is Mr. Hunt's application and he had notice of the hearing on February 28, 2024. I found Mr. Hunt had ample opportunity to prepare for the hearing, to instruct counsel to appear on his behalf, and to appear himself.
6. The Landlord opposed the adjournment. Ms. Travers, the Landlord's representative submitted her client retained counsel, prepared for this hearing and expended funds in that preparation. The Landlord was present at the hearing. The Landlord's representative submitted the Landlord would be prejudiced if an adjournment was granted given the fact the application was procedurally flawed.
7. Ultimately, I am not satisfied that the adjournment was necessary in the circumstances, and I find that it would prejudice the Landlord by causing undue delay in the proceedings. Therefore, I denied the adjournment.

Determinations

8. It is a condition precedent to an Application under Section 57(1)(a) of the *Residential Tenancies Act, 2006* that a tenant no longer be in possession. That section states:

57. FORMER TENANT'S APPLICATION WHERE NOTICE GIVEN IN BAD FAITH.

(1) The Board may make an order described in subsection (3) if, on application by a former tenant of a rental unit the Board determines that,

(a) the landlord gave a notice of termination under section 48 in bad faith, the former tenant vacated the rental unit as a result of the notice or a result of an application to or order made by the Board based on the notice, and no person referred to in clause 48(1)(a), (b), (c) or (d) occupied the rental unit within a reasonable time after the former tenant vacated the rental unit.

[Emphasis added]

9. That section specifically contemplates an application requires the applicant is former tenant who vacated the rental unit as a result of the N12, an application filed based on that

notice or an order of the LTB. A current tenant cannot bring a T5 application. Also, the Landlord's alleged failure to occupy the rental unit would have to occur only after the Tenant vacated.

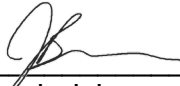
10. I am not satisfied that the Tenant has vacated the rental unit. I found the Tenant's Representative was evasive when asked directly if Mr. Hunt was in possession of the rental unit both when the application was filed and as of the hearing date. There was some suggestion by Ms. Oyelowo that Mr. Hunt left the rental unit for a time, however if I accept Ms. Oyelowo's submissions, he returned at some point. No details were provided by Ms. Oyelowo and no evidence of an alternate address for Mr. Hunt was provided by Ms. Oyelowo.
11. I also find that it is more likely than not that the Tenant is still in possession of the rental unit because he has appealed and sought a stay of order LTB-L-06034-23, which ordered eviction.
12. Accordingly, I find this T5 application by the Tenant to be premature, having no cause of action. I therefore have no jurisdiction to hear the application.

It is ordered that:

1. The Tenant's application is dismissed.

August 2, 2024
Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6



Julie Broderick
Member, Landlord and Tenant Board

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