



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

Citation: SHEWEN v REID, 2024 ONLTB 25484

Date: 2024-04-08

File Number: LTB-T-056551-22-RV

In the matter of: A, 71 NORMA CRESCENT
GUELPH ON N1E0K6

Between: DARLENE SHEWEN

And

ELEANE REID

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

APR 08, 2024

Landlord and Tenant Board

Tenant

Landlord

Review Order

DARLENE SHEWEN (the 'Tenant') applied for an order determining that ELEANE REID (the 'Landlord') gave a notice of termination in bad faith.

This application was resolved by order LTB-T-056551-22 issued on February 5, 2024

On February 12, 2024, the Landlord requested a review of the order and that the order be stayed until the request to review the order is resolved.

On February 13, 2024, interim order LTB-T-056551-22-RV-IN was issued, staying the order issued on February 5, 2024.

The Landlord's request for review was heard in by videoconference on April 2, 2024.

The Landlord and the Tenant attended the hearing. The Tenant was represented at the hearing by Shaun Harvey.

Determinations:

1. The review request alleges the Landlord did not receive the previous notice of hearing.
2. On the basis of the submissions made in the request, I am not satisfied that that the Landlord was not reasonably able to participate in the proceeding.

Notice of Hearing

3. The original hearing was scheduled to be hearing January 18, 2024. On August 11, 2023, the Board sent the parties the notice of hearing. The notice was sent to the Landlord at **2781 Townline Road Rr 21 Cambridge, Ontario, N3C 2V3**. This is the address for the Landlord listed in the lease agreement.

4. The Board also e-mailed the notice to the Landlord at **eleanedossantos@gmail.com**. The Landlord confirmed this is her e-mail address, and lease agreement confirms that this e-mail address may be used by the parties to exchange documents.
5. The Landlord claims she did not receive the notice by mail as that is not the correct address. The Landlord acknowledge receiving the notice of hearing by e-mail; however, it went to her junk mail folder. She did not check her junk mail folder until after the hearing.
6. *In Q Res IV Operating GP Inc. v. Berezovs'ka, 2017 ONSC 5541 (Div. Ct.) (CanLII)*, the Divisional Court affirmed that a party to a Board proceeding must exercise appropriate diligence to be aware of and to attend a Board proceeding. In this case, I find the Landlord's lack of diligence to be the reason why she did not receive the notice of hearing.
7. The Landlord acknowledged her signature on the original lease agreement, which included her email address as a channel for communication. This establishes that the Landlord provided and therefore endorsed this method of service for notices and other important communications from the Tenant or the Board. Regardless of the circumstances leading to the inclusion of her email address, it is incumbent upon the landlord to verify the accuracy of such critical information and to monitor these communication channels diligently.
8. The expectation that parties to a tenancy agreement will exercise due diligence in maintaining open and effective lines of communication is foundational to the proper functioning of tenancy agreement. This includes regularly checking for communications in all agreed-upon forms, including email, which the Landlord admitted to neglecting. The failure to check one's email, including the spam folder, does not constitute an extraordinary circumstance that would warrant a review, especially when the email address was explicitly provided as a means of service.
9. With respect to her physical address, the notice was mailed to the address was to the address on the lease agreement. The Landlord has a statutory obligation to ensure that the Tenant has the correct address for documents. The Landlord claims that the Tenant had her correct address, and it was listed on subsequent lease agreements.
10. I do not accept this argument. If there were subsequent lease agreements the Landlord would surely be able to produce those agreements. This was the Landlord's request to review. The Landlord is a sophisticated individual who ought of known that it is her obligation to produce any documentation she intends to rely on at the hearing.
11. It is unfortunate that the address on the lease agreement is not the correct address for the Landlord. However, this is the address the Tenant had to serve documents. The Tenant should not be punished for the Landlord's failure to provide the Tenant with an up-to-date address for service.
12. I am mindful of the need to apply the law equitably to all parties, irrespective of their level of experience, the number of properties owned, or other individual circumstances. Allowing a review based on the Landlord's self-described inexperience and oversight would set a precedent that could undermine the accountability mechanisms integral to the *Residential Tenancies Act*, 2006 and the Board's procedures. The law and its obligations apply equally

to all landlords, and ignorance of these obligations, unfortunately, cannot be a defense or a basis for granting a review.

13. *Khani v. Zhang, 2019 ONSC 1362* elucidates the principle that parties to a dispute before the Board must demonstrate due diligence in their engagement with the process. In this instance, I find the Landlord's oversight in monitoring her email and ensuring her contact information was up to date did not meet the requisite level of due diligence. This lack of diligence directly contributed to her failure to participate in the initial hearing, and as such, does not justify granting a review. Accordingly, the Landlord's request for review is denied.

It is ordered that:

1. The request to review order LTB-T-056551-22 issued on February 5, 2024, is denied. The order is confirmed and remains unchanged.
2. The interim order issued February 13, 2024, on is cancelled. The stay of order LTB-T-056551-22 is lifted immediately.

April 8, 2024
Date Issued



Bryan Delorenzi
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.