



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

Citation: DEB v TAYLOR, 2025 ONLTB 35121

Date: 2025-05-08

File Number: LTB-L-078968-24-RV

In the matter of: BASEMENT, 59 PITT AVE
SCARBOROUGH ON M1L2R3

Between: SHAKTI DEB

And

JANIS TAYLOR

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

MAY 8, 2025

Landlord and Tenant Board

Landlord

Tenant

Review Order

SHAKTI DEB (the 'Landlord') applied for an order to terminate the tenancy and evict JANIS TAYLOR (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-078968-24 issued on January 23, 2025.

On February 11, 2025, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On February 13, 2025 interim order LTB-L-078968-24-RV-IN was issued, staying the order issued on January 23, 2025.

The review request was heard by videoconference on April 14, 2025.

The Landlord, the Landlord's representative Fred Bari, and the Tenant attended the hearing.

Determinations:

Review

1. Interim order LTB-L-078968-24-RV-IN directed the Tenant's review request to a review hearing to determine:
 - (a) Did the hearing member consider whether the Tenant's obligation to pay one month's rent was suspended pursuant to section 12 of the *Residential Tenancies Act, 2006* (the 'Act')?
 - (b) Was the hearing member's finding of fact regarding the arrears' reasonable?

- (c) Any other issue the reviewing member deems appropriate.
2. The Landlord's representative raised at the end of the hearing that he did not have a copy of the Tenant's review request but that he thought he had a copy of the interim order. The interim order clearly identifies the issue to be determined at the review hearing and I started the review hearing by reading from the interim order so that the parties understood the scope of the review hearing. As such, I find that the Landlord was aware of the issue to be determined at the review hearing.
 3. For the following reasons I find that the order contains a serious error.
 4. I have listened to the hearing recording. The Tenant did attempt to raise that she does not have a complete copy of her lease. However, the Board did not allow the Tenant to provide any evidence on the issue and there are no determinations about the issue in the final order.
 5. Pursuant to section 12 and 12.1 of the Act a Landlord failing to provide a tenant with a copy of a lease agreement that meets certain requirements can result in a tenant being entitled to withhold rent. As such, it was a serious error not to hold a hearing on the issue.
 6. While raising most tenant issues at a rent arrears hearing requires serving notice in accordance with section 82 of the Act, I find that the issue of a lease agreement does not involve the same disclosure requirements. This is because tenants are not entitled to withhold rent for most tenant issues. However, section 12 and 12.1 of the Act are unique in that tenants can withhold rent if their landlord does not comply with the sections. As such, whether the Landlord had complied with section 12 and 12.1 goes directly to the amount of outstanding rent arrears. As such the issue should have been addressed at the original hearing.
 7. The review request was granted and a new hearing was held on the limited issue of whether the Tenant was entitled to withhold her rent pursuant to either section 12 or 12.1 of the Act.

Section 12

8. Section 12 of the Act states the following:

12 (1) Every written tenancy agreement entered into on or after June 17, 1998 shall set out the legal name and address of the landlord to be used for the purpose of giving notices or other documents under this Act. 2006, c. 17, s. 12 (1).

Copy of tenancy agreement

(2) If a tenancy agreement entered into on or after June 17, 1998 is in writing, the landlord shall give a copy of the agreement, signed by the landlord and the tenant, to the tenant within 21 days after the tenant signs it and gives it to the landlord. 2006, c. 17, s. 12 (2).

Notice if agreement not in writing

(3) If a tenancy agreement entered into on or after June 17, 1998 is not in writing, the landlord shall, within 21 days after the tenancy begins, give to the tenant written notice of the legal name and address of the landlord to be used for giving notices and other documents under this Act. 2006, c. 17, s. 12 (3).

Failure to comply

(4) Until a landlord has complied with subsections (1) and (2), or with subsection (3), as the case may be,

- (a) the tenant's obligation to pay rent is suspended; and
- (b) the landlord shall not require the tenant to pay rent. 2006, c. 17, s. 12 (4).

After compliance

(5) After the landlord has complied with subsections (1) and (2), or with subsection (3), as the case may be, the landlord may require the tenant to pay any rent withheld by the tenant under subsection (4). 2006, c. 17, s. 12 (5).

9. The parties agree that at the commencement of the tenancy a lease agreement was created. However, they disagree regarding whether it was provided to the Tenant. The parties also disagree regarding whether the Tenant has been provided an address for service for the Landlord.
10. The Tenant testified that she only received the first page of her lease. A copy of the version of the lease the Tenant has was entered into evidence (DOC-5402818). That page identifies the parties, the start date of the tenancy, the monthly rent, information about utilities, and a clause about occupants. Notably that page does not include an address for service for the Landlord. The Tenant testified that the Landlord has claimed not to receive documents she has served him in the past and that she worries that if she serves him with a tenant application, he will claim not to get it.
11. The Landlord testified that the full version of the lease agreement was given to the Tenant the day after it was signed. However, the Landlord did not produce a copy of the full lease agreement at the hearing so I cannot determine for myself whether it includes an address for service for the Landlord. At the review hearing when I asked the Landlord if he had ever given the Tenant an address for serving an application, the Landlord replied "no, she never asked me for that" (Recording 57:40).
12. The Landlord submits that the Tenant can serve their legal representative and that the Tenant's claim is an abuse of process. The Landlord submits that the Tenant has never raised not having a lease at other hearings before the Board and that other hearings support that she does have a lease.
13. I accept the Tenant's testimony that she has never received a copy of a lease agreement with the address for service of the Landlord as it was offered in a forthright manner. Additionally, the only lease I have before me is the copy provided by the Tenant that does not contain an address for service. If the Landlord had a lease that contained an address for service they easily could have provided it at the hearing. Additionally, according to the Landlord's own testimony he has never provided an address for service.

14. While I have considered that the Tenant is aware that the Landlord has a legal representative for this file, I do not find that sufficient to satisfy the requirement in section 12 (1). There is no evidence that the Landlord's paralegal is retained on an ongoing endless retainer. The Tenant requires an address for the Landlord to use even once this specific matter is concluded.
15. I have also considered that the Tenant knows where the Landlord lives as he resides in the residential complex, and therefore may not need to be told what address to use for service. However, sections 12(1) and 12(3) of the Act both require that the Landlord tell the Tenant *in writing* what address to use for service. The Act does not say that if a Tenant can gain access to the Landlord's address, then the requirement is waived. The likely purpose of the requirement to provide the information in writing is so there is no ambiguity surrounding what address can be used. The Tenant stated that the Landlord claims not to receive notices and that she is concerned if she files a tenant application the Landlord will claim not to receive it. Having the address for service in writing would directly address that concern of the Tenant.
16. I also find that the Tenant has not been provided with a full copy of the lease agreement. I accept the Tenant's testimony in this regard as it was offered in a forthright manner. Additionally, the Tenant has repeatedly asked for a full copy of the lease which supports that she does not have one. While the Landlord denies receiving any of the Tenant's requests, and claims to have given the Tenant a full copy of the lease, the Landlord at no point during the hearing produced a full copy of the lease. The Landlord's inability to provide the lease even at the hearing suggests that he may have also been unwilling to provide the Tenant with one.
17. While both parties referenced the lease agreement in order LTB-L-056378-23 they only referenced the rent amount. That is not contrary to the Tenant's submission that she only has the first page of the lease that contains the rent amount. While the Tenant may not have referenced the lease in at the hearing for file LTB-L-017719-24 that does not alone satisfy me that the Tenant is being untruthful about not having the lease. The Tenant could not have raised it at that hearing for any number of reasons.
18. I do not find the Tenant's claim to be an abuse of process. The Act explicitly allows a Tenant to withhold rent until section 12 is complied with and there is no time limitation for when a tenant can raise an issue surrounding section 12 of the Act. That the Tenant has raised other concerns in other hearings does not necessarily mean that this claim is an abuse of process.
19. For those reasons I find that as of the review hearing date the Landlord has not complied with either sections 12(1) to provide a tenancy agreement with the address of the landlord, 12(2) to provide the Tenant with a copy of the lease or 12(3) if the tenancy agreement is not in writing to provide with 21 days after the tenancy agreement begins written notice of the address to be used for service. As such the Tenant's obligation to pay rent is suspended pursuant to section 12(4) of the Act until the Landlord complies. The result of this is that the Tenant did not owe rent arrears when the N4 notice of termination was served and therefore the notice was invalid and cannot form the basis to terminate the tenancy. An arrears only order also cannot be issued for the same reason.

20. Pursuant to section 12(5) after the landlord has complied with subsections 12(1) and 12(2), or with subsection 12(3), as the case may be, the landlord may require the tenant to pay any rent withheld by the tenant under subsection 12(4).

Section 12.1

21. While I have already determined that the Tenant was entitled to withhold rent pursuant to section 12 of the Act, I will still provide reasons for whether the Tenant was entitled to do so pursuant to section 12.1 as well. This is because what can be withheld and whether it needs to be paid back is different for both sections and therefore would have different outcomes on this order.

22. Section 12.1 of the Act states the following:

12.1(1) Every tenancy agreement that is entered into in respect of a tenancy of a prescribed class on or after the date prescribed for that class of tenancies shall comply with the following requirements:

1. The tenancy agreement shall be in the form prescribed for that class of tenancies.
2. The tenancy agreement shall comply with the requirements prescribed for that class of tenancies. 2017, c. 13, s. 5.

23. O. Reg. 9/18: TENANCY AGREEMENTS FOR TENANCIES OF A PRESCRIBED CLASS establishes that the prescribed form for this tenancy is an Ontario Standard Form Lease. While the lease agreement that the parties have is not an Ontario Standard Form Lease, none of the Tenant's demands for a lease have ever raised a concern with the form of the lease, the Tenant was only complaining that she did not have the full copy of the lease. Section 12.1(5) and 12.1(6) of the Act establishes that section 12.1 only applies if a demand is made for a tenancy agreement that is in the prescribed form. The Tenant has not done so and as such was not entitled to withhold any rent pursuant to section 12.1 of the Act.

It is ordered that:

1. The request to review order LTB-L-078968-24 issued on January 23, 2025 is granted.
2. Order LTB-L-078968-24 issued on January 23, 2025 is canceled and replaced with the following:
3. The Landlord's application is dismissed.

May 8, 2025
Date Issued


Amanda Kovats
Member, 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.