



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

Citation: Macallum v Young, 2026 ONLTB 1133

Date: 2026-01-06

File Number: LTB-L-060413-25-RV

In the matter of: 5, 5 HEIMAN ST
KITCHENER ON N2M3L5

Between: Andrew Macallum Landlord

And

Sean Young Tenant

Review Order

Andrew Macallum (the 'Landlord') applied for an order to terminate the tenancy and evict Sean Young (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-060413-25 issued on October 7, 2025.

On November 17, 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 November 17, 2025, interim order LTB-L-060413-25-RV-IN was issued, staying the order issued on October 7, 2025.

This review request was heard by videoconference on December 3, 2025. The Tenant, the Landlord and the Landlord's legal representative Brittany Colley attended the hearing.

Determinations:

1. The Tenant requested a review of order LTB-L-060413-25, issued October 7, 2025 alleging the Tenant was not reasonably able to participate in the hearing which was conducted on October 2, 2025.
2. The test for being reasonably able to participate in a proceeding was considered by the Divisional Court in *King-Winton v. Doverhold Investments Ltd.*, 2008 CanLII 60708, which held that "*being reasonably able to participate in the proceeding must be interpreted broadly, natural justice requires no less.*" The case law also provides that not participating in the hearing because of one's own lack of due diligence is not the same thing as not being reasonably able to participate (see *Khani v Zhang*, 2019 ONSC 1362 (Div Ct.) and *Q Res IV Operating GP Inc. v. Berezovs'ka*, [2017 ONSC 5541](#) (Div. Ct.))

3. Upon review of the Board's records, a notice of hearing (NOH) was sent by mail to the Tenant on August 11, 2025. At the review hearing, the Tenant Sean Young (the "Tenant" or "SY") testified he did not receive that notice. The Tenant stated he lives in a 6-plex with each tenant having their own (unlocked) mailbox. SY indicated he is required to travel for work and thus, checks his mailbox approximately once per week.
4. The Landlord requests that the review be denied, stating the Tenant had a reasonable opportunity to participate at the hearing and simply chose not to attend. In addition to the Board's mail notification, the Landlord's representative produced an email sent to the Tenant on September 25, 2025 (the "Hearing Notification Email") – approximately 1 week prior to the hearing - which contained the hearing date and file number in the title and enclosed the NOH, further stating:

Please see attached the update form for the hearing scheduled on October 2, 2025. I have also attached the Notice of Hearing for your reference.

5. While the Tenant did not acknowledge receipt of the email (or any other correspondence from the Landlord's then legal representative), the Landlord produced subsequent email correspondence received from the Tenant on November 27, 2025 whereby the Tenant immediately responded to an email sent earlier in the day by the Landlord's then legal representative. The Landlord thus submits the Tenant receives timely emails, including the Hearing Notification Email. The Tenant, on the other hand, responded he "never checks his email" and never received the Hearing Notification Email, but acknowledged his email account is connected to his handheld phone and that he receives "tons of emails".
6. The onus is on the Tenant to establish that he was not reasonably able to participate in the October 2, 2025 proceeding. I do not find the Tenant's evidence believable that he did not receive both (i) the NOH mailed by the Board; as well as (ii) the Hearing Notification Email sent by the Landlord's then legal representative. The Tenant's explanation for not receiving both methods of notification lacked particulars, making it less believable. With respect to the NOH mailed by the Board, there is no indication of any such mail being returned for non-delivery. Moreover, subsequent email correspondence from the Landlord appears to have received a prompt reply, suggesting the Tenant likely received the Hearing Notification Email before the hearing date but simply chose to ignore it.
7. In the circumstances, I find on a balance of probabilities the Tenant had a reasonable opportunity to participate in the proceeding but simply chose not to attend. For the reasons above, the Tenant's request to review is denied

It is ordered that:

1. The request to review order LTB-L-060413-25 issued on October 7, 2025 is denied. The order is confirmed and remains unchanged.
2. The interim order issued on November 17, 2025 is cancelled. The stay of order LTB-L-060413-25 is lifted on January 20, 2026.

January 6, 2026
Date Issued

Peter Nicholson
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.