



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

Citation: Batko v Smith, 2026 ONLTB 1852

Date: 2026-01-09

File Number: LTB-L-002220-25-RV

In the matter of: 2, 15 FAIRHOLT RD S
HAMILTON ON L8M2T2

Between: Zbigniew Batko Landlords
MxZ International Trade & Construction

And

Albert Smith Tenant

Review Order

Zbigniew Batko and MxZ International Trade & Construction (the 'Landlords') applied for an order to terminate the tenancy and evict Albert Smith (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant; and
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises.

The Landlords also applied for an order requiring the Tenant to pay the Landlords' reasonable out-of-pocket costs the Landlords have incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was resolved by order LTB-L-002220-25, issued on October 3, 2025.

On October 30, 2025, the Landlord requested a review of the order.

A preliminary review of the review request was completed without a hearing.

Determinations:

1. On the basis of the submissions made in the request, I am not satisfied that there is a serious error in the order or that a serious error occurred in the proceeding.
2. The order correctly identifies the last day of the voiding period under subsection 64(3) in paragraph 13 as December 13, 2024. Since the Form N5 notice was given on December 6, 2024, the last day of the voiding period set out in the order is consistent with Rule 1.12 of the Board's Rules of Procedure and subsection 64(3) of the Act. The review request does not claim the Board Member erred by finding that the Landlord did not prove that the Tenant did not void the Form N5 notice of termination. The material the Landlord included with the review request does not show that the Tenant continued the activity described in the Form N5 in the appropriate voiding period.
3. Although the order identifies December 7, 2024 as the first day of the voiding period, the Member did not error in calculating the voiding period under subsection 64(3) of the Act. The error in identifying the December 7, 2024 is therefore not a serious, reviewable error, because the error does not affect the outcome of the proceeding. Instead, the error appears to conflate the voiding period under subsection 64(3) of the Act and how time is calculated under Rule 1.12.
4. The balance of the order explains how and why the Board Member found that the Landlord did not prove, on a balance of probabilities, that the Tenant caused undue damage to the rental property. The Member finds that the Landlord's evidence did not connect the Tenant, or a guest of the Tenant or another occupant of the rental unit, to the alleged damage.
5. Although the Landlord disagrees with the Member's finding with respect to the alleged damage, the Board's review process is not an opportunity to re-argue a matter with the hope of achieving a different result. Here, the Member's finding is rational and not arbitrary. As the finder of fact, the Member's finding is entitled to deference.
6. There is therefore no serious, reviewable error in the October 3, 2025 Board order.
7. The order shows that the parties were aware of the issues to be determined at the Board hearing and exercised the right to address those issues. The parties were therefore afforded procedural fairness as described in section 183 of the *Residential Tenancies Act, 2006*, and no error occurred in the proceeding.
8. The Landlord's request to review the October 3, 2025 Board order must accordingly be denied.

It is ordered that:

1. The request to review order LTB-L-002220-25 issued on October 3, 2025 is denied. The order is confirmed and remains unchanged.

January 9, 2026

Date Issued

Harry Cho

Vice Chair, 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.