



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

Citation: Nayal v Dabbagui, 2026 ONLTB 2001

Date: 2026-01-05

File Number: LTB-L-055682-25-RV

In the matter of: A, 76 SCOTT ST W
ST CATHARINES ON L2R1C9

Between: Amrou Nayal Landlord

And

Abderrazak Dabbagui Tenants
Hanan Alasmar

Review Order

Amrou Nayal (the 'Landlord') applied for an order requiring Abderrazak Dabbagui and Hanan Alasmar (the 'Tenants') to pay the rent that the Tenants owe.

This application was resolved by order LTB-L-055682-25 issued on September 22, 2025.

On September 29, 2025, the Tenants requested a review of the order and that the order be stayed until the request to review the order is resolved.

On October 1, 2025 interim order LTB-L-055682-25-RV-IN was issued, staying the order issued on September 22, 2025.

This request for review was heard by videoconference on October 23, 2025.

The Landlord and the Tenants attended the hearing.

Determinations:

Request for Review

1. On the basis of the submissions made in the request, I am satisfied that that the Tenants were not reasonably able to participate in the proceeding.
2. In the review request, the Tenants assert they vacated the rental unit on June 30, 2025 and they had no knowledge of the scheduled hearing held on September 15, 2025 as they did not receive the Notice of Hearing.
3. In his testimony, the Tenant, Abderrazak Dabbagui, stated that he was unaware of the Landlord's L9 application because he did not receive any communication or documentation

from either the Landlord or the Board regarding the hearing. He noted that the Landlord had also filed a separate application with the Board concerning an N5 notice of termination, and that he himself had filed three applications against the Landlord. The Tenant explained that, given the circumstances, he would have attended the hearing to oppose the Landlord's L9 application had he been properly notified. He further testified that he did not receive the Notice of Hearing by mail or email from the Board or the Landlord.

4. The Landlord was opposed to the Tenants' review request but admitted he did not have any communication with the Tenants regarding the hearing held on September 15, 2025.
5. The Board's power to review a decision may be exercised if a party to a proceeding was not reasonably able to participate in the proceeding. The case law from the Divisional Court generally instructs that the meaning of the phrase "not reasonably able to participate" should be interpreted broadly to ensure natural justice and, where a party shows that they genuinely intended to participate in a hearing but was prevented from so doing, then they should be entitled to a hearing through the review process. However, this genuine intent to participate must be borne out by the evidence, such as actions and conduct by the party, which clearly demonstrate the party's intent to participate in the hearing.
6. In *King-Winton v. Doverhold Investments Ltd.* 2008 CanLII 60708 (ON SCDC), the Divisional Court stated: "Being reasonably able to participate in the proceeding must be interpreted broadly, natural justice requires no less.
7. I agree with the ruling in *King-Winton* and am bound by the Divisional Court's ruling. It is a basic tenet of natural justice that a party to a proceeding be given an opportunity to participate in it. If a party has not been given a reasonable opportunity to participate in a proceeding that results in an order against that party's interests, natural justice demands that the party be given this opportunity. It is the possibility of this injustice that necessitates a broad interpretation of the grounds of being not reasonably able to participate in the proceedings.
8. I find that, given the ongoing applications before the Board filed by both the Landlord and the Tenants, as well as the Tenants' attendance at previous hearings, they would have attended the hearing scheduled for September 15, 2025. However, they were unable to do so because the Notice of Hearing was mailed to the rental unit on July 14, 2025, after the Tenants had already vacated the premises.
9. For the foregoing reasons, I find, on a balance of probabilities, that the Tenants were not reasonably able to participate in the proceeding. Therefore, the request for review shall be granted and a *de novo* hearing was held to consider the Landlord's application.

L9 Application

Were the Tenants in possession of the rental unit when the application was filed?

Landlord's evidence

10. The Landlord's application was filed on July 7, 2025 and in the application, the Landlord indicates the Tenants were still in possession of the rental unit on this date. The Landlord is

claiming the Tenants owe the monthly rent for the month of July 2025 in the amount of \$2,255.00.

11. In his testimony, the Landlord explained that he received an email from the Tenants on June 1, 2025 in which the Tenants wrote:

We are actively looking for a house to move out from your unit #A located at 76 Scott St. W. , St Catharines, ON, L2R-1C9. Our target is to move out as soon as the kids finish their school by July 1st 2025 to July 15, 2025. Based on the progress of getting a house sooner, we will move out from your unit.

12. The Landlord testified he responded to the Tenants email on June 1, 2025 and wrote:

I believe you are aware that you will need to provide a 60 days notice, nonetheless you are welcome to leave earlier, as long as you pay for the 60 days, which will be both June rent and July rent, considering you leave at your latest date of July 15th 2025.

13. The Landlord further testified that the Tenants paid the rent owing for June 2025 but failed to pay the rent for July 2025. He stated that he received an e-transfer from the Tenants on July 1, 2025, in the amount of \$1,127.50, representing the rent for the period of July 1 to July 15, 2025. However, the Tenants cancelled this e-transfer on July 7, 2025.
14. The Landlord submitted a video dated July 7, 2025, as evidence. The video shows the Tenants leaving the rental unit at 7:43 p.m. however, it does not establish that they entered the unit or that they remained in possession of the rental unit on that date.
15. The Landlord testified that, it is his position, the Tenants still had access to the rental unit on July 7, 2025, and were therefore still in possession of the unit when the application was filed. He further stated that the Tenants' cancellation of the e-transfer on July 7, 2025, prompted him to proceed with filing the application and the July rent is owing as the Tenants did not provide him with 60 days notice to vacate the unit.

Tenants' evidence

16. In their testimony, the Tenant explained that he sent the Landlord the e-transfer on July 1, 2025 in the amount equivalent to two weeks rent as it was their intention to thoroughly clean the unit after their belongings were removed. He understood that by paying the Landlord, he would be entitled to possession of the unit until July 15, 2025.
17. The Tenant testified they removed all of their belongings from the rental unit on June 30, 2025, but returned on July 5, 2025, after receiving notice from the Landlord regarding an inspection. The Tenant stated that their intention on July 5 was to complete the cleaning of the unit. He further testified that when the Landlord arrived, an altercation occurred between them, prompting the Tenants to leave the property. As a result of this incident, the Tenants cancelled the e-transfer that had been sent on July 1, 2025 and it was his belief that the tenancy ended on June 30, 2025, the day they vacated the unit.

18. The Tenants did not dispute that they attended at the rental unit on July 7, 2025, but testified that they did not enter the unit, as they had moved out on June 30, 2025 and had returned vacant possession to the Landlord on that date.
19. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.

Analysis and Legislation

20. The issue to be determined is whether the Tenants were in possession of the rental unit at the time the application was filed. Subsection 87(1) of *the Residential Tenancies Act, 2006* (the 'Act') allows a landlord to apply to the Board for an order for the payment of rent arrears if:
 - (a) the tenant has not paid rent lawfully required under the tenancy agreement; and
 - (b) the tenant is in possession of the rental unit. [Emphasis added]
21. In this case, I find that, based on the Landlord's own evidence, the Tenants were not in possession of the rental unit at the time the L9 application was filed. The Landlord's video evidence is insufficient to establish that the Tenants remained in possession on July 7, 2025, nor does it demonstrate that they entered the unit on that date.
22. I accept the Tenants' evidence that they attended at the rental unit on July 5, 2025, for the purpose of a final inspection and returned on July 7, 2025. However, this visit does not establish that they remained in possession of the unit. The Tenant testified that the main door to the rental unit was secured by a keypad system and that they did not have a physical key; therefore, no key could be returned to the Landlord to signify the surrender of the unit.
23. In my view, the Landlord needed only to change the keypad access code to secure possession of the unit on July 5, 2025. Based on the Landlord's own evidence, I am satisfied on a balance of probabilities that he filed the L9 application after the Tenants cancelled the e-transfer on July 7, 2025, and that he indicated on the application that the Tenants were still in possession because he observed them leaving the rental unit on that date. This observation, on its own, does not establish that the Tenants remained in care and control of the unit.
24. As the Tenants were not in possession of the unit at the time of the filing of the application, the application must be dismissed.

It is ordered that:

1. The request to review order LTB-L-055682-25 issued on September 22, 2025, is granted.
2. The interim order issued on October 1, 2025 is cancelled.
3. Order LTB-L-055682-25, issued on September 22, 2025, is cancelled and replaced with this order.

4. The Landlord's application is dismissed.

January 5, 2026
Date Issued

Susan Priest
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.