



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

Citation: Penfold v Balram, 2026 ONLTB 2858

Date: 2026-01-06

File Number: LTB-T-014136-24-RV

In the matter of: 23, 735 SHEPPARD AVE
PICKERING ON L1V7K5

Between:	Kimberly Penfold	Tenant
	And	
	Paul Balram	Landlord

Review Order

Kimberly Penfold (the 'Tenant') applied for an order determining that Paul Balram (the 'Landlord') :

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.

This application was resolved by order LTB-T-014136-24 issued on December 3, 2025.

On January 2, 2026, the Tenant requested a review of the order.

A preliminary review of the review request was completed without a hearing. In determining this request, I reviewed the materials in the LTB's file as well as the audio recording for this 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 proceedings.
2. The order under review shows that on December 7, 2024, the Landlord, after serving notice of entry, entered the unit and conducted an inspection. During this inspection, the Landlord took photos in the basement of the unit and some of these photos show the Tenant's personal items. The presiding Member did not find the taking of these photos amounted to substantial interference with the Tenant's reasonable enjoyment because the Member accepted the Landlord testimony that they took the photos for the sole purpose of using them as evidence in an unrelated hearing between the parties involving an N5 notice.

3. The Tenant submits the Member seriously erred in accepting the Landlord's explanation for taking the photos on December 7, 2024 because the N5 notice does not involve allegations supported by these photos.
4. The Board's records show that on October 8, 2025, the Tenant filed a request to amend her application. Page 17 of the request to amend sets out the allegation involving the photos this way:

On December 7, 2024, the landlord attended my unit for an "inspection". The landlord took 47 pictures (I know he took 47 pictures because he uploaded all of them for another matter we have before the Board).

5. In addition, the hearing recording shows the Tenant herself testified that the Landlord had uploaded these photos to TOP in support of his own application involving an N5 notice. The recording also shows the Landlord acknowledged taking the photos on December 7, 2024 in the basement of the unit. The Landlord testified the photographs were to be used only as evidence in the unrelated application involving the parties.
6. Paragraph 11 of the order shows the Member considered the circumstances alongside the Divisional Court's decision in *Nickoladze v. Bloor Street Investments and Advent Property Management*, 2015 ONSC 3893 when concluding that the taking of these photos was not done for any improper purpose and was not a breach of section 22 of the Act. The hearing recording confirms the Tenant gave no testimony that the Landlord used the photos taken on December 7, 2024 for any purpose other than as evidence in this other unrelated matter.
7. The presiding Member had ample evidence from both parties to conclude the photos were taken by the Landlord to be used as evidence for an upcoming hearing involving the parties and an N5 notice. Both parties stated as much. The Member's findings are rationally connected to the evidence presented and they are entitled to deference. Reasonable findings of a presiding Member will not be interfered with on review.
8. The Tenant was free to cross examine the Landlord with respect to the photos taken on December 7, 2024. The Tenant was free to give evidence and make submissions to the Member that showed the Landlord's testimony was incorrect. The Tenant could have cited the other Board file number to the Member and reviewed the allegations in it alongside the photos taken. The Tenant could have sought to introduce evidence the photos were taken for some other reason than that stated. Instead, the Tenant did not raise this issue with the Member at the hearing and now seeks to do so for the first time at the review stage of the proceedings.
9. The Board's review process is not a continuation of the hearing meant to provide parties an additional opportunity to make new argument in the hopes of obtaining a more desirable outcome. It is also not an opportunity to raise issues that could have and should have been raised at the original hearing. It is not an error for the Member to rely on the evidence presented at the hearing, including the testimony from both parties that

the photos taken by the Landlord are being used as evidence in another matter involving the parties before the Board.

10. Even if the Tenant did raise the issues articulated in her review request during the original hearing, I do not find this would have likely changed the outcome. The Tenant's belief that the photos are not relevant to the Landlord's allegations in this other matter, does not impact the reality that the photos were taken for evidentiary purposes.
11. For all of these reasons, I do not find the Tenant has shown a serious error exists in the order or that a serious error occurred in the proceedings. Accordingly, the Tenant's request for review is denied.

It is ordered that:

1. The request to review order LTB-T-014136-24 issued on December 3, 2025 is denied. The order is confirmed and remains unchanged.

January 6, 2026
Date Issued

John Cashmore
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.