



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

Citation: Singh v Bhagria, 2026 ONLTB 4257

Date: 2026-01-12

File Number: LTB-L-061357-23-RV

In the matter of: 34 ZELDA RD
BRAMPTON ON L6R3V3

Between: Gangadai Singh Landlord
Ramesh Sing

And

Kumaril Bhagria Tenant

Review Order

Gangadai Singh and Ramesh Sing (the 'Landlord') applied for an order to terminate the tenancy and evict Kumaril Bhagria (the 'Tenant') because the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was resolved by order LTB-L-061357-23 issued on January 8, 2026.

On January 8, 2026, 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 the Landlord was not reasonably able to participate in the proceeding.

Serious Error

2. The application was dismissed because the Landlord did not prove their case on a balance of probabilities. The Board found that the Tenant's evidence raised legitimate concerns about the Landlord's intention for the rental unit. The Board also had concerns about the Landlord not calling the alleged intended occupant of the rental unit (their son) as a witness.

3. The Landlord submits that it was a serious error for the Board to dismiss their case because their son did not testify.
4. Section 72 of the *Residential Tenancies Act, 2006* ('the RTA') establishes that the Board shall not terminate a tenancy unless a landlord files an affidavit sworn by the person who personally requires the rental unit certifying that the person in good faith requires the rental unit for their own use for one year. The Board's Rules of Procedure permit a declaration to be filed in place of an affidavit.
5. In support of their argument that the order contains a serious error the Landlord provides the case of *Melhuish v. 580472 Ontario Ltd.*, 2002 CanLII 6256 (ON SCDC) ('*Melhuish*'). In that case the Divisional Court says that the *Tenant Protection Act* (now the RTA) requires a declaration from an intended occupant but does not require viva voce testimony on the subject. The Court states that a tenant can summons the intended occupant to be cross examined.
6. *Melhuish* does not stand for the proposition that all eviction applications for a landlord's own use must be granted as long as the Landlord files a declaration from an intended occupant. *Melhuish* correctly notes that the RTA does not require viva voce testimony from an intended occupant. However, *Melhuish* does not say that filing a declaration relieves an applicant from the burden of proving their case on a balance of probabilities. Filing a declaration is a necessary requirement but whether a declaration is alone sufficient to prove a case depends on the circumstances of an individual case. Where there is compelling evidence to question the Landlord's good faith intent, such as in this case, a declaration alone may not be sufficient.
7. The Board noted the following in *Zuidersma v Duke*, 2022 CanLII 122598 (ON LTB):
 16. "In accordance with the decision of Ontario Divisional Court in *Melhuish v. 580472 Ontario Ltd.*, 2002 CanLII 6256 (ON SCDC) ("*Melhuish*") there is no express or implicit requirement that the purchaser in a contested application give oral testimony at a Board hearing, although the tenant is free to summons the purchasers for cross-examination on the affidavit. Accordingly, the non-attendance of the purchasers cannot by itself be fatal to the Landlord's application.
 17. But as noted to the Landlord's representative at the hearing, the purchasers' declaration can only stand as evidence for what it actually says. Put another way: should other issues arise at the hearing that might bring into question the purchasers' genuine intention to occupy, the lack of oral testimony from the purchaser respecting their intentions may result in the Landlord failing to establish, on the balance of probabilities, that the purchasers do indeed have a good faith intention to occupy the rental unit."
8. As explained in paragraph 13 of the order under review, the Board was concerned that the declaration was completed July 19, 2023, that the Board had no way of questioning the Landlord's son about his current intentions, and that that was problematic because the Landlord's evidence was that their son's circumstances have since changed. The

Board found that the Tenant's evidence raised legitimate concerns about the Landlord's intention for the rental unit. The Tenant provided evidence that the application was retaliatory for the Tenant's rejecting the Landlord's request for a rent increase. I am not satisfied that based on the evidence before the Board, it was unreasonable to find that the Landlord did not prove their case on a balance of probabilities. Reasonable determinations will not be interfered with on review.

Participation in the Proceeding

9. The review submissions do not make clear why the Landlord submits that they were not reasonably able to participate in the proceeding. The Landlord attended the hearing, actively participated, and was represented throughout the hearing.
10. The Landlord may be suggesting that they were not reasonably able to participate in the proceeding because their son was unavailable to be a witness because he was at work.
11. I am not satisfied that the Landlord's son making the active choice to attend work rather than the hearing means that the Landlord was not reasonably able to participate in the proceeding. The Landlord could have sought an adjournment to secure their son's attendance on another date. The review request provides no information about any steps the Landlord's son took to arrange time off work.
12. My finding is consistent with the Board's approach in the following cases in which choosing to attend work rather than attending a hearing was found not to be grounds for review: *TEL-82989-17-RV (Re)*, 2017 CanLII 84863 (ON LTB), *TSL-75156-16-RV (Re)*, 2017 CanLII 28808 (ON LTB), and *TNL-56542-14-RV (Re)*, 2014 CanLII 57970 (ON LTB). I note that in *TEL-87603-18-RV-IN2 (Re)*, 2018 CanLII 111773 (ON LTB) the Board found that a tenant who left a hearing because her workplace needed her to cover for an unexpectedly ill employee was not reasonably able to participate in the hearing. However, that case is distinguishable from the case before me because it involved an unexpected illness.

It is ordered that:

1. The request to review order LTB-L-061357-23 issued on January 8, 2026 is denied. The order is confirmed and remains unchanged.

January 12, 2026

Date Issued

Amanda Kovats

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.