



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

Citation: Lewis v Foundation Capital Holdings, 2026 ONLTB 6627

Date: 2026-01-27

File Number: LTB-T-006633-24-RV

In the matter of: 2, 975 Barton
Hamilton ON L8L3C8

Between: Arlie Eleanor Lewis Tenant

And

Foundation Capital Holdings Landlord

Review Order

Arlie Eleanor Lewis (the 'Tenant') applied for an order determining that Foundation Capital Holdings (the 'Landlord') failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards.

This application was resolved by order LTB-T-006633-24 issued on October 21, 2025 and based on a hearing that took place on October 14, 2025 where only the Landlord attended the hearing.

On October 22, 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 October 24, 2025 interim order LTB-T-006633-24-RV-IN was issued, staying the order issued on October 21, 2025

This review was heard by videoconference on November 18, 2025.

The Tenant, the Landlord's agent, and the Landlord's legal representative, Lisa Barder, attended the hearing.

Determinations:

1. The Tenant submits that they were not reasonably able to participate in the hearing that took place on October 14, 2025 due to miss-diarizing the date in her calendar. She submits that because of three deaths in her close family, between August 13, 2025 with the passing of her half-brother, August 18, 2025 with the passing of her uncle and September 8, 2025 with the passing of her first child's father, that this caused significant grief which led to the miss-diarizing. In her request, she also notes that her mother was ill on October 14, 2025 and she had to care for her.

2. Relating to their passing, the Tenant attended two funerals on September 15, 2025 for her child's father and her uncle and then attended a celebration of life on September 25th for her half-brother. The Tenant submitted no evidence with respect to the illness of her mother.
3. At the hearing, the Tenant further submitted that she was also wrapped up in the Landlord's L2 application under LTB-L-038204-25 based on an N5 Notice of termination in which she stated that she wants to ensure that her T6 application proceeds as there are ongoing issues that need to be addressed. The hearing for the Landlord's application was on September 10, 2025. The Tenant attended that hearing.
4. The Tenant stated that they thought that the hearing for their T6 application was on October 20th or 27th but could not recall if or when she put the correct date in her calendar. She then testified her certainty around the hearing date being on October 27th and that this is why she checked the portal on October 20th to upload her material for the file in 7 days advance of the hearing date. She further submitted an email copy to the Fire Marshall dated October 15, 2025 in support of suggesting her understanding of the hearing date being October 27th.
5. Under cross examination, the Tenant admitted that it was October 22, 2025 that she made further submissions on the file with her evidence and not on October 20, 2025 as she originally pled in her review request. The Tenant also admitted it was possible that she received the Landlord's disclosure evidence on October 7th about the upcoming hearing but states she may not have cued into it given her ongoing grieving.
6. The last time the Tenant uploaded materials to this file was on July 16, 2025. By that time, she submitted approximately 471 separate exhibits with the final submission being **Exhibit 23** which is a doctor's note dated July 7, 2025 along with their remedies and a certificate of service for her materials.
7. Under the Landlord's L2 application file, the Tenant uploaded exhibits up to **Exhibit 29e** which is a document dated August 28, 2025. She uploaded her materials on the L2 file on September 6th and 9th. The Tenant confirms that the exhibits are identical on both files and she relies on them for both matters.
8. The Tenant submits that she uploaded the additional Exhibits after the review request because these documents were not previously available to her prior to October 22nd. However, I did not find the Tenant particularly credible on this as they were able to upload up to Exhibit 29e dated August 28, 2025, by the time they uploaded this to the L2 file on September 6th.
9. While I do accept that perhaps the Tenant prioritized the L2 application hearing as it related to a potential eviction from her home, I do not accept the Tenant's explanation on why they missed the October 14, 2025 hearing.
10. More likely than not, they were not diligent in checking the status of their file and they were not prepared to proceed with their T6 application on October 14th because they had not uploaded all of their anticipated evidence in time. The proximity of her close family members passing was much closer to the September 10th L2 hearing which she attended, than it was to the T6 hearing on October 14th that she did not attend.
11. The Notice of Hearing for this matter was emailed to the Tenant on July 31, 2025. The Tenant uploaded materials on July 16th and then did not appear to upload any further

materials until October 22nd, which was after the hearing date and after the order was issued on October 21, 2025. I do not accept that the evidence was previously unavailable as she had uploaded additional materials in the L2 application file up to September 9, 2025.

12. In *King-Winton v. Doverhold Investments Ltd.*, 2008 CanLII 60708 (*'King-Winton'*), the Divisional Court held that "being reasonably able to participate in the proceeding must be interpreted broadly, natural justice requires no less". In this case, there was evidence to suggest that the tenant missed her hearing because of her honest but mistaken belief in an incorrect hearing date.
13. More recently, in *Chin Yong Ahn v. 4900 Bathurst Street*, 2014 ONSC 7325 (*CanLII*), the tenant received the notice of hearing, but did not attend. He claimed he mistook the stated June 3, 2014 hearing date for June 4, 2014; but there was no evidence that he attended on June 4. The Divisional Court held that, pursuant to subsection 7(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, C.S 22, the Board was entitled to proceed in the tenant's absence and that the tenant was reasonably able to participate in the hearing.
14. I am of the view that *King-Winton* does not stand for the proposition that forgetfulness, distraction, lack of attention to detail or disregard for the date of a hearing entitles a party to a new hearing. A party who fails to attend a hearing should not be in a better position than the party who attends, and a party should not benefit from their conduct by delaying the proceedings. (See also TNL-83955-16-RV)
15. What appears to be the case here is a lack of due diligence on the Tenant's part. That is not the same thing as not being reasonably able to participate. (See: *Khani v. Zhang*, 2019 ONSC 1362 (*CanLII*) (Div. Ct.), and *Q Res IV Operating GP Inc. v. Berezovs'ka*, 2017 ONSC 5541 (*CanLII*) (Div. Ct.).
16. For these reasons, I am not satisfied that the Tenant was not reasonably able to participate in the October 14th hearing and on this basis the request for review must be denied.

It is ordered that:

1. The request to review order LTB-T-006633-24 issued on October 21, 2025 is denied. The order is confirmed and remains unchanged.
2. The interim order issued on October 24, 2025 is cancelled. The stay of the order is lifted effectively immediately.

January 27, 2026

Date Issued

Terri van Huisstede

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.