



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

File Number: LTB-T-076252-24-RV

In the matter of: 497 WORTHINGTON ST E
NORTH BAY ON P1B1H4

Between: Adam McKay Tenant

And

Aedo Properties Landlord

Review Order

Adam McKay (the 'Tenant') applied for an order determining that Aedo Properties (the 'Landlord') was required to allow the Tenant to move back into the unit under section 53 of the *Residential Tenancies Act, 2006* (the "Act") and failed to do so.

This application was resolved by order LTB-T-076252-24 issued on January 12, 2026.

On January 21, 2026, the Landlord requested a review of the order.

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

Determinations:

1. The Landlord alleges there is a serious error in the Board order issued on January 12, 2026 (the "Order").
2. 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.
3. By way of background, the Tenant filed a T5 application seeking to move back into the rental unit under section 53 of the Residential Tenancies Act, 2006 (the "Act"). In short, the Tenant was given a Form N13 (repairs/renovations) and was denied the opportunity to move back into the rental unit notwithstanding the Tenant giving the Landlord a right of first refusal. Instead, the Landlord served the Tenant with a Form N12 – while the Tenant was awaiting a return of possession to the rental unit – and unilaterally moved in the rental unit.
4. In restoring possession to the Tenant, the member considered the reasoning and guidance from the Ontario Divisional Court in *Schram v. Thompson*, 2022 ONSC 6922 (CanLII) ("Schram"), which stated:

[44] If a third-party tenant, without notice of these circumstances, was in possession of the unit today, the Tenant could not be restored to the unit without displacing that subsequent tenant. In such a case, issues could arise about the Board's jurisdiction to oust the subsequent tenant in favour of the original tenant, and the test for exercising such jurisdiction, if it exists. They do not arise in this case. Where an alleged occupant is not a tenant, but is a family-member occupant, and the alleged occupation is either a ruse or a tactic to further a landlord's abuse of the process of the LTB, the Board has jurisdiction pursuant to *SPPA*, s. 23(1) and *RTA*, s. 31(1)(f), to order that the tenant be restored to the unit. That is this case.

5. The Landlord submits the member "misapplied" *Schram* because in *Schram* possession was restored to a vacant unit while in the current situation, the Landlord is residing in the rental unit. I disagree. A plain reading of *Schram* shows an intent to prevent an abuse of process by allowing the Landlord to circumvent the Act and/or engage in self-help remedies. Here, there is no suggestion that the Tenant abandoned or gave up possession of the rental unit in any way. In fact, the opposite occurred: the Landlord was clearly made aware of the Tenant's right of first refusal and intent to return to the rental unit once renovations were completed. Allowing the Landlord, in such circumstances, to override the Tenant's right of first refusal by moving into the rental unit while the Tenant is awaiting a return to the rental unit would reasonably be interpreted to be an abuse of process and contrary to the intent of Act. I thus find no error in the member's application of *Schram*.
6. Section 57.01(1) provides that on applications such as the current one, the Board may make an order described in subsection 57(3) of the Act which provides, in part, as follows:
 4. Any other order that the Board considers appropriate.
7. Pursuant to Section 57(3)4, I find it was within the Member's jurisdiction to restore the Tenant's possession of the rental unit and that such an order was appropriate to prevent the Landlord from circumventing the Tenant's right of first refusal.
8. The Landlord's request to review is accordingly denied.

It is ordered that:

1. The request to review order LTB-T-076252-24 issued on January 12, 2026 is denied. The order is confirmed and remains unchanged.

January 23, 2026
Date Issued

Peter Nicholson
Member, Landlord and Tenant Board

Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.