



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

File Number: LTB-L-048839-25-RV

In the matter of: 194 MONEYPENNY PL
THORNHILL ON L4J0K9

Between: Jingying Song Landlord

And

Callie Zhang Tenant

Review Order

Jingying Song (the 'Landlord') applied for an order to terminate the tenancy and evict Callie Zhang (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

This application was resolved by order LTB-L-048839-25 issued on June 18, 2025 on an ex parte basis.

On June 27, 2025, the Tenant filed a motion to set aside the ex parte order. The hearing was scheduled for August 5, 2025 and the Landlord did not attend. Order LTB-L-048839-25-SA was issued on August 8, 2025.

On September 7, 2025, the Landlord requested a review of the order.

On September 8, 2025 interim order LTB-L-048839-25-SA-RV-IN was issued, staying the order issued on August 8, 2025.

This application was heard by videoconference on September 23, 2025.

The Landlord's agent, Andy Xia, and the Tenant's agent, Hui Zhang, attended the hearing. The Tenant was represented by Ali Golabgir.

Determinations:

1. For the reasons that follow, the request to review is denied and the order remains unchanged.

Request to review

2. The Landlord's request to review alleges the Landlord was not reasonably able to participate at the hearing on August 5, 2025 because of an unexpected medical emergency that morning – particularly a knee injury and a very bad headache.

3. At the hearing, while the Landlord was not present as she was at work, the Landlord's spouse and agent submitted that on the morning of the hearing, his wife had a bad headache and was at home to recover. He testified he could not join the hearing room at such a short notice as he was at work and couldn't get the day off.
4. I note that the interim order issued on September 8, 2025 required the Landlord to provide evidence of the Landlord's medical emergency but the Landlord did not comply with this order. When I asked the Landlord's agent why, he stated that the Landlord manages her pain at home and does not have medical documentation from the hearing day that was missed.
5. After cross-examination, the Landlord's agent confirmed the knee injury occurred on August 7 and that no medical attention was required.
6. The Tenant opposes the Landlord's request to review and submits that the Landlord has presented contradictory and insufficient reasons for why they missed the original hearing date. Further, the Landlord did not take any steps to ensure due diligence such as informing the Board and the Tenant that they were unwell on the hearing date – if that is truly the reason they missed the hearing. The Tenant submits the review request should be denied. '

ANALYSIS

7. Pursuant to subsection 209(2) of the Residential Tenancies Act, 2006 the Board is empowered to review an order where a party to a proceeding was "not reasonably able to participate" in the hearing.
8. The question of what the phrase "not reasonably able to participate" means has been before the Divisional Court in a number of appeals from Board orders. What all of the Divisional Court cases have in common is the notion of fairness: a party who does not know about a hearing should have a chance to participate in a new one; a party that knows about the hearing and genuinely wants to participate but does not, should still have an opportunity to be heard.
9. I find the circumstances in this case do not fall under the scenarios above and do not warrant the granting of the review request. I say this because it is undisputed that the Landlord was aware of the hearing, but it is also unclear what happened that required them to miss it. Was it the headache? Was it the knee injury? Or was it something else, and if so, was it a medical emergency the Landlord asserts in their review request or has the Landlord inflated their claim?
10. In my view, the circumstances in this case are also appropriate for an adverse inference to be drawn against the Landlord based on their failure to attend and comply with the interim order to provide evidence in support of their medical emergency.
11. In commenting on the doctrine of adverse inference, the Court of Appeal for Ontario in its decision in *Parris v. Laidley*, [2012 ONCA 755 \(CanLII\)](#), stated:

Drawing adverse inferences from failure to produce evidence is discretionary. The inference should not be drawn unless it is warranted in all the

circumstances. What is required is a case specific inquiry into the circumstances including, but not only, whether there was a legitimate explanation for calling the witness, whether the witness was within the exclusive control of the party against whom the adverse inference is sought to be drawn, or equally available to both parties and whether the witness has key evidence to provide or is the best person to provide the evidence in issue.

12. In *The Law of Evidence in Canada*, 4th ed. by Lederman, Bryant and Fuerst, the test for an adverse inference is described as follows:

In civil cases, an unfavourable inference can be drawn when, in the absence of an explanation, a party litigant does not testify or fails to provide affidavit evidence on an application, or fails to call a witness who would have knowledge of the facts and would be assumed to be willing to assist that party. In the same vein, an adverse inference may be drawn against a party who does not call a material witness over whom he or she has exclusive control and does not explain it away. Such failure amounts to an implied admission that the evidence of the absent witness would be contrary to the party's case or at least would not support it.

13. In the present case, the Landlord who failed to attend because of her alleged medical emergency, did not attend the hearing or file evidence to support her claim. Her evidence was key to determine whether she was reasonably able to participate at the hearing. As such, the general criteria for and adverse inference would be applicable.
14. On the basis of the submissions made in the request, I am not satisfied that the Landlord was not reasonably able to participate in the proceeding. I say this because their bald assertion on the review request is not supported by evidence such as their testimony, medical documentation, or any reasonable steps taken by the Landlord or their agent on the day of the hearing. Therefore, the request to review is denied
15. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The request to review order LTB-L-048839-25-SA issued on August 8, 2025 is denied. The order is confirmed and remains unchanged.
2. The interim order issued on September 8, 2025 is cancelled.
3. The stay of order LTB-L-048839-25 is lifted immediately.

January 26, 2026
Date Issued

Sonia Anwar-Ali
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.